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In the County Court at Birmingham Justice Centre

IN THE COUNTY COURT

Claim No.: abccc

Between

Civil Enforcement Ltd

(Claimant)

- and -

abc

(Defendant)

WITNESS STATEMENT OF DEFENDANT

I, abc of 111 XYZ Road, Birmingham, BB XYZ, am the Defendant in this case. The facts below are true to the best of my belief, and my account has been prepared based upon my own knowledge.

In my statement, I shall refer to exhibits within the evidence supplied where appropriate. My Defence is repeated, and I will say as follows:

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1. Preliminary Matter: The Claim Should Be Struck Out

1.1 I draw the attention of the Court to persuasive recent appeal judgments supporting the dismissal or striking out of claims like this one. Similar cases have been struck out due to poor adherence to the Civil Procedure Rules (CPR), particularly in relation to inadequately pleaded Particulars of Claim (POC).

In Civil Enforcement Limited v Chan (Ref. E7GM9W44), HHJ Murch ruled that the POC did not set out the conduct that amounted to a breach of contract. Likewise, the POC in this case lacks the required detail to form a complete cause of action, and I believe this claim should be struck out pursuant to CPR 3.4. This is reflected in multiple area court strikeouts of similar claims (see Exhibit 01).

The second recent persuasive appeal judgment in Car Park Management Service Ltd v Akande (Ref. K0DP5J30) would also indicate the POC fails to comply with Part 16. On the 10 May 2024, in the cited case, HHJ Evans held that 'Particulars of Claim have to set out the basic facts upon which a party relies in order to prove his or her claim'. (See Exhibit 01)

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2. Inadequate Particulars of Claim

2.1 The POC submitted by the Claimant is vague and fails to meet the standards set out in CPR 16.4. It does not explain:

a) The specific contractual terms alleged to have been breached;

b) The exact dates and times of the parking incidents;

c) The breakdown of charges and any additional fees sought.

2.2 The Claimant's claim has been issued through Money Claims Online which is subject to character limits resulting in the use of generic text. This has obstructed my ability to provide a fully informed Defence.

2.3 This mirrors the findings in the Civil Enforcement v Chan case, and it is my belief that the Court should strike out this claim for its failure to provide adequate detail.

3. Facts and Sequence of Events

3.1 On the date in question I visited the car park outside Food World Supermarket for the purpose of shopping. I parked my vehicle in the area provided but I did not observe any clear signage outlining the terms and conditions of parking.

3.2 The signage present was already obscured or too small to be legible from where I had parked. In addition, cars are frequently parked right at the entrance to the store further obstructing any visibility of the signage. These cars often park right in front of the building which blocks the already limited visibility of the signs, as can be seen in the photo provided (Exhibit 02 to Exhibit 06).

3.3 The car park is situated on a very busy side road which leads to a primary school and directly connects to a main road with numerous shops and takeaways. The car park entrance can be chaotic with heavy traffic contributing to the difficulty of paying attention to any parking notices or signs.

3.4 As a result, I was not aware of any restrictions or penalties related to parking in that area. The Claimant has failed to provide adequate notice, which is necessary to form a valid contract.

3.5 I deny that any parking charge was due as the Claimant did not comply with the fundamental requirement of prominently displaying clear and legible signs as stipulated in consumer protection legislation.

3.6 The alleged breach occurred a few years ago, but I am unable to recall specific details due to the lack of information provided by the Claimant in their POC, which only adds to the lack of clarity in this claim.4. Denial of Liability and Standing

4.1 I deny that I am liable for the sums claimed by the Claimant. No contract was formed between the parties due to the lack of clear and legible signage, and therefore, no breach occurred.

4.2 The Claimant has failed to provide evidence of their standing or authority to bring this claim, as required when acting on behalf of a landowner. The Claimant must provide proof of their legal right to enforce parking charges on the land in question.

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5. Exaggerated and Unlawful Charges

5.1 The parking charge, if any, should not exceed £100, as capped by the industry standards. However, the Claimant seeks to recover a disproportionately inflated sum, which I believe is an attempt at double recovery.

