IN THE COUNTY COURT

Claim No.:

Between

HX Car Park Management Ltd

(Claimant)

- and -

NAME

(Defendant)

DEFENCE

1. The Defendant denies that the Claimant is entitled to relief in the sum claimed, or at all. It is denied that any conduct by the driver was in breach of any term. Further, it is denied that this Claimant (understood to have a bare licence as agents) has standing to sue or form contracts in their own name. Liability is denied, whether or not the Claimant is claiming 'keeper liability', which is unclear from the boilerplate text in the Particulars of Claim ('the POC').

The facts known to the Defendant:

2. The facts come from the Defendant's own knowledge and honest belief. Conversely, the Claimant sets out a cut-and-paste incoherent and sparse statement of case. The POC appears to be in breach of CPR 16.4, 16PD3 and 16PD7, and fail to "state all facts necessary for the purpose of formulating a complete cause of action". The Defendant is unable, on the basis of the POC, to understand with certainty what case, allegation(s) and what heads of cost are being pursued, making it difficult to respond. However, the vehicle is recognised and it is admitted that the Defendant was the registered keeper but not the driver.

Preliminary matter: The claim should be struck out

3. The Defendant draws to the attention of the allocating Judge that there is now a persuasive Appeal judgment to support striking out the claim (in these exact circumstances of typically poorly pleaded private parking claims, and the extant PoC seen here are far worse than the one seen on Appeal). The Defendant believes that dismissing this meritless claim is the correct course, with the Overriding Objective in mind. Bulk litigators (legal

firms) should know better than to make little or no attempt to comply with the Practice Direction. By continuing to plead cases with generic auto-fill unspecific wording, private parking firms should not be surprised when courts strike out their claims based in the following persuasive authority.

4. A recent persuasive appeal judgment in Civil Enforcement Limited v Chan (Ref. E7GM9W44) would indicate the POC fails to comply with Civil Procedure Rule 16.4 and Practice Direction Part 16. On the 15th August 2023, in the cited case, HHJ Murch held that 'the particulars of the 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'. The same is true in this case and in view of the Chan judgment, the Court should strike out the claim, using its powers pursuant to CPR 3.4

TRANSCRIPT OF PROCEEDINGS

Ref. E7GM9W44

IN THE COUNTY COURT AT LUTON

Arndale House
The Mall
Luton
LU1 2EN

Before HIS HONOUR JUDGE MURCH

IN THE MATTER OF

CIVIL ENFORCEMENT LIMITED **(Respondent / Claimant)**

-v-

MING TAK CHAN **(Appellant / Defendant)**

MR YAMBA appeared on behalf of the Appellant
MS CARUS appeared on behalf of the Respondent

JUDGMENT
15th AUGUST 2023
(APPROVED)

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JUDGE MURCH:

1. This appeal raises the meaning of and consequences of failing to comply with Civil Procedure Rule 16.4 and the Practice Direction to Part 16. This is a claim for unpaid parking charges where it is said by the appellant that the claim form upon which the claimant - the respondent before me - relied failed to comply with those requirements. An application was made to set aside a judgment entered in default. That application did not succeed.

2. I gave permission to appeal on the single ground that it was arguable there was a real prospect of success on the argument that the failure to comply with the Practice Direction constituted some other good reason pursuant to CPR 13.3(1)(b) to set judgment aside. I did not give permission on the other ground upon which the appellant sought to rely, namely whether the claim form had been served at the correct address.

3. Reminding myself then of the requirements of the rules before setting out what happened in this case, CPR 16.4 reads as follows:

> (1) "Particulars of claim must include -
> (e) such other matters as may be set out in a practice direction."

It is agreed that none of the other parts of that sub-rule are relevant to the decision that I have to reach today. Practice Direction 16 at paragraph 7 is headed "Other matters to be included in the particulars of claim" and then lists them. Pertinent to the present claim is para.7.5 which reads as follows:

> "Where a claim is based upon an agreement by conduct, the particulars of claim must specify the conduct relied upon and state by whom, when and where the acts constituting the conduct were done."

4. This was a claim commenced by the claimant, now the respondent before me, using the money claims online facility. It is common ground that the space for the particulars of claim is limited as to the number of characters which can be inserted. Inevitably, one therefore sees in cases commenced using this procedure a degree of simplicity in the way that claims are put. Quite often, they are grammatically inexact, even if it is argued that they set out in terms the bare bones of the claim such as to comply with the rules. It is of course though always open to a claimant - if of the view that the space by way of character allowance is insufficient - to file and serve separate particulars of claim serving them either with the claim form or in accordance with the rules at a later date.

