

CLAIM NO:

UK Car Park Management Limited

(CLAIMANT)

-AND-

(DEFENDANT)

WITNESS STATEMENT OF S

I,

WILL SAY AS FOLLOWS:

1. I am the Employee of the Claimant Company ('my Company') and I am duly authorised to make this statement on its behalf. The facts and matters set out in this statement are within my own knowledge unless otherwise stated and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.
2. Exhibited to this Witness Statement at 'GSL1' are following documents which my Company wishes to rely upon;
 - i) The Agreement authorising my Company to manage parking on the relevant land (as described therein and hereinafter referred to as 'the Relevant Land')
 - ii) The Sign (i.e. the Contract)
 - iii) The Site Plan
 - iv) Notices
 - v) Photographs of the incident
3. The Defendant is liable for a parking charge relating to the parking of a vehicle on the Relevant Land in a manner so as to incur the same pursuant to the Contract (i.e. the Sign). Set out in the Schedule below are details of the parking charge;

PCN NUMBER	DATE OF CHARGE	LOCATION	DESCRIPTION
2012	9th December 2016		Not Displaying a Valid Permit

The Defence

The Defendant avers that they were not the driver

4. The Criminal Case of Elliott v Loake 1983 Crim LR 36 held that the Registered Keeper of a vehicle may be presumed to have been the driver unless they sufficiently rebut this presumption. To date the Registered Keeper has been invited on numerous occasions to identify the driver, yet has failed to do so. The Court is therefore invited to conclude it more likely than not that the Registered Keeper (i.e. the Defendant) was the driver.
5. In the alternative, if the Court is not able to infer that the Defendant was, in fact, the driver then the Defendant is pursued as the Registered Keeper of the vehicle pursuant to Schedule 4 (4)(1) of the Protection of Freedoms Act 2012 ('the Act') which states:

"The creditor has the right to recover any unpaid parking charges from the keeper of the vehicle."

6. The relevant Notice was sent to the Defendant in accordance with the Act and the Registered Keeper (the Defendant) failed to nominate who was driving the vehicle prior to these proceedings (which is required under the Act (paragraph 5(2))).
7. The Protection of Freedoms Act 2012, Sched 4 (para 2) states that; the "keeper" means the person by whom the vehicle is kept at the time the vehicle was parked, which in the case of a registered vehicle is to be presumed, unless the contrary is proved, to be the registered keeper.

Charge is excessive/ no loss suffered

8. The charge sought is industry standard and is set at a rate so as to suitably satisfy my Company's legitimate interest. In the case of ParkingEye v Beavis 2015 it was held that an £85.00 charge was neither extravagant nor unconscionable. The Accredited Trade Associations of which parking operators must be a member in order to apply for DVLA data prescribe a maximum charge of £100. My Company's charges are within this level. The charge is not, therefore, excessive.

Particulars of Claim

9. The Claim is issued via the County Court Business Centre which is a procedure specifically provided for in the Civil Procedure Rules. This only allows the Claimant to insert brief details of the Claim. In any event, I can confirm that the Particulars of Claim contained sufficient information for the Defendant to be aware of what the claim relates to; namely:-
 - i) The date of the charge;
 - ii) The vehicle registration number;
 - iii) The Parking Charge Notice number;
 - iv) The amount outstanding;
 - v) That it relates to parking charges; and
 - vi) That it is debt.
10. Further, prior to proceedings being issued the Defendant was sent notices in accordance with the Act and a Letter Before Claim. As such, the Defendant would have been aware of the charge which is the subject of this claim.

11. Furthermore, Paragraph 5.2A of Practice Direction 7E specifically states the requirement in paragraph 7.3 of Practice Direction 16 for documents to be attached to the particulars of contract claims does not apply to claims started using an online claim form, unless the particulars of claim are served.

Signs/Double Yellow Lines

12. The Defendant makes reference to insufficient and inconsistent signage. As evidenced from the photographs attached to this witness statement the signs clearly state "A valid UK CPM permit must be clearly displayed in the front windscreen at all times". Further, the signage at the Relevant Land is clearly visible and the information on the signage informs the driver of the parking conditions at the location. Signage is prominent throughout the parking area. Signage location, size, content and the font has been audited by the International Parking Community. It is the driver's responsibility, to check for signage, check the legality and obtain any authorisation for parking before leaving their vehicle. The signage on the Relevant Land is the contractual document.
13. The Defendant makes reference to the lack of double yellow lines next to the building he live in, this is entirely irrelevant as my Company have issued a parking charge notice for not displaying a valid permit not for parking on yellow lines.

Aggressive /automated debt recovery

14. It is denied that my Company uses the small claims track as a form of aggressive automated debt collection. My Company is a member of the International Parking Community which is an accredited trade association within the parking sector, authorised to issue charges and seek recovery of unpaid charges.