5.2 In ParkingEye Ltd v Beavis [2015] UKSC 67, the Supreme Court ruled that parking charges must reflect a legitimate interest and not constitute a penalty. In my case, there was no financial loss to the Claimant, and the amount claimed is clearly punitive and disproportionate.

5.3 The Department for Levelling Up, Housing and Communities (DLUHC) has published a Parking Code of Practice, which exposes the true minor cost of pre-action letter chains, suggesting that the costs claimed by the parking industry are inflated to unjustifiable levels (see Exhibit 09).

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6. Costs Incurred

6.1 In the course of preparing my Defence and witness statement, I have incurred the following costs:

a) 15 hours of research and preparation at £12 per hour, totalling £180;

b) £50 in taxi costs for travel to and from the hearing;

c) £150 for taking a day off work.

6.2 The total costs incurred amount to £380.

6.3 I will be claiming these costs from Civil Enforcement Ltd as they have pursued this claim without merit, causing unnecessary time and financial burden on my part. Given the lack of merit in their claim and the failure to provide clear evidence or particulars, I believe the Court should consider this in the final decision on costs.

Statement of truth:

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Defendant’s signature:

Date: 3rd October 2024

Exhibit 01 – Appeal judgements & multiple area court 'strike outs'

IN THE COUNTY COURT AT LUTON

Car Park. It then sets out the sums due and interest which is claimed and the rate at which it is claimed and therefore the sums which are claimed.

6. Now, on behalf of the appellant before me it is argued that, even though there is a measure of detail set out in those words, it is not sufficient to comply with the provision of para.7.5 of the Practice Direction.

7. This is, I think both sides accept, an argument based on conduct - there is no written agreement between the parties; there is no oral agreement between the parties - and the position is that there is an agreement by conduct namely, as one knows in these cases, the bringing of the car onto land where signs are sufficiently displayed which amounts to conduct accepting those terms and conditions.

8. On behalf of the respondent it was submitted that the claim form states that this is a private car park. It is stated that the defendant was in breach of the terms and conditions: the registration number is given; the location of the car park is given; the times in and out are given as well. Ms Goodchild submitted that the information given was sufficient to comply with the Practice Direction. She referred to pre-action correspondence but accepted that it was not part of the particulars of claim and did not assist in showing whether there had been compliance.

9. On behalf of the appellant though, it is argued that the information set out is not sufficient to set out the conduct relied upon as amounting to a breach of contract. Mr Yamba argues that there are a number of ways in which one might breach the terms and conditions. This is not set out in the brief claim form. By way of example, he said, there may be a failure to buy a parking ticket at all. There may be a failure to park properly in a bay. By way of further example, he said, a person might use a space allocated for use by drivers with disabilities. Alternatively, he submits, it may be a case of overstaying whereby a ticket bought for a certain period of time and the defendant stays longer than he or she has paid for.

10. I am persuaded by these arguments. It is incumbent upon the claimant (the respondent before me) to set out how it is that the entitlement to the charge arises. It is correct that this claim form sets out that there was a contract. One can safely infer that it is as a result of the driver bringing the car onto the land that it is being said by conduct a contract arose. It is also clear which vehicle is said to have been used in a manner which breached the contract. It is also clear where and when the breach is said to have occurred. The breach itself however is not set out. The conduct giving rise to the breach is not set out.

11. This is, I think as Mr Yamba accepts, a technical point, but nonetheless the rules are clear. The particulars of claim must set out that conduct and, in my view, Mr Yamba has shown that the particulars of claim as filed and served did not set out the conduct which amounted to the breach in reliance upon which the claimant would be able to bring a claim for breach of contract.

12. Now, the application that was before Judge Chattaway was to set the judgment aside entered in default and also for an order striking out the claim form. The Judge did not set aside judgment and did not therefore proceed to consider the point whether the claim should be struck out. Of course, it may follow from a set aside application where a failure to comply with Practice Direction is relied upon, that an application might also be made to strike out the claim form. Both advocates are agreed that – and this intends no disrespect to either party - this being a tolerably low value claim for some £250 odd with court fees, I should exercise a

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discretion to set aside judgment also to strike out the claim for failing to comply with the rules. They agree that it is not proportionate to re-list this for hearing before a District Judge.