5. The respondent here elected to put its case in the character limit in the box on the claim form and wrote as follows:

> "Claim for monies relating to a parking charge for parking in a private car park managed by the claimant in breach of the terms and conditions (T&Cs). Drivers are allowed to park in accordance with T&Cs of use. ANPR cameras and/or manual patrols are used to monitor vehicles entering and exiting the site. Debt + damages claimed sum of £236. Violation date: 06.01.2017. Time in: 15:14. Time out: 20:04."

The reference is then given for the penalty charge notice. The registration number of the car said to be involved is given. The name of the car park is set out, namely the Newbury Retail

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

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

5. It is denied that the Claimant can pursue the registered keeper pursuant to the POFA 2012 because this Claimant's consumer notices are likely to fail to comply with Schedule 4 and the sum pursued exceeds the 'maximum sum' that Act sets.

5.1. The Claim should be struck out on the basis that it contravenes Schedule 4, Paragraph 4(5) of the Protection of Freedoms Act 2012 (PoFA).

5.2. PoFA clearly stipulates that a creditor may not make a claim against the keeper of a vehicle for more than the amount of the unpaid parking charges as they stood when the notice to the driver was issued. The original Parking Charge Notice (PCN) issued by the claimant was presumably for £100 (as pleaded in the POC). However, the claimant's current claim is for £160. The Claimant’s attempt to claim an unlawful amount constitutes an abuse of process and should not be allowed to proceed.

5.3. The Defendant respectfully request the allocating judge to dismiss the claim on the basis of the Claimant's contravention of Schedule 4, Paragraph 4(5) of PoFA and thereby CPR 1.1, CPR 3.4(2)(a) and (b) and CPR 27.14 and to award costs - if incurred at the point of claim dismissal - to the Defendant.

5.4. As the claim (fully disputed in any event) should only be for the amount of £100 as stated on the original PCN, the interest calculated should only be on that amount. By also calculating interest on the purported £60 "contractual" escalation fee (which is, in itself, an abuse of process and POFA breach) the Claimant has not only acted unreasonably but also abused the courts process and breached the following CPRs:

Further CPR Breaches over and above those covered by paragraphs 2-4 above:

- **CPR 1.1 - The Overriding Objective**:
- The claim is not being dealt with justly or proportionately. The excessive amount claimed puts the defendant at a disadvantage, increases unnecessary costs, and is disproportionate to the original charge.
- **CPR 3.4 - Power to Strike Out**:
- **CPR 3.4(2)(a)**: The claim for £160 has no reasonable grounds, as it exceeds the lawful amount stipulated by PoFA 4(5).
- **CPR 3.4(2)(b)**: The claim represents an abuse of the court's process by attempting to claim an amount not legally recoverable, thus obstructing the just disposal of proceedings.
- **CPR 27.14 - Costs on the Small Claims Track**:
- **CPR 27.14(2)(g)**: The claimant's behaviour in pursuing an excessive and unlawful amount is unreasonable, warranting the claim to be struck out.

6. To the best of the Defendant's knowledge it is denied that any breach of any (prominently advertised) term occurred due to any conduct of a driver of the vehicle, and the Claimant is put to strict proof of all aspects, facts and alleged liability. The POC is so sparse as to be incoherent; utterly failing to specify any alleged breach(es) despite the fact the Claimant has a PCN file and it would be easy to elaborate concise facts. The allegation could be anything from 'no stopping' or unauthorised parking, to an overstay of allowed time, to parking outside of a bay, or perhaps failing to display a ticket, or maybe allegedly failing to pay, or not paying enough, or failing to enter a VRM, or a keypad failure (apparently a favourite trap of this car park operator over the years). The Defendant cannot guess and is left unable to admit or deny these non-existent allegations. The claim should be struck out.

7. The Claimant will concede that no financial loss has arisen and that in order to impose an inflated parking charge, as well as proving a term was breached, there must be:

(i). a strong 'legitimate interest' extending beyond mere compensation for loss, and

(Ii). 'adequate notice' of the 'penalty clause' charge which, in the case of a car park, requires prominent signs and lines.

The Defendant denies (i) or (ii) have been met. The charge imposed, in all the circumstances is a penalty, not saved by ParkingEye Ltd v Beavis [2015] UKSC67 ('the Beavis case'), which is fully distinguished.

Exaggerated Claim and 'market failure' currently being addressed by UK Government

8. The alleged 'core debt' from any parking charge cannot exceed £100 (the industry cap). It is denied that any 'Debt Fees' or damages were actually paid or incurred.

9. This claim is unfair and inflated and it is denied that any sum is due in debt or damages. This Claimant routinely pursues an unconscionable fixed sum added per PCN, despite knowing that the will of Parliament is to ban it.

