

IN THE ALTRINCHAM COUNTY COURT

Trafford Courthouse
Ashton Lane
Sale
Cheshire
M33 7WX

BEFORE:

DISTRICT JUDGE HAYES

BETWEEN:

Parking Eye Ltd 40 Eaton Ave

Claimant

- and -

Mrs Nicola Hotchin

Defendant

Miss Vipond on behalf of the Claimant

Mrs Hotchin, Litigant-in-person assisted by Mr Hotchin

Judgment date: 17th March 2014

Judgment as approved by the Court

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District Judge Hayes:

1. This is a case brought by Parking Eye Ltd -v- Mrs Nicola Hotchin. It is a claim that was issued on the 30th September 2013 in the sum of £100, plus court fees and solicitors' costs, and relates to an allegation that Mrs Hotchin had parked without displaying a ticket at a car park in Newquay, Cornwall, on the 30th May 2013.
2. It was said in the particulars of claim that the car entered the car park and left it some time later without putting a pay and display ticket on. The defence, dated the 22nd October 2013 disputed the claim and referred to a number of basis for the defence.
3. Whilst admitting that Mrs Hotchin was the owner of the vehicle concerned, which had been photographed, it was said that she was unable to admit or deny the precise time she was parked in the car park as she had no recollection of this, and went on to deal with a number of legal issues in terms of whether or not there was a contract with the Claimant, whether the Claimant was the proper party to these proceedings in terms of the issue of land owner, and even if there was deemed to be a contract whether the amount was a penalty or a genuine pre-estimate of loss, and then therefore properly recoverable.
4. Both parties have, subsequent to directions being given by the Court and in fact prior to that in the Claimants' case, filed numerous documents with the Court. There was a reply to defence lodged which is not a document that is required by the Court Rules but is an optional one, in any event it was not dated or signed, but was later incorporated into the witness evidence of the Claimants.
5. In terms of the evidence on the court file the Claimants have filed a statement of Jonathan Langham, of the 31st January 2014 and also the 30th January 2014, one being in response to Mrs Hotchin's witness statement, and also a statement of John Bryant, of the 3rd December 2013. Mrs Hotchin has filed her witness statement, of the 28th January 2014, and as I have said, both parties have lodged with those statements a considerable number of documents and submissions in relation to the matters before the Court today.
6. It has to be said a large number of them are not at all relevant, but perhaps the Defendants have fallen into the trap that many do, of having thrown absolutely everything they possibly can at this case, and many of the submissions the Court sees on a regular basis in other cases of this nature.
7. What I must do today, of course, is not focus on general principles, but on the facts of this case and in that regard the Claimants were represented by Miss Vipond today, as an agent, and Mrs Hotchin attended and was assisted and represented, in terms of a lay representative, by her husband.
8. I heard submissions from Mr and Mrs Hotchin and evidence from Mrs Hotchin in respect of some questions that I asked her. I have considered the witness statements filed by both parties, and particularly the Claimants', although of

course none of their witnesses are here today to give any further evidence or be cross-examined.

9. I set out at the outset of today that the burden of proof to prove their case is upon the Claimant, and the burden is on a balance of probabilities.
10. The Claimants' case is very straightforward. They pursue Mrs Hotchin in respect of a charge imposed for entering into a car park and staying within the confines of that car park for 31 minutes before leaving on the day in question, and say that no ticket was purchased. They base this on the fact that the machine requires customers to enter a registration number when purchasing a ticket.
11. The Defendant's case was clarified today as being essentially on three basis, first that Parking Eye had no right to bring this claim and to be Claimant in these proceedings, that that lies with the land owner. Secondly, that if that fails the terms and conditions the Claimants rely on were not incorporated into a contract with Mrs Hotchin, and thirdly, if they were, that in any event then the charge being pursued is not a genuine pre-estimate of loss but a penalty and should not be enforceable.
12. I dealt with each of those in turn. I have already given an indication that I was satisfied that on the basis of contract that was exhibited to the documents between Parking Eye and the leaseholder of the land, that there was clearly a contractual relationship between them and that this entitled Parking Eye to deal with the parking charges and therefore to pursue this claim.
13. Mr Bryant's statement simply dealt with that issue and I did not see that as being controversial in this case. I am therefore satisfied that Parking Eye could bring this case against Mrs Hotchin.
14. The second issue was the most controversial in terms of whether terms and conditions that the Claimants say were part of the contract were incorporated into a contract with Mrs Hotchin.
15. The Defendant's position in respect of the events of the day were, as said in their Defence, that simply Mrs Hotchin was unable to admit or deny the precise time she was parked in Fistral Beach as she has no recollection of this. In the witness statement of the 28th January she says at paragraph 1:

“I am defending the case on the following grounds, it is unlikely on the balance of probabilities that my vehicle was parked on the date of the event and Parking Eye have failed to offer evidence to the contrary.”

16. Mrs Hotchin's case today started on the basis that it was said that the position was that they cannot say for sure whether she was parked or circling the car park, and that then became a more definite assertion; and that if they were circling the car park, as 'we believe we did' it is impossible to read the signage. The Defendant's case, therefore, is that certainly as of the evidence today, they were circling the car park.

17. On re-reading Mrs Hotchin's witness statement I see at paragraph 8 she dealt with the issue of the busy-ness of the car park, and said:

“It is likely that my vehicle was not parked at all, but on this occasion it is likely that my vehicle was driving around the car park with the driver looking for a suitable spot to park, prior to leaving.”

Perhaps it is unfair to say, therefore, that the first occasion upon which the issue of circling was raised today, it does appear to have been raised as a likelihood, I put it no stronger than that, in the witness statement of Mrs Hotchin, which is dated the 28th January.

18. There are other references in that witness statement to the busyness of that car park in terms of, particularly, a day in August. I am not sure that necessarily assists me in ascertaining whether or not Mrs Hotchin parked on this occasion.
19. Of course it is the case that the Claimant cannot offer indisputable evidence that the Defendant did park because all they are able to offer in terms of evidence is the time when the car entered the car park and when the car left the car park, and they are 31 minutes apart and although Mr Hotchin attempted to raise some issue with regard to the reliability of that evidence none of that was put in the Defence and I accept that that was the period that the car was within the boundaries of the car park.
20. The Defendants also referred to there being a one hour free period at other times of the year, and suggested that this applied on this occasion as this would be classed as spring. It was pointed out by Miss Vipond, quite fairly, that this was not an issue raised in the defence.
21. Mr Langham's statement deals with the issue of the different tariffs at the different times of year, and in his statement indicates that Parking Eye's signage at this site alternates between summer and winter tariffs. During winter tariffs motorists are allowed one hour free parking. The signage is not different in spring or autumn, and at this time summer tariffs were in place. There is no evidence that suggests otherwise and it seems likely that in late May that would be classed as "summer".
22. The Defendant made a point that the signage is not clear and that the small writing that is referred to as the terms and conditions may not be visible as one is in one's car, it seems to me that it is clear that one must pay for parking, and the Defendant herself, in her own witness statement, says that she was aware of parking charges locally and makes an appropriate allowance for that in her holiday budget. There is no suggestion by the Defendant that it was a free car park.
23. Reference was made to the provision of a grace period of 20 minutes. This is referred to in particular by the Defendant, in an excerpt from a local newspaper, and indeed it is also conceded by the Claimant that there is that grace period.

24. There is no evidence before me that this is brought to the attention of anybody visiting the site and certainly not on any of the signs that I have been referred to, and as I say, the only reference to it was in a newspaper article and in the statements that have been filed for the purposes of these proceedings.
25. This is perhaps particularly pertinent in this case, where the Defendants are said to have circled the car park, not to have parked, and to have left without parking within the 31 minutes.
26. It seems to me I must establish my position in respect of the Defendants' evidence that they did not park, and circled the car park. Is it reasonable that Mrs Hotchin would circle for 31 minutes and then leave?
27. The Claimant, in response to her witness statement, in which it was asserted that she thought it was likely that that had happened, says, and this is Mr Langham's statement of the 30th:

“Parking Eye operates a fair and reasonable grace period that allows motorists to enter and exit the car park. Parking Eye considers it likely that the vehicle was parked. It is unlikely that the driver stayed within the car park for 31 minutes without parking.”