13. I am persuaded that the right thing to do in this case is to strike out the claim form. Therefore, for those reasons, despite the endeavours of Ms Carus who went through with great care what the particulars of claim said, I conclude there has been a failure to comply with the rules. The conduct amounting to the breach was not set out; it was open to the respondent either to attach a separate particulars of claim or set out a little less of the detail as to the interests calculations and perhaps in that way set out how it was argued that there had been a breach amounting to conduct in breach of a contract.

14. The appeal therefore succeeds. Judgment is set aside and I further strike out the claim.

This transcript has been approved by the Judge

all of the details of the terms and conditions and the breach. She says it would be disproportionate for a parking company in every case of this nature to have to serve detailed Particulars of Claim.

10. It cannot be right that the fundamental basic rule that Particulars of Claim must set out the case which a defendant has to meet can somehow be swept away by the character limit imposed by the MCOL system. It does not take many characters to say "did not buy a ticket" or "did not display permit" but if the Claimant really cannot fit that into the 1080 character limit then the remedy is to serve detailed Particulars of Claim. A complaint that that is disproportionate is one which should be taken up with HMCTS and/or the Civil Procedure Rules Committee.

11. Mrs Davis submitted that a driver will already have received a penalty charge notice before proceedings begin and so will already know what they are said to have done wrong and therefore it is unnecessary to specify the breach in the Particulars of Claim. That point has no merit. The fact that a claimant's case has been set out in a letter of claim pre-action (as it will be in the vast majority of cases) does not mean that pleadings are unnecessary or that the requirements of the CPR can be ignored. The Court of Appeal have consistently reaffirmed that the issues in a case are defined by the pleadings.

12. For all of those reasons, in my judgment, the district judge was, as I say, not only not wrong but she was correct. The appeal is dismissed.

(proceedings continue)

13. So far as the Respondent's costs are concerned, leaving aside the question of attendance at the hearing which I will come back to, the rest of it I allow as claimed. It seems to me entirely reasonable and proportionate and although Mrs Davis has made some criticism of the number of hours taken by Mr Yamba, he is of course only a grade D fee earner and the argument, I think, probably has to go both ways in terms of whether somebody is qualified or not qualified. So, for a grade D fee earner the amount of time spent seems to me to be reasonable.

14. So far as the cost of his attendance at the hearing is concerned, Mr Yamba appeared at this hearing to represent the Respondent without in fact having a right of audience. It is only because Mrs Davis raised the issue that that became apparent. He did not prospectively make an application for a right of audience before me. I granted him a right of audience today, but it is plainly a breach of the rules. If I had not granted him a right of audience, I would not have adjourned the appeal as it would have been disproportionate. The consequence would have been that the Respondent would not have been represented at the hearing; the Appellant still would not have succeeded on the appeal, but there would have been nobody here even to ask for a costs order. Having regard to the conduct of the Respondent's representatives in terms of the right of audience point, I am not going to allow anything for the attendance.

Exhibit 02 – Car park signage (busy road with school)


20
ZONE
School Zone
Thank you for walking to school
WATAN MINI MAR
& FRESH NAAN
328 2609
0121 2665477

Exhibit 03 – Car park signage (busy road with cars by entrance)

Exhibit 04 – car park

Exhibit 05 – car park (sign covered by leaves)

Exhibit 06 – Car park exit (same as entrance)

Exhibit 07 – Excel v Wilkinson Case Transcript

Case No: G4QZ465V

IN THE COUNTY COURT AT BRADFORD

The Court House
Exchange Square
Drake Street
Bradford

Before :

District Judge Jackson

Between :

Excel Parking Services Ltd — **Claimant**
- and -
[redacted] **Wilkinson**

Defendant

Mr Simon Cannard for the **Claimant**
The Defendant appeared in person

Hearing date: 1 July 2020

JUDGMENT

1. In this claim the Claimant seeks to recover the sum of £160 from the Defendant based on a parking charge notice issued by the Claimant against the Defendant and relating to the Defendant's use of a car park at Cavendish Retail Park, in Keighley. The facts of the case are relatively straightforward.

