

IN THE COUNTY COURT AT:

CLAIM No:

BETWEEN:

(Claimant)

-- and --

(Defendant)

WITNESS STATEMENT

1. I X and I am the Defendant in this matter. This is my supporting Statement to my application dated 11th June 2019 requesting to:

- a. Set aside the Default Judgement dated 22nd May 2019 as the court hearing was not sent or misplaced in post;
- b. In the interests of justice the Defendant has the prospects of successfully defending the claim itself and the added costs which included sums illusive by the parking firm which were never incurred and were an abuse of process for the Claimant to add to a parking charge;
- c. Order for the Claimant to pay the Defendant £255 as reimbursement for the set aside fee;
- d. Order for the original claim to be dismissed.

2. Default Judgement

2.1. I understand that the Claimant obtained a Default Judgement against me as the Defendant on 22nd May 2019 2019. However, the hearing date had not been duly served at my current address. Any notice of order shall be sent to every person whose name the debtor has notified to the County Court, as being a creditor of his or who has proved as stated in Section 113 (a) of the County Court Act 1984. Therefore, I was not aware of the County Court Judgement. None of the information regarding a court hearing date was appropriately corresponded and it is to my belief that there was an omission by the court or postal service, in failing to inform me that a hearing was to take place, which I would certainly have attended.

2.2. If a debtor summoned to attend the County Court by a judgement summons fails to attend on the day and at the time fixed for any hearing of the summons, the court may adjourn or further adjourn the summons to a specified day and order the debtor to attend at that time on that day with the requirements of Section 110(1) of the County Court Act 1984. Therefore, I was awaiting the court's next communication regarding the hearing and directions. I believe the order was premature and I was not given a fair opportunity to attend a hearing or submit any evidence or my Witness Statement.

2.3. The last communication I had received before the Judgement in Default was the Notice of Allocation to the Small Claims track (Hearing) dated 05/11/18.

2.4. On the 03/08/2018 I wrote to XXX County Court and rejected the Claimants request to have a trial by paper. Please see the attachment and confirmation from the court clerk of my requested day in court. (See Evidence A)

2.5. On the 15/09/2018, X County Court contacted me requesting for a copy of the directions questionnaire as it could not be "located" by the court clerk(s). (See Evidence B). This was re-sent.

2.6. On the 04/10/2018 XXX County Court contacted me again requesting another copy of the

directions questionnaire. This was the second time in the space of few weeks. On this basis, and the admission of the clerk that it was misplaced. I believe due to another error I either did not receive the court hearing date or it was defectively posted and was never received. (See Evidence C)

2.7. On the 08/07/2018 XXX County Court received my defence including my counter claim. It was in the interest of the Defence to defend the claim as well as counterclaim the incurring costs of time spent and harassment to the defendant. (See Evidence D)

2.8. On the basis provided above, I believe that refusing the Claimants trial by paper, re-issuing the directions questionnaire twice to XXX County Court and collating a counterclaim. Through careful due diligence and compliance to the court's requests, deemed likely that I could have my day in court to recover the costs time spent on this dishonest claim. The Defendant would not have fulfilled and obeyed these obligations otherwise.

2.9. Considering the above I was unable to defend this claim reasonably. I am confident that the Default Judgement against me was issued incorrectly and thus should be set aside.

3. Order dismissing the Claim

3.1. I further believe that the original Claim by the Claimant has no merit and should thus be dismissed. I understand that the Claimant is a Parking Company which seeks to claim for "Parking Charge Notices" which the Claimant believes are due because of an alleged breach of contract for parking by a motorist.

3.2. It appears that the Claimant has obtained details of the vehicle for which I am the Registered Keeper and used those details to make a claim for a 'Parking Charge Notice'. Any Notice to Keeper served by the Claimant must comply with the requirements of Schedule 4 of the Protection of Freedoms Act 2012. This includes the requirement to issue the Notice to Keeper within 14 days of the alleged incident. If the Claimant has not complied with the requirements of the Act they cannot claim this charge against me as the Registered Keeper in any case.

3.3 If the Notice to Keeper was not issued within 14 days, then the Claimant is required to prove who the driver of the vehicle was at the time of the alleged incident. The vehicle to which I am the Registered Keeper was at the time insured to be driven by two adults. I submit that the Claimant cannot provide such evidence to prove the driver of the vehicle they claim was involved in the alleged incident.

