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IN THE OXFORD COUNTY COURT

St Aldates,
Oxford OX1 1TL

Wednesday, 29 June 2016

Before:

HIS HONOUR JUDGE HARRIS QC

LAURA JOPSON — Appellant

- v -

HOMEGUARD SERVICES LIMITED — Respondent

MR J COUZENS (instructed by Parrott & Coales LLP, Aylesbury HP20 2RS) appeared for the Appellant.
MISS K FENWICK (instructed by Direct Access) appeared for the Respondent.

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Words: 2963
Folios: 41

JUDGMENT
(Approved)

Wednesday, 29 June 2016

JUDGMENT

JUDGE HARRIS:

1 This is an appeal from Deputy District Judge Wright's decision on 26 January 2016 to award the claimant £175.42 plus costs in respect of its claim for a sum of money said to be due for parking for a period of one minute outside Trevithick Court, Wolverton Park Road, Milton Keynes. The judgment was reached on consideration of written statements only, with no live evidence.

2 Miss Jopson is the owner of a leasehold flat on the third floor of the property. She purchased this flat in April 2015 from Places for People Homes Limited. It is located on a private estate. The lease which she bought included a right-of-way "with or without vehicles over the roadways within the estate". Wolverton Park Road was one of those roadways.

3 She had, indeed she said she owned, a place in an underground carpark below the building where her flat was located, but as she put it in her written statement:

> "The spaces are very tight. Ingress is via a lift and staircase, but if one is carrying bulky or large items, this cannot be used, and so the residents and anyone delivering to the flats have to stop on Wolverton Park Road to load and unload."

4 On 12 June 2015 she wanted to unload some furniture and a desk. She said she could not do so via the underground park, because there was not enough room to get it out of the back, and she could not manage the egress up from

the carpark. For this reason, she stopped to unload for a few moments outside the entrance to the building containing her flat.

5 The claimant relied principally upon a notice which it had put up in various places after it had been engaged by Places for People Homes Limited in March 2013, and upon letters sent to tenants at a time before the claimant acquired her flat.

6 The notice read as follows (although I will not read it all):

> "Attention. Private land. Ticketing in operation 24 hours. CCTV ANPR in operation.
>
> This site is managed and operated by 14 Services. Parking at this location is permitted for vehicles fully displaying a valid permit within the front windscreen whilst parked wholly within the confines of the bay allocated to that permit. Vehicles displaying a valid Disabled Blue Badge within the front windscreen of the vehicle and parked fully within the confines of a marked Disabled Bay. If there are no Disabled Bays, Disabled Blue Badges are not accepted.
>
> By parking or remaining at this site otherwise than in accordance with the above, you the driver are agreeing to the following contractual terms.
>
> You agree to pay a parking charge of £100 within 28 days of issue. This is reduced to £60 if paid within 14 days…
>
> …you park at your own risk to property and personal injury. Retrospective evidence of right to park will not be accepted."

There then followed references to driver's details being obtained from the DVLA. Then:

> "Additional parking charges will be imposed for each and any subsequent 24 hour period that the vehicle remains or if it returns at any time. All enquiries relating to parking in this area shall be directed to 14 Services."

There is then a telephone number. Then:

> "14 Services is a trading name of Homeguard Services Limited."

7 The notice makes no reference to any rights which the occupiers of premises on the estate may have had by virtue of their leases. The claimant was, however, aware of these leases. In a letter circulated to residents before 2 March 2015 (which was before the claimant bought her flat), and enclosing, it seems, a permit or permits, it wrote:

> "We take this opportunity to refer you to your lease Schedule 11 points 24, 25 and 26."

The reference was in fact wrong and was intended, it would seem, to be a reference to Schedule 6.

8 Paragraph 24 of that Schedule included an obligation:

> "At all times to observe and perform all such variations and modifications of the regulations, and all such further and other regulations as the lessor may from time to time in its reasonable discretion think fit for the management, care and cleanliness of the estate and the comfort, safety and convenience of all its occupiers, details of which have been notified to the lessee."

9 It was suggested that the controlled parking arrangement was within this description. However, the definitions section in the lease reads as follows:

> "Regulations [mean] the regulations contained in Schedule 6 or such other regulations for the preservation of the amenities of the block or for the general convenience of the occupiers of the flats as the lessor shall notify to the lessee in writing from time to time, provided that, in the event of any inconsistency, the terms of the lease's covenants in clause 4 of this lease shall prevail."

The lessor never mentioned to the appellant, in writing or otherwise, the parking charge arrangements, and this was not in dispute.