2. The claim form in this matter states that "*The claim is for a breach of contract for breaching the terms and conditions set on private land. The Defendant's vehicle* [redacted] *was identified in the Cavendish Retail Park on 8/12/2016 in breach of the advertised terms and conditions; namely parked without purchasing a valid pay & display ticket for vehicle registration. At all material times the Defendant was the registered keeper and/or driver. The terms and conditions upon entering private land were clearly displayed at the entrance and in prominent locations. The sign was the offer and the act of entering private land was the acceptance of the offer hereby entering into a contract by conduct. The sign specifically detail the terms and conditions and the consequences of failure to comply, namely a parking charge notice will be issued, and the Defendant has failed to settle the outstanding liability. The Claimant seeks the recovery of the parking charge notice, contractual costs and interest.*" The sum claimed in the claim form is £160 together with the court fee of £25 forming a total amount of £185.

3. The Defendant denies that the Claimant is entitled to the sum claimed o any sum for five reasons:

    a. First the Defendant denies that there was any contractual agreement which arose as a result of the parking as the Defendant asserts that thc Claimant has not shown the right to charge for parking at the site and that the signs at the car park were sufficient to result in an agreement;
    b. Second the Defendant denies that the sum claimed is recoverable as it is set at a level which is above the costs of recovery or operating the scheme;
    c. Third the sum claimed is unconscionable and unfair as a result of the Consumer Rights Act 2015;
    d. Fourth the claim involves an element of double recovery and is an abuse of process as it is an inflated claim;
    e. Fifth the Defendant was disadvantaged by the letter before action not complying with the pre-action protocol and the particulars of claim are embarrassing, incoherent and lacking detail.

4. In regards to the third and fourth limbs of the defence the Defendant seeks to rely on decisions in other courts including orders by District Judge Wright, orders of Deputy District Judge Joseph and a decision of District Judge Grand sitting in the Southampton County Court dated 11 November 2019. These orders and the decision of District Judge Grand are not binding on me.

5. Other than the pleadings and exhibits thereto the only additional document before me was the witness statement of Mr Arshad and the exhibits thereto. Mr Arshad did not attend the trial and therefore both the Defendant and the Court were prevented from asking questions of Mr Arshad. The Defendant has given evidence on the facts today and has answered questions. In relation to the law she relies on her defence and the exhibits thereto. The Defendant did not make submissions on the law beyond this as she explained that this had been prepared for her by her daughter who could not attend today.

6. In dealing with the trial today I have had an e-bundle. The bundle was prepared by the Claimant. I was sent to the court in two emails. The bundle is not paginated, there is no index and it has no hyperlinks in it. As a result, it has proven extremely difficult to manoeuvre around bundles during this hearing. Luckily, I have had the entire day to prepare this case and therefore this morning was able to write my own index to the bundles so that at least I knew which email I needed look at. It is imperative for as long as the court is undertaking cases remotely that parties prepare bundles for the court in accordance with the CPR and in accordance with the guidance on bundles. The Claimant in this case has chosen not to do so and that has made the claim far harder to manage than it needed to be. This has not however influenced my decision in this case.

7. I therefore turn to the facts of this case. On the evidence before me the Claimant has the right to manage parking at the Cavendish Retail Park. At that car parking site they have erected a number of signs. The signs are in two different formats: The first in a portrait format is attached to a number of lampposts throughout the car park. It is a sign that tells parties limited details of how the car park should used and otherwise directs users to the full terms and conditions which can be found in the signs at pay-and-display machines Those first signs cannot of themselves form a contract.

8. Moving to the second set of signs these provide more detail. The second set of signs contain information which provides as follows: By parking you enter into a contract and agreed to pay parking charge for any breach of the terms and conditions. Any vehicle remaining on the land 10 minutes after entry is subject to and agrees in full to the terms and conditions. You agree to pay a parking charge notice for breach. Parking charge notices are charged at £100 discounted to £60 if payment is received within 14 days of the notice to issue. The terms and conditions then state if payment is not made the Claimant is entitled to issue legal proceedings to recover "the outstanding charge including interest and any additional costs incurred." There is then a pictorial sign which states that the parking charge notice is £100.