3.4. If the Claimant has obtained details of the vehicle for which the Defendant is the Registered Keeper, and used those details to make a claim for a "Parking Charge Notice", I dispute the claim in its entirety as I do not know the wording of the contract neither the means by which the contract was alleged to come into force.

3.5. I submit that this is not a penalty charge notice but a private one based on contract law and therefore the Claimant must:

a) show evidence that they have complied with the POFA or alternatively, show evidence of the driver's identity, to prove that this is the right defendant;

b) set out the facts on which it is asserted that the claimant has a cause of action against this defendant, and

c) identify the 'relevant obligation' of the defendant to pay parking charges and the 'relevant land' on which the parking is said to have occurred;

d) state whether the claim is in relation to a 'relevant contract' or in respect of an alleged trespass or other tort; (as per the POFA 2012 Schedule 4)

e) disclose full particulars and a contract, in order to evidence a claim in law;

f) evidence how a parking charge which the BPA Code of Practice sets a ceiling for, of not more than £100, has escalated to a triple 'recovery' reaching over £248 despite the POFA also stating that a keeper can only be pursued for the sum on the Notice to Keeper (double recovery not being allowed).

3.6. A requirement of the Protection of Freedoms Act 2012 is that this any Notice to Keeper served by the Claimant must be served within 14 days of the date of the alleged incident. Since I have not received any documentation from the Claimant prior to finding out about the Default Judgement, I submit the Claimant will not have complied with the requirements of the Act and thus cannot claim this charge against me as the Registered Keeper in any case.

3.7. I further submit that the parking charge notice is without merit due to substantial issues in law. This is for the following main reasons:

3.8. Lack of Standing by Claimant: The Claimant is unlikely to be the landowner of the car park in question and will have no proprietary interest in it. This means that the Claimant, as a matter of law, will have no locus standi to litigate in their own name. Any consideration will have been provided by the landholder, and only they would have been able sue for any damages or trespass.

3.8.1. No Loss Suffered by Claimant: Their claim is presumably based on damages for alleged breach of contract. It is a fundamental principle of English Law that a party who suffers damages through breach of contract can only seek through court action to be put back in the same position as they would have been if the breach had not occurred. In order to do so, they must demonstrate their actual, or genuine, pre-estimate of loss. I submit that no loss has been suffered by the Claimant as a result of any alleged breaches of contract on the part of any motorist of the vehicle of which I am the Registered Keeper. I further submit that any loss to the landholder (which would be the only party able to claim such losses) would be at most a few pounds.

3.8.2. No contract with the claimant: Any contract must have offer, acceptance and consideration both ways. There would not have been consideration from the Claimant to the motorist; the fee for parking benefits the landowners, not the Claimant. Therefore, there is no consideration from the motorist to UK Car Park Management.

3.9. The signage is forbidding and makes no offer to the motorist. There can therefore be no contract.

3.10. Even if there was a contract the signage fails informational requirements for contracts established in the Consumer Contracts (Information, Cancellation And Additional Charges) Regulations 2013, enacted 13 June 2014, and so any contract would be non-binding on the consumer.

3.11. My name and address information (together with other information) is classified as personal data within the meaning of s1(1) of the Data Protection Act (DPA). The Claimant has misused this data by attempting to claim a charge when there is no possibility that a lawful reason exists.

3.12. The Protection of Freedoms Act 2012, Schedule 4, at Section 4(5) states that the maximum sum that may be recovered from the keeper is the charge stated on the Notice to Keeper, in this case £100. The claim includes an additional £148.55, for which no calculation or explanation is given, and which appears to be an attempt at double recovery.

3.13. The Claimant is put to strict proof that it has incurred legal representation costs specifically related to this claim, for which a £50 cost has been included in the claim.

3.14. On this basis I believe that the Claimant has not provided any reasonable cause of action and thus the claim should be dismissed in its entirety.

3.15. In order to make informed decisions and statements in my defence as keeper of the vehicle, I will require copies of all paperwork and images of all signs from the Claimant.

Statement of Truth:

I believe that the facts stated in this Witness Statement are true.

Full name: Atilla Apaydin