No authority to enforce charges

15. As the contract is between my Company and the Defendant, my Company does have the authority to enforce parking charges. However, both *VCS v HM Revenue & Customs (2013)* and *Parking Eye v Beavis (CA 2015)* made it clear that a contracting party need not show they have a right to do what they have promised in the performance of a contract, nor is (in the case of a parking operator) the agreement between Operator and Landowner of any relevance. In any event, and without concession, the Agreement exhibited to this Witness Statement evidences my Company's authorisation to operate / manage the Relevant Land on behalf of the Landowner.

16. Lord Justice Lewison commented in *VCS v HM Revenue & Customs [2013] EWCA Civ 186*

1. *"The Upper Tribunal's reasoning on this part of the case was that since VCS did not have the right under its contract with the car park owner to grant a licence to park, it could not have contracted with the motorist to grant such a right. In my judgment there is a serious flaw in this reasoning.*
2. *The flaw in the reasoning is that it confuses the making of a contract with the power to perform it. There is no legal impediment to my contracting to sell you Buckingham Palace.*

If (inevitably) I fail to honour my contract then I can be sued for damages. On the stock market it is commonplace for traders to sell short; in other words to sell shares that they do not own in the hope of buying them later at a lower price. In order to perform the contract the trader will have to acquire the required number of shares after the contract of sale is made. Moreover, in some cases a contracting party may not only be able to contract to confer rights over property that he does not own, but may also be able to perform the contract without acquiring any such right. Thus in Bruton v London and Quadrant Housing Trust [2000] 1 AC 406 a housing trust with no interest in land was held to have validly granted a tenancy of the land to a residential occupier. The tenancy would not have been binding on the landowner, but bound the two contracting parties in precisely the same way as it would have done if the grantor had had an interest in the land.

Thus in my judgment the Upper Tribunal were wrong to reverse the decision of the FTT on the question whether VCS had the power to enter into a contract. Having the power to enter into a contract does not, of course, mean that VCS necessarily did enter into a contract with the motorist to permit parking”

Increased charges

17. As the Defendant did not pay the charge within the 28 days allowed the Defendant was in breach of contract. Breach of contract entitles the innocent party to damages as of right in addition to the parking charge incurred. As you didn't pay the charge the matter was passed to us and the debt has, as a result of this referral risen as my Company's staff have spent time and material facilitating the recovery of this debt. This time could have been better spent on other elements of their business. My Company believes the costs associated with such time spent were incurred naturally as a direct result of your breach and as such claims them as a damage. The costs are a pre-determined and nominal contribution to the actual losses. Alternatively, our Client does have a right to costs pursuant to the sign (i.e. the contract).

No contract

18. My Company relies on the case of ParkingEye v Beavis 2015. In that case it was accepted as an established principle that a valid contract can be made by an offer in the form of the terms and conditions set out on the sign, and accepted by the driver's actions as prescribed therein.
19. The signs on the Land are clear and unambiguous. By parking in the manner in which they did, the charge was properly incurred.
20. The principles in this case are the same as in the Parking Eye case, save that in the Parking Eye case, as the particular parking rules were different, the rule breached was that motorists must leave the site within 2 hours, whereas here, as set out above, the rule was to display a valid parking permit.
21. The Court may conclude that the Land is managed as follows; the Claimant grants a contractual license to all; this license allows anyone permission to be on the Land. This is inferred by the nature of the land and the lack of any general prohibition of entry on the signage. In this regard, the Defendant (as were all the motorists) was offered to comply with the normal conditions (as clear on the sign), or park otherwise than in accordance with the normal conditions and incur a £100 charge. The acceptance was at the point the Defendant decided to park, having read the

sign, and his consideration was the promise to pay £100 for the privilege of parking outside the normal conditions. The Claimant's consideration is the provision of parking services.

22. I refer to the Court to Judge Hegarty's comments in ParkingEye v Somerfield (2011) that "If this is the price payable for the privilege, it does not seem to me that it can be regarded as a penalty, even though it is substantial and obviously intended to discourage motorists from leaving their cars on the car park".
23. Alternatively; it could be concluded that, any person can use the Land provided they do not exceed the licensed activity as set out on the sign and in failing to comply with the license granted to them, they in turn agree to the Claimant's entirely distinct offer from that license which is 'to park otherwise than in accordance with the license for a charge of £100'.

The Current Debt

24. In view of the Defendant not paying the charge within the 28 days allowed they are in breach of the contract. Breach of contract entitles the innocent party to damages as of right in addition to the parking charge incurred.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed:

Print:

Dated: 29/11/2017