9. The Claimant's evidence goes on to show that on 8 December 2016 a vehicle entered their car park at 9:00:24 and left at 9:27:18. The Defendant accepts this is the case. She states she parked in a disabled space and therefore thought she did not have to pay to park as users with disabled badges did not previously have to pay to park in that car park. On 14 December 2016 a parking charge notice was sent to the Defendant claiming £60 and on 23 January 2017 a reminder notice was sent claiming £100. The Defendant states she did not receive the letters. Both letters set out why the sums were sought and had exhibited to them photographic evidence of the breach. Finally the evidence shows that there was no payment on the date in question for a vehicle with the same registration number as the vehicle in the photos and the DVLA details show the Defendant as the registered keeper of the vehicle.

10. Applying those facts to the law in my judgment the Claimant has shown, on the balance of probabilities, that on 8 December 2016 the Defendant's vehicle entered its, the vehicle remained in the property for 27 minutes and no

payment was made on that date for parking. There are sufficient signs throughout the car park of sufficient size and with sufficiently large writing to result in a contract arising upon a vehicle entering the property and remaining there in excess of 10 minutes. The signs also confirm that disabled drivers have to pay to park in the car park.

11. Those signs give adequate notice that the parking charge applicable for a breach of contract, and recoverable under Schedule 4 to the Protection of Freedoms Act 2012, is £100. The Defendant admits she was the driver on the date in question.

12. In my judgment therefore the Claimant has shown that the Claimant and the Defendant entered into a contract, it has shown the terms of the contract required a parking ticket to be purchased and displayed and it has shown that the terms of the contract were breached. It has therefore shown that, save for the abuse of process point, it is entitled to judgment for £100 being the parking charge.

13. The first and fifth limbs of the defence do not run on the facts before me and, to the extent the challenge in the second limb of the defence is a challenge to the amount of the parking charge, this cannot succeed following the decision in *Parking Eye v Beavis [2015] UKSC 67.*

14. That is not however where the matter ends because in this claim this Claimant seeks to claim not just the £100 parking charge recoverable under Schedule 4 to the Protection of Freedoms Act 2012 but rather £160, or a £100 parking charge and £60 for contractual costs.

15. I must therefore go on to consider in this case whether the additional £60 is recoverable as this is denied in the third and fourth limbs of the defence. If it is not recoverable I must also go on to consider whether as the Defendant asserts in the fourth limb of her defence the inclusion of the £60 is an abuse of process which taints the entire claim and requires the claim to be struck out as an abuse of process.

16. In relation to abuse of process the court's powers are governed by Civil Procedure Rules 3.4(2) this provides:

The court may strike out a statement of case if it appears to the court

a. *the statement of case discloses no reasonable grounds for bringing or defending the claim*
b. *that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings*
c. *that there has been a failure to comply with a rule, practice direction or court order.*

17. Looking at this case there can be no suggestion that the claim form discloses no reasonable grounds bringing or defending the claim and there is no evidence before me of a failure by the Claimant to comply with a rule, practice direction or court order. Therefore the Defendant's assertion that the claim should be struck out is brought solely on the basis of rule 3.4 (2)(b) i.e. that

the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings

18. I have had time before the proceedings today to consider the commentary in the White Book Service 2020 volume 1 at pages 87 to 100 in considering this issue.

19. I must therefore first consider whether the £60 claimed for "contractual costs" is recoverable. The use of the phrase contractual costs is taken directly from the Claimant's claim form, it is of note it does not appear anywhere in the Claimant's signage at the car park. The car park instead refers to additional costs incurred whilst the witness statement for the Claimant refers to the debt recovery process.

20. There are no details given on the signs as to what those additional costs could be or a breakdown of how those costs will be calculated. In the claim form there is no breakdown of the contractual costs which are sought to be recovered, how they are calculated nor any reference to the specific terms pursuant to which they are recoverable.