10. This is a classic example where adding exaggerated fees funds bulk litigation of weak and/or archive parking cases. No checks and balances are likely to have been made to ensure facts, merit or a cause of action (given away by the woefully inadequate POC).

11. The Department for Levelling Up, Housing and Communities ('the DLUHC') published a statutory Parking Code of Practice in February 2022: https://www.gov.uk/government/publications/private-parking-code-of-practice.

The Ministerial Foreword is damning: "Private firms issue roughly 22,000 parking tickets every day, often adopting a labyrinthine system of misleading and confusing signage, opaque appeals services, aggressive debt collection and unreasonable fees designed to extort money from motorists."

12. Despite legal challenges delaying the Code (temporarily withdrawn) it is now 'live' after a draft Impact Assessment (IA) was published on 30th July 2023. The Government's analysis is found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1171438/Draft_IA_-_Private_Parking_Code_of_Practice_.pdf

13. Paragraphs 4.31 and 5.19 state that the parking industry has shown the DLUHC that the true minor cost of pre-action stage totals a mere £8.42 per case (not per PCN).

14. This claim has been enhanced by a disproportionate sum, believed to enrich the litigating legal team. It appears to be double recovery, duplicating the intended 'legal fees' cap set by small claims track rules.

15. The draft IA shows that the intimidating letter-chains endured by Defendants cost 'eight times less' than the fixed +£70 per PCN. This causes immense consumer harm in the form of some half a million wrongly-enhanced CCJs each year, that Judges are powerless to prevent. MoJ statistics reveal several hundred thousand parking claims per annum, with c90% causing default CCJs totalling hundreds of millions of pounds. The false fee was enabled by the self-serving Codes of Practice of the rival parking Trade Bodies who aligned in 2021 to allow +£70, each led by a Board comprising the parking and debt firms who stood to gain from it.

16. It is denied that the added damages/fee sought was incurred or is recoverable. Attention is drawn to paras 98, 100, 193, 198 of Beavis. Also ParkingEye Ltd v Somerfield Stores Ltd ChD [2011] EWHC 4023(QB) where the parking charge was £75, discounted to £37.50 for prompt payment. Whilst £75 was reasonable, HHJ Hegarty (decision ratified by the CoA) held in paras 419-428 that 'admin costs' inflating a PCN to £135 exaggerated the cost of template letters and 'would appear to be penal'.

17. This Claimant has not incurred costs. A PCN model already includes what the Supreme Court called an 'automated letter-chain' and it generates a healthy profit. In Beavis, there were 4 pre-action letters/reminders and £85 was held to more than cover the minor costs of the operation (NB: debt collectors charge nothing in failed collection cases).

18. Whilst the new Code is not retrospective, all non-monetary clauses went unchallenged. It will replace the self-serving BPA & IPC Codes, which are not regulation and carry limited weight. It is surely a clear steer for the Courts that the DLUHC said in 2023 that it is addressing 'market failure'.

19. At last, the DLUHC's analysis overrides plainly wrong findings by Circuit Judges steered by Counsel in weak appeal cases that the parking industry steamrollered through. In Vehicle Control Services v Percy, HHJ Saffman took a diametrically opposed position to that taken by DJ Hickinbottom, DJ Jackson (as Her Honour Judge Jackson then was), and other District Judges on the North Eastern Circuit, including DJ Skalskyj-Reynolds and DJ Wright (Skipton) all of whom have consistently dismissed extortionate added 'fees/damages'. District Judges deal with private parking claims on a daily basis, whereas cases of this nature come before Circuit Judges infrequently. The Judgments of HHJ Parkes in Britannia v Semark-Jullien, and HHJ Simpkiss in One Parking Solution v Wilshaw were flawed. These supposedly persuasive judgments included a universal failure to consider the court's duty under s71 of the CRA 2015 and factual errors. In Wilshaw: a badly outdated reliance on 'ticket cases' which allowed poor signage to escape fair scrutiny and a wrong presumption that landowner authority 'is not required' (DVLA rules make it mandatory). In Percy, HHJ

Saffman made an incorrect assumption about pre-action costs and even sought out the wrong Code of Practice of his own volition after the hearing, and used it to inform his judgment.

20. In addition, pursuant to Schedule 4 paragraph 4(5) of the Protection of Freedoms Act 2012 ('the POFA') the sum claimed exceeds the maximum potentially recoverable from a registered keeper. The Claimant is put to strict proof of POFA compliance if seeking 'keeper liability'.

21. The Defendant avers that there was no agreement to pay a parking charge or added 'damages' which were not even incurred, let alone quantified in bold, prominent text. This Claimant's lack of large, readable signs are nothing like the yellow & black warnings seen in Beavis, nor do they meet the signage requirements in the DLUHC Code which reflects the already statutory requirement for 'prominence' (Consumer Rights Act 2015 - the 'CRA').