28. There is reference, to parking in the defence, and I think that is perhaps the only reference to parking, but that is made in respect of the Defendant being unable to admit or deny the precise time she was parked at the beach. She said she has no recollection of this. That case was on the basis, it seems to me, of the fact that she could not recall what happened on that occasion.
29. There is no way of the Claimant disputing whether or not the Defendant parked or not, and it seems to me that it is likely that the car park may well be busy and that it might be necessary to circle for some time before finding a space, and it seems to me that the provision of a grace period accepts that to some extent, that that might be necessary.
30. Is it reasonable to do that for 31 minutes and then leave? One might look at it the other way. Is it likely that having gone to the car park during Whit half term week to find a space that one would park and then leave within 31 minutes? It seems to be more likely that the 31 minutes were spent driving around the car park looking for a space, bearing in mind this was Whit half term in May and therefore, it seems to me, more likely to have been busy than on other occasions and I accept, therefore, what the Defendant says about that.
31. I accept, therefore, that the Defendant did not park. That is not the end of the matter because the Claimants say that even if they did not park they are still caught by the terms and conditions, and Mr Langham, in his statement, says at paragraph 6, this is his statement of the 31st January:

“Terms and conditions are clearly set out on the signage. Here it states ‘This is a paid parking car par, please enter full correct

vehicle registration into the payment machine when purchasing your ticket. Failure to comply with terms and conditions will result in a parking charge of £100'. We can confirm the signage was in place on the site at the date of the parking event, there were also various warning signs on site reminding motorists that ANPR cameras are in use and payment can be made at the end of stay."

And paragraph 7:

"Once it had been confirmed the vehicle had broken the terms and conditions on the signage a fee paying application was made to DVLA."

32. I have had referred to me numerous copies of the signage on that occasion and whilst I can see reference to what Mr Langham says on, I think it is sign 1(a), which says:

"By parking, waiting or otherwise remaining in the area"

That is in quite small writing at the bottom, as the terms and conditions.

33. As I have already indicated there can be no dispute this is a paying car park. It cannot be said that the signs are unclear in that regard, but would somebody circling the car park know that they were liable to pay by being in the car park for, as Mr Langham states, longer than 20 minutes? Well I have no evidence to suggest they would know that.

34. There is another sign, sign 1(e), which is the sign that says:

"An automatic number plate recognition system is operating on site for the purposes of managing the car park."

The enlarged version of that provides in the small writing at the bottom:

"By parking in this car park"

It does not refer to waiting or otherwise remaining in this car park.

35. It seems to me a customer who enters that car park, cannot find a space and leaves the car park is not aware that if they are doing that for more than 20 minutes they are liable to a charge. It seems to me that the signage makes it clear that if you park you are liable to pay a charge.
36. The difficulty for the Claimant here is they cannot prove whether this car was parked or not and I have got to consider the matter on the balance of probabilities.
37. On that balance of probabilities, as I have indicated, I am satisfied the Defendant was not parked and I am not satisfied that it was clear to the Defendants that by parking or entering or remaining within the area covered by Parking Eye Ltd they

were liable for a charge, that the signage does not make that clear in my view unless one gets out of the car, walks up to it, by which point it seems to me one would be parked, and even if this was not the case, even if there were signs saying that, I cannot see that a charge for driving around a car park can in any way be a genuine pre-estimate of loss as opposed to actually parking.

38. For those reasons, in this case, I find that the claim has failed and the Claimant has not satisfied me. As I say every case is dealt with on its merits and the vast majority of the documents submitted have been completely irrelevant and unhelpful in this case, it turns on the evidence here and that particular piece of evidence in this case was that whether or not the Defendant was parked. It seems to me that that was fundamental here and was raised in the statement of the end of January.
39. Those are my reasons, I therefore dismiss this claim.