21. The witness evidence refers to the debt recovery process and to the IPC Code, which is not a creature of statute, statutory instrument or binding case law. It is not code which binds this court. In any event all that code says is if a parking charge is overdue a charge may be added to it £60. Again it does not state for what purpose that may be added or how it is to be calculated. No details of how £60 has been expended on the debt recovery process are given.

22. The witness statement then further goes on to contradict the claim in the claim form that the entitlement to £60 is based on a contract by stating that "*in view of the Defendant not paying the charge within 28 days the breach of contract entitles the Claimant to damages as of right in addition to the CN incurred. The warning notices make it clear that damages will be sought and added to the value of the charge levied. The maximum amount awarded is £60 which is identified as a debt recovery charge.*" The Claimant then relies on "*Chaplair Limited v Kumari* [2015] EWCA 798" in support of this submission. However that case is not relevant to this head of claim as *Chaplair* is a case concerning the right to contractual costs in a small claim as opposed to fixed costs. Even then the contractual costs must be evidenced as the court retains the power to fix the quantum of costs payable.

23. The claim to the £60 is therefore wholly confused: It is either a claim to additional costs, or to contractual costs, or to a debt recovery process, or to damages. It is for £60 but no justification for an award of £60 is put forward whether as costs, charges, debt recovery or damages.

24. There is therefore no firm evidence before me as to whether these costs are said to be costs incurred in operating the scheme, costs incurred in dealing with administration of the scheme, costs in dealing with the legal proceedings up to the date of issue or if they are costs of the proceedings themselves other than the court fees. However given the reference in the witness evidence to

the costs being the costs of the debt recovery process I find that the costs are the costs of chasing the Defendant for payment and/or the costs of proceedings. They are therefore either costs of operating the scheme or costs governed by court rules.

25. That is of importance for two reasons. First the defence of the Defendant in this case relies upon Schedule 2 to the Consumer Rights Act 2015 which requires the court to consider whether the terms of a consumer contract are fair or not whether a party who is a consumer pursues that point at trial or not. Second given my finding as to what the costs relate to the costs are potentially seeking a double recovery.

26. I deal first with the Consumer Rights Act 2015. Section 61 of the Act applies to a contract between a trader and a consumer. I am satisfied having regard to the definitions in the Act and the facts in this case that:
    a. the Claimant is a trader and the Defendant is a consumer (section 2 of the Act);
    b. the contract that arose between them is a consumer contract (section 61(3) of the Act)
    c. any notices which relate to the obligations as between the Claimant and the Defendant are consumer notices (section 61(7) of the Act).

27. Pursuant to section 62(1) an unfair term in a consumer contract is not binding on the consumer. The term is unfair if contrary to the requirements of good faith it causes significant imbalance in the parties rights and obligations under the contract to the detriment of the consumer (section 62(4)). Whether a term is fair is to be determined taking into account the nature of the subject matter of the contract and reference to all the circumstances existing and the other terms agreed. Schedule 2 to the Act contains an indicative and non-exhaustive list of the terms in consumer contracts that can be regarded as unfair for the purposes of the Act. Section 67 of the Act provides that "*Where a term of a consumer contract is not binding on the consumer as a result of this Part, the contract continues, so far as practicable, to have effect in every other respect.*"

28. Hence if I were to find that the additional costs provision in the contract was unfair that would not as a matter of law prevent the Claimant from pursuing the parking charge notice, subject to the abuse of process point. It would however prevent the Claimant from recovering the £60 claimed as contractual costs.

29. Turning therefore to schedule 2 to the Act the following considerations are engaged:

10 A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract;
14 A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound.

30. There can be no doubt that the provision in the contract that the Claimant can pursue the Defendant in legal proceedings for "*any additional costs incurred*" without giving any details of the costs that may be incurred or how they will be calculated to the Defendant before the contract was entered into fall squarely within the considerations of paragraphs 10 and 14 of Schedule 2 to the Act. The question is whether taking into account the nature of this contract and all the circumstances of the case and the contract it is fair for the Claimant to be entitled to rely on such clause.

31. To this end one needs to turn to the decision of the Supreme Court in ***Parking Eye v Beavis***. In that case the Supreme Court was considering whether a parking charge notice was reasonable in the sum of £85 or whether it was a penalty clause. The Supreme Court in its decision found that the charge of £85 was reasonable as it was a genuine estimate of the costs of operating the scheme including the losses which would be suffered by the operator of the parking scheme were its terms and conditions not complied with (see paragraphs 188 and 193 of the decision).

32. The Supreme Court in dealing with the case allowed the sum of £85 as it permitted the parking operator the right to not only cover the costs of operating the scheme so far as Mr Beavis was concerned but to cover the costs of operating the parking scheme generally and to make a healthy profit for its shareholders but with only drivers who breached the contract funding the scheme. In therefore finding that the charge of £85 was reasonable the Supreme Court was satisfied that it was a sufficient charge to cover the costs incurred by the operator of the parking scheme including pursuing drivers who breached its terms and conditions.

33. In this case what the Claimant seeks to do is to operate a parking scheme to recover its £100 parking charge being liquidated damages based on the *Beavis* decision and then to add £60 for the costs of recovery suggesting that the additional charge is for additional expenses caused by people who do not pay. The Supreme Court was however concerned with the case of somebody who did not pay. This was the whole nub of what the case was about.

34. Given the costs of recovery are already therefore built into the parking charge as a cost of operating the scheme, this is a double recovery or an attempt by the Claimant to try to add in an additional charge. The only alternative is that it is an attempt to recover legal costs without expressly stating this.

35. If it is double recovery then the clause is obviously unfair. It is an attempt to gild the lily and to recover what is already provided for by the Supreme Court in what they judged to be a reasonable charge. If it is an additional charge then that cannot be fair as what the Claimant is seeking to do in this case is to charge far more to somebody who does not comply with the parking terms than was approved by the Supreme Court in ***Beavis***. It does seem to me that the additional sum charged is unlawful as a result as it is unfair. If it is said to be legal costs then the terms and conditions in this case are not sufficiently

clear to entitle the Claimant to depart from the fixed costs rules in CPR 27.14 and hence if this is what the term in the contract seeks to achieve it is unfair.

36. As a result in my judgment the contract term permitting the Claimant to seek additional charges in the proceedings is unfair and is not enforceable in accordance with section 67 of the Consumer Rights Act 2015. As a result the Claimant is not entitled to recover that sum.

37. That is of course not where the defence concludes: The fourth limb of the defence goes on to say that because the claim is inflated and seeks double recovery the entire claim should be struck out.

38. That is an entirely separate consideration to the unfair point because of section 67 of the Act. Simply because a term is unfair it does not mean the whole contract is unfair therefore subject to the abuse of process point it is possible as a matter of law for the Claimant to recover the £100 parking charge notice even though the £60 additional costs has been dismissed. Given the defence in this case however I am required to consider whether in claiming both the parking charge and £60 additional costs this Claimant should be penalised by having its claim struck out as an abuse of process.

39. In my judgment the claim should be struck out as an abuse of process. There can be no doubt that the inclusion of the additional costs claim is inclusion of a claim based either on an unfair clause which will not be enforced by the court, double recovery or an attempt to circumvent CPR 27.14 when it is unfair to do so.

40. Why then has this additional sum of £60 been included in this claim, and it would appear in a number of claims made by this Claimant? There can be only one reason it is an attempt by the Claimant to recover sums they are not entitled to either by seeking unliquidated damages as liquidated damages to avoid a hearing before a Judge in relation to default judgment, or by seeking to recover unfair sums which would be recovered in a default judgment application despite the sums not being recoverable at law or by seeking to circumvent CPR 27.14. I do not need to decide which of these is applicable here. It be one of these three.

41. Whichever it is, it is an attempt to abuse the process of the Court as it is an attempt to use the courts process in a way significantly different from its ordinary or proper course and is an attempt to use the courts process to achieve something not properly available to the Claimant. These are therefore proceedings with an improper collateral purpose. This a serious matter requiring disapproval by the Court. Striking out the claim is therefore an option.

42. Is it however the proper option in this case given that strike out should be the last option? In my judgment it is. Having regard to the overriding objective and in particular the need to deal with cases justly and at proportionate cost and the need for a sanction to be proportionate in my judgment the case should be struck out. Simply disallowing the £60 claim or disallowing the Claimant's

costs is not sufficient to show the court's disapproval of the abuse of its process. The Claimant must be shown that including irrecoverable heads of loss in its claims has consequences otherwise I have not doubt they will continue to claim £60 damages/costs etc to profit from undefended cases.

43. Having regard to all elements of the overriding objective and the need for a sanction to be proportionate I find that striking out this claim is the only appropriate manner in which the disapproval of the court can be shown.

44. The claim is therefore struck out.

Exhibit 08 – The Beavis case sign for comparison

Exhibit 09 – ParkingEye Limited v Beavis

Paragraphs 98, 193, and 198

98. Against this background, it can be seen that the £85 charge had two main objects. One was to manage the efficient use of parking space in the interests of the retail outlets, and of the users of those outlets who wish to find spaces in which to park their cars. This was to be achieved by deterring commuters or other long-stay motorists from occupying parking spaces for long periods or engaging in other inconsiderate parking practices, thereby reducing the space available to other members of the public, in particular the customers of the retail outlets. The other purpose was to provide an income stream to enable ParkingEye to meet the costs of operating the scheme and make a profit from its services, without which those Page 43 services would not be available. These two objectives appear to us to be perfectly reasonable in themselves. Subject to the penalty rule and the Regulations, the imposition of a charge to deter overstayers is a reasonable mode of achieving them. Indeed, once it is resolved to allow up to two hours free parking, it is difficult to see how else those objectives could be achieved.

193. The penalty doctrine is therefore potentially applicable to the present scheme. It is necessary to identify the interests which it serves. They are in my view clear. Mr Beavis obtained an (admittedly revocable) permission to park and, importantly, agreement that if and so far as he took advantage of this it would be free of charge. ParkingEye was able to fulfil its role of providing a traffic management maximisation scheme for BAPF. The scheme met, so far as appears, BAPF's aim of providing its retail park lessees with spaces in which their customers could park. All three conditions imposed were directed to this aim, and all were on their face reasonable. (The only comment that one might make, is that, although the signs made clear that it was a "Customer only car park", the Parking Charge of £85 did not apply to this limitation, which might be important in central Chelmsford. The explanation is, no doubt, that, unlike a barrier operated scheme where exit can be made conditional upon showing or using a ticket or bill obtained from a local shop, a camera operated scheme allows no such control.) The scheme gave BAPF through ParkingEye's weekly payments some income to cover the costs of providing and maintaining the car park. Judging by ParkingEye's accounts, and unless the Chelmsford car park was out of the ordinary, the scheme also covered ParkingEye's costs of operation and gave their shareholders a healthy annual profit.

198. The £85 charge for overstaying is certainly set at a level which no ordinary customer (as opposed to someone deliberately overstaying for days) would wish to incur. It has to have, and is intended to have, a deterrent element, as Judge Moloney QC recognised in his careful judgment (para 7.14). Otherwise, a significant number of customers could all too easily decide to overstay, limiting the shopping possibilities of other customers. Turnover of customers is obviously important for a retail park. A scheme which imposed a much smaller charge for short overstaying or operated with fine gradations according to the period of overstay would be likely to be unenforceable and ineffective. It would also not be worth taking customers to Page 88

court for a few pounds. But the scheme is transparent, and the risk which the customer accepts is clear. The fact that, human nature being what it is, some customers under-estimate or over-look the time required or taken for shopping, a break or whatever else they may do, does not make the scheme excessive or unconscionable. The charge has to be and is set at a level which enables the managers to recover the costs of operating the scheme. It is here also set at a level enabling ParkingEye to make a profit. Unless BAPF was itself prepared to pay ParkingEye, which would have meant, in effect, that it was subsidising customers to park on its own site, this was inevitable. If BAPF had attempted itself to operate such a scheme, one may speculate that the charge might even have had to be set at a higher level to cover its costs without profit, since ParkingEye is evidently a specialist in the area.