10 It follows from this that the respondent was unable to assert that qua the appellant there had been any due notification of a variation or modification of the lease regulations to authorise the imposition of the parking charge scheme. The scheme only came to the attention of appellant when she moved into her flat and found that the previous occupant had left behind a document which read, in part:

> "This permit is only valid for the spaces stated on the permit itself. We do not accept notes of any kind in windows or retrospective evidence of right to park. This permit can be revoked at any time by 14 Services where we deem there is reasonable cause… It is the responsibility of the permit user to avail themselves of any and all parking signage in the area in which they park [a peculiarly ill composed provision] and parking otherwise than in accordance with the signage on site will result in a parking charge being issued."

There were other provisions too.

11 On the day in question, an employee of the respondent found the appellant's car stopped outside the front door of the property with nobody in it. He appears to have photographed the car, waited only a minute, photographed it again and then departed.

12 The evidence of the appellant indicated, and was not contradicted by any other, that she was absent for a few minutes, carrying a desk and some other furniture up to her flat.

13 When this was explained to the respondent after it had submitted a claim for money to her, it refused to rescind the charge. Furthermore, the respondent was not prepared to explain to the court why, in the circumstances, it would not withdraw its claim to this charge. The respondent's stance appeared wholly unreasonable, but this does not, of course, affect a disinterested analysis of the legal position.

14 The appellant's argument is that this is not a simple case of parking without permission on somebody else's property having seen a notice imposing financial conditions for doing so (as in the recent decision of the Supreme Court ParkingEye v Beavis [2015] 3 WLR 1373.

15 It was firstly argued on her behalf that she had a right-of-way to enable her to access the property, and that the right to stop for a few moments or minutes to put down passengers or unload awkward items was a necessary incident of this easement. The position was analogous to the right to unload which was the subject of Bulstrode v Lambert [1953] 2 All ER 728. The right of way in that case was:

> "To pass and re-pass with or without vehicles…for the purposes of obtaining access to the building…known as the auction mart."

Upjohn J said at 332:

> "I am quite satisfied that on its true construction the plaintiff is entitled to bring on this yard…vehicles and to transport from those vehicles…furniture or other chattels…into the auction mart."

He continued, having dealt with some geographical questions:

> "Is he entitled to halt on the yard while the vans…are unloading, an operation which takes a half-hour to an hour? If the right which the plaintiff has under the deed of covenant does not include that right, then the right-of-way is virtually useless to him… The whole object of the reservation is for the purpose of…obtaining access… The plaintiff can…bring goods in vehicles to his auction room. If he is entitled to do that, then he must of necessity be entitled to unload them… The right…may be described as ancillary to the easement, because without the right he cannot substantially enjoy that which has been reserved to him."

16 This authority seems to me to be reasonably clear and a matter of common sense and apposite. The respondent did not argue that it was wrongly decided or has been overruled.

17 The respondent argued *inter alia* that it was not being suggested that the parking restrictions could or did override the lease, but they were "instituted in a manner compatible with the rights of the lease". They were, it was suggested, a modification of the regulations. But Miss Fenwick frankly conceded that there was no appropriate notification – see paragraph 8.

18 It therefore seems to me clear that the respondent was not in any position unilaterally to override the right of access which the claimant had bought when she purchased the lease, and that right of access permitted short incidental stops for the purpose of access to her flat.

19 The appellant's case could also be put in another way. The purported prohibition was upon "parking", and it is possible to draw a real and sensible distinction between pausing for a few moments or minutes to enable

passengers to alight or for awkward or heavy items to be unloaded, and parking in the sense of leaving a car for some significant duration of time.

20 Neither party was able to direct the court to any authority on the meaning of the word "park". However, the Shorter Oxford Dictionary has the following: "To leave a vehicle in a carpark or other reserved space" and "To leave in a suitable place until required." The concept of parking, as opposed to stopping, is that of leaving a car for some duration of time beyond that needed for getting in or out of it, loading or unloading it, and perhaps coping with some vicissitude of short duration, such as changing a wheel in the event of a puncture. Merely to stop a vehicle cannot be to park it; otherwise traffic jams would consist of lines of parked cars. Delivery vans, whether for post, newspapers, groceries, or anything else, would not be accommodated on an interpretation which included vehicles stopping for a few moment for these purposes. Discussion in this area left the respondent in obvious difficulties, from which the attractive advocacy of Miss Fenwick was unable to rescue it.

21 Whether a car is parked, or simply stopped, or left for a moment while unloading, or (to take an example discussed in argument) accompanying a frail person inside, must be a question of fact or degree. I think in the end this was agreed. A milkman leaving his float to carry bottles to the flat would not be "parked". Nor would a postman delivering letters, a wine merchant delivering a case of wine, and nor, I am satisfied, a retailer's van, or indeed the appellant, unloading an awkward piece of furniture. Any other approach would leave life in the block of flats close to unworkable, a consideration

which those instructing Miss Fenwick seemed reluctant to accept. I am quite satisfied, and I find as a fact, that while the appellant's car had been stationary for more than a minute and without its driver for the same period (whatever precisely it was), while she carried in her desk, it was not "parked". Accordingly, for that reason too, the appellant was not liable to the charge stipulated in the respondent's notice.

22 The respondent at one stage sought to argue that it would not have charged the appellant if she had telephoned to explain what she wanted to do. She would then have been given permission. But the notice said nothing at all about exemption being granted on request, and the reference to "all enquiries relating to parking in this area should be directed to 14 Services" was insufficient, in my judgment, as an indication that there was indeed scope for periodic exemptions on request. The whole tenor of the sign was to the contrary, and the idea that a postman or a milkman would have to telephone for permission to pause outside each set of premises on the estate was manifestly quite unrealistic.

23 There was a further matter, not developed in argument. The appellant's statement indicated that she had in fact been given permission by the landlord's caretaker, but the district judge, though not explicitly finding that she did not, did not accept that she had either.

24 The district judge's judgment set out some of the background and indicated that the respondents were operating pursuant to an agreement with the head

landlords which authorised them to impose charges upon owners improperly parked, and the district judge observed that the appellant denied parking permanently outside her designated bay, but accepted that she did stop on occasion to load and unload. Her contention that she had a right-of-way pursuant to her lease was recorded and that she was contending that, in those circumstances, she was not parked illegally, as is suggested by the claimant.

25 The judgment continued as follows:

> "The claimant, on the other hand, has produced a copy of an agreement with Places for People and a copy of a letter from Places for People…addressed to Mark Lancaster MP outlining the background which led to the claimant's engagement. The letter not only confirms the engagement of the claimant, but refutes the suggestion by the defendant that parking in these restricted areas was an activity allowed by the landlord. The opposite seems to be clear. Places for People, following consultation with residents at a leaseholders meeting where parking issues were raised, agreed to engage the services of a parking control company to restrict parking in areas where there was no permit to park. This, it seems, presents irrefutable evidence of the landlord's intentions not only to engage the claimant, but that the claimant was authorised to issue contravention notices and to continue to chase and collect non payment of charges… Whilst the defendant was not present at that leaseholders meeting (she had not yet acquired the interest in the lease), she would or should have been aware of their existence when she purchased the property. Once she became the owner of 99 Trevithick Court she was provided with a parking permit. Contrary to the defendant's assertions, I am satisfied that the claimant was engaged by Places for People in line with the agreement under the terms and conditions as stated. I am further satisfied that the defendant knew of the restrictions on parking which were in place at the time that she purchased the property. She makes reference to having received a parking permit. I find that the defendant was mistaken in her understanding that the parking restriction did not apply to her because (a) she was not an unauthorised person, and (b) that the rights conferred by her lease referred to in her defence and witness statement allowed her to park for reasons of necessity outside her designated parking bay. That being the case, the Unfair Terms in Consumer Contracts

> Regulations, the Law of Property Act and the Law of Property (Miscellaneous Provisions) Act do not assist the claimant."

The judgment went on:

> "In relation to the charge itself of £100…the court does not find this charge to be unfair or unreasonable. The charge is not for a short overstay…the charge is for parking other than in accordance with the permitted terms."

26 It will be apparent from that that a good deal of the attention of the district judge was devoted to the question whether or not the claimant was in fact authorised to do what it was purporting to do, but no reference was made to the conceded lack of notice – see paragraphs 8, 9 and 16 of this judgment – and there was no analysis of the existence and extent of the right to unload as an ancillary to the easement to pass or re-pass, nor was there any consideration of whether what the defendant was doing in fact constituted parking.

27 I am satisfied that the decision of the district judge was wrong.

28 In the circumstances, it is not necessary to deal with arguments about the Unfair Contract Terms, and the factual circumstances are quite different from those in ParkingEye v Beavis [2015] *supra. Inter alia*, in that case the agreed motorist was not exercising a right ancillary to a right of way, and clearly was parking.

29 The appeal will therefore be allowed.