CRA breaches

22. Section 71 CRA creates a statutory duty upon Courts to consider the test of fairness whether a party raises it or not. Further, claiming costs on an indemnity basis is unfair, per the Unfair Contract Terms Guidance (CMA37, para 5.14.3):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf

23. The CRA introduced new requirements for 'prominence' of both terms and 'consumer notices'. In a parking context, this includes a test of fairness and clarity of 'signs & lines' and all communications (written or otherwise). Signs must be prominent (lit in hours of darkness/dusk) and all terms must be unambiguous and contractual obligations clear.

24. The Defendant avers that the CRA has been breached due to unfair/unclear terms and notices, pursuant to s62 and paying regard to examples 6, 10, 14 & 18 of Schedule 2 and the duties of fair/open dealing and good faith (NB: this does not necessarily mean there has to be a finding of bad faith).

ParkingEye v Beavis is distinguished

25. Unlike in Beavis, the penalty rule remains engaged. The CRA covers disproportionate sums, which are not exempt from being assessed for fairness because a 'fee' is not the core price term and neither was it prominently proclaimed on the signs.

26. The Supreme Court held that deterrence is likely to be penal if there is a lack of a 'legitimate interest' in performance extending beyond the prospect of compensation flowing directly from alleged breach. The intention cannot be to punish a driver, nor to present them

with hidden terms or cumbersome obligations ('concealed pitfalls or traps'). This Claimant has failed those tests, with small signs, hidden terms and minuscule small print that is incapable of binding a driver. Court of Appeal authorities about a lack of ‘adequate notice’ of a parking charge include:

(i) Spurling v Bradshaw [1956] 1 WLR 461 (Lord Denning's ‘red hand rule’) and

(ii) Thornton v Shoe Lane Parking Ltd [1970] EWCA Civ2,

both leading authorities that a clause cannot be incorporated after a contract has been concluded; and

(iii) Vine v London Borough of Waltham Forest: CA 5 Apr 2000, where Ms Vine won because it was held that she had not seen the terms by which she would later be bound, due to "the absence of any notice on the wall opposite the parking space".

27. Fairness and clarity of terms and notices are paramount in the DLUHC Code and these clauses are supported by the BPA & IPC. In the official publication 'Parking Review' the IPC's CEO observed: "Any regulation or instruction either has clarity or it doesn’t. If it’s clear to one person but not another, there is no clarity. The same is true for fairness. Something that is fair, by definition, has to be all-inclusive of all parties involved – it’s either fair or it isn’t."

Lack of standing or landowner authority, and lack of ADR

28. DVLA data is only supplied if there is an agreement flowing from the landholder (ref: KADOE rules). It is not accepted that this Claimant (an agent of a principal) has authority to form contracts at this site in their name. The Claimant is put to strict proof of their standing to litigate.

29. The Claimant failed to offer a genuinely independent Alternative Dispute Resolution (ADR). The DLUHC Code shows that genuine disputes such as this should see PCNs cancelled, had a fair ADR existed. The rival Trade Bodies' time-limited and opaque 'appeals' services fail to properly consider facts or rules of law and reject most disputes: e.g. the IAS upheld appeals in a woeful 4% of decided cases (ref: Annual Report). This consumer blame culture and reliance upon their own 'appeals service' (described by MPs as a kangaroo court and about to be replaced by the Government) should satisfy Judges that a fair appeal was never on offer.

Conclusion

30. There is now evidence to support the view - long held by many District Judges - that these are knowingly exaggerated claims that are causing consumer harm. The July 2023 DLUHC IA analysis shows that the usual letter-chain costs eight times less than the sum

claimed for it. The claim is entirely without merit and the POC embarrassing. The Defendant believes that it is in the public interest that poorly pleaded claims like this should be struck out.

31. In the matter of costs, the Defendant seeks:

(a) standard witness costs for attendance at Court, pursuant to CPR 27.14, and

(b) a finding of unreasonable conduct by this Claimant, and further costs pursuant to CPR 46.5.

32. Attention is drawn to the (often-seen) distinct possibility of an unreasonably late Notice of Discontinuance. Whilst CPR r.38.6 states that the Claimant is liable for the Defendant's costs after discontinuance (r.38.6(1)) this does not 'normally' apply to claims allocated to the small claims track (r.38.6(3)). However, the White Book states (annotation 38.6.1): "Note that the normal rule as to costs does not apply if a claimant in a case allocated to the small claims track serves a notice of discontinuance although it might be contended that costs should be awarded if a party has behaved unreasonably (r.27.14(2)(dg))."

Statement of Truth

I believe that the facts stated in this defence 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.

Signature:

Date: