

IN THE COUNTY COURT AT MANCHESTER

CLAIM NO. D1DP69Q6

BETWEEN:

EXCEL PARKING SERVICES LIMITED

Claimant

AND

MUHAMMAD [REDACTED]

Defendant

SKELETON ARGUMENT

1. PRELIMINARIES

1.1 I, Muhammad ● of 1 ●, Pharmacist, am the Applicant and Litigant-in-person in these proceedings. I filed an application to set aside judgement on 1 May 2018 (the "**Application**") and I submit this skeleton argument in support of the application set aside judgement in this case, pursuant to CPR 13.3.

2. INTRODUCTION AND SUMMARY OF CASE

2.1 This is a hearing to set aside judgement in this case and relies upon a correct application of CPR 13.3, which states:

2.2 *the court may set aside or vary a judgment entered under Part 12 if:*

(a) *the defendant has a real prospect of successfully defending the claim;*
or

(b) *it appears to the court that there is some other good reason why –*

(i) *the judgment should be set aside or varied; or*

(ii) *the defendant should be allowed to defend the claim.*

2.3 I make three arguments:

Argument 1: I have real prospect of successfully defending the claim;

Argument 2: (i) there are other good reasons why the judgement should be set aside or varied or (ii) I should be allowed to defend the claim; and

Argument 3: This Application has been filed in a timely fashion.

Argument 1 summary:

2.4 The terms and conditions have not been breached and I did not park in the car park at any time. The evidence provided that I did park in the car park is not relevant and of a very poor quality.

Argument 2 summary:

2.5 I did not know any court proceedings had begun in 2017, or when they concluded in 2017. I only found out about such on 23 March 2018 (the "**No Notice Limb**"). In light of the overriding objective, the judgement be entirely set aside and the Claimant's claim dismissed, or in the alternative, I must be allowed to present a defence.

2.6 The County Court Judgement ("**CCJ**") is having a major impact on my life as I can no longer get a mortgage and am having difficulties obtaining relevant financing and credit in my business (the "**Impact Limb**"). In light of the impact the CCJ is having on my life, and given I have not yet had a chance to present my defence, I must be allowed to present a defence, which I have not had an opportunity to, or, in the alternative, the judgement be entirely set aside and the Claimant's claim dismissed.

2.7 The Claimant should not have used a service address from 2012 when it issued proceedings after a delay of 5 years in 2017 and this is contrary to the Court Procedure Rules ("**CPR**") 6.9 (the "**Old Address Limb**").

Argument 3 summary:

2.8 This Application has been filed in a timely fashion and I did not delay unnecessarily in filing this Application.

2.9 I did not know about the CCJ so the delay of over a year is not the relevant delay for the court to consider as claimed by paragraph 40 of the Claimant's Witness Statement.

2.10 The circa 1-month delay is the relevant delay, however this was because as a litigant-in-person it took time to work out what this meant, to obtain the

details of the CCJs against me from old addresses and online databases, liaising with National Debtline and seeking ad-hoc legal counsel on next steps and drafting an application on my own.

3. **BACKGROUND**

3.1 The Claimant's car park is an open access car park with an entrance on two sides and has no barriers. The terms and conditions as displayed in the car park (Appendix 1 figure 1) do not state that it is not allowed to drive on or through the car park without parking.

3.2 The Claimant claims that I have parked on a number of separate occasions in its car park, which has resulted in 3 CCJs being filed against me to date with the prospect of further CCJs being filed in due course.

3.3 I am the owner of a business which has an adjoining car park with separate entrances (see photographs in the Witness Statement attached to my Application Notice). This car park has approximately 7 parking spaces and as the owner of this business I have my own reserved place. The staff entrance to my place of business is also situated in my car park therefore I have no need to park in the Claimant's car park and would indeed be inconvenienced by parking in the claimant's car park. This would apply at any time of the day 365 days a year.

4. **ARGUMENT 1**

4.1 The Terms and Conditions (the "**T&Cs**") state that *"after a vehicle has entered the car park, a maximum period of 10 minutes is allowed to purchase a valid ticket or make payment by phone"*.

4.2 There are two ways of interpreting this term:

(a) Cars are allowed to enter this car park, (for whatever reason, e.g. to look for spaces, decide if they want to stay on the car park) and then leave within 10 minutes without any charge; or

(b) Cars are bound to pay within 10 minutes as soon as they enter the car park. They are bound to pay from the moment they enter the car park.

- 4.3 4.2 (a) is the obvious, reasonable, and practical understanding of the term and is also the understanding of the Claimant at paragraph 9 of its Witness Statement.
- 4.4 There are no other relevant terms in the T&Cs and therefore I am not in breach of the T&Cs in the absence of evidence that I parked in the car park at the stated times claimed. I may have passed through the car park, but that alone does not necessitate any payment.
- 4.5 The evidence submitted by the Claimant (photographs appended to its Witness Statement) is of a poor quality and does not prove a breach of the T&Cs. The photographs simply show my vehicle entering and exiting the car park at the times stated. They do not show my vehicle parked on the car park. As discussed in the Background, I park in my own car park, for free, at my reserved spot so, in the absence of any evidence to the contrary, there is no reason to consider that my vehicle parked on the Claimant's car park between the entry and exit times stated.
- 4.6 ANPR camera technology is known to be unreliable, with a 4% chance of error for every number plate read, and 1.2 million number plates wrongly read every day (Appendix 2). Given the number of times I will have passed through the car park over the years due to its close proximity to my place of work, one would expect a Parking Charge Notice ("**PCN**") for nearly every day. This is not the case, and therefore it is highly likely that on a number of occasions the ANPR system on one end of the car park (Entrance 1) registered my entry, while the ANPR at the other end (Entrance 2) failed to register my exit. Therefore, when I passed back through the car park much later, my number plate triggered the ANPR at Entrance 1 and the Claimant issued a PCN.

5. **ARGUMENT 2**

No Notice Limb

- 5.1 I did not know any court proceedings had begun in 2017, or when they concluded in 2017. I only found out about such on 23 March 2018. In light of the overriding objective, the judgement be entirely set aside and the

Claimant's claim dismissed, or in the alternative, I must be allowed to present a defence.

Impact Limb

- 5.2 I am a father of 5 and my elderly and disabled parents live with me and the family is now too big for my rented property and I want to buy a property now that my business is established. However, I cannot do that with a CCJ against my name.
- 5.3 Additionally, suppliers are not willing to provide me with the credit and financing that my pharmacy business requires to function. This is making my life extremely stressful as a small business owner and father.
- 5.4 In light of the impact the CCJ is having on my life, and given I have not yet had a chance to present my defence, I must be allowed to present a defence, or, in the alternative, the judgement be entirely set aside and the Claimant's claim dismissed.

Old Address Limb

- 5.5 I submit that the Claimant did not serve as per the guidelines at CPR 6.9 which state:
- 5.6 *"(3) Where a claimant has reason to believe that the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2) is an address at which the defendant no longer resides or carries on business, the claimant must take **reasonable steps to ascertain the address of the defendant's current residence or place of business** ('current address')."*
- 5.7 The CPR requires the Claimant to take "reasonable steps" to ascertain my current address. I submit that the Claimant did not take such reasonable steps for the following reasons:
 - (a) The Claimant claims it sent a "plethora" of legal correspondence to the old address without response over 5 years, as stated at paragraph 37 and 39 of its Witness Statement. The lack of response should have put the Claimant on notice that the address being used was not the correct address. The Claimant cannot make a "good arguable case" that the premises served at were the addressees usual or last known

residence, as the test was stated by in **Varsani v Relfo Ltd (In Liquidation) [2010] EWCA Civ 560**¹.

- (b) Approximately 5 years after the initial correspondence, the Claimant saw fit to use the address it had received from the DVLA in 2012, and from which had not once obtained a response.
 - (c) The Claimant could have hired an enquiry agent, undertaken a simple Google or Companies House search, or contacted the DVLA again. Any of these steps would have resulted in them obtaining my new address² swiftly. Given the impact a CCJ can have on an individual, and given the length of time since the Claimant had obtained the address from the DVLA, the Claimant should have taken these steps to verify the address.
- 5.8 I seek to rely on the judgement in **Smith v Hughes [2003] EWCA Civ 656**, where it says *"there is no suggestion in this case that 45 Whitworth Close was not Mr Hughes' last known residence. If the MIB had disputed the claimant's claim that this was Mr Hughes' last known residence, then difficult questions might have arisen. In particular, is the rule concerned with the claimant's actual knowledge, or is it directed at the knowledge which, **exercising reasonable diligence**, he or she could acquire? We incline to the latter view, but, as we have said, **the point does not arise on this appeal.**"*
- 5.9 After Smith was decided, CPR 6.5(6) was amended to incorporate precisely the "reasonable diligence" mentioned obiter in the judgement. Therefore, there is now an additional step that the Claimant must pass which I submit it has not passed. Upon a proper reading of *Smith* therefore, it does not support the Claimant and instead supports my Old Address Limb.
- 5.10 In the alternative, Smith can be distinguished as it is an application of the old CPR rules which did not have the "reasonable steps" element. The "reasonable steps" element is particularly important as the new CPR rules also remove the protection for the Defendant 13.5(2) which provided that

¹ This was the test stated by the first instance judge and was not challenged on appeal.

² Searching "Muhammad Mian Ashby Close" results on Google points directly to my Pharmacy. A call to that would have clarified within 5 minutes what the correct address is.

if a claimant who has entered judgment subsequently has good reason to believe that the particulars of claim did not reach the defendant before the claimant entered judgment, he must file a request for the judgment to be set aside, and apply to the court for directions. Therefore the protection afforded to the Defendant now lies heavily on the "reasonable steps" being taken prior to service.

- 5.11 Contrary to the Claimant's paragraph 39, the onus is not, and cannot be, on me to provide an up-to-date address to a third party with whom I have no idea I am in litigation with. Pursuant to CPR 6.9(3) the burden of proof is in fact on the Claimant to show it had taken reasonable steps to ascertain the correct service address.
- 5.12 The Claimant argues that because no correspondence was returned to it as returned mail, it should not be penalised. However, this relies upon the new occupant returning the post to the sender – something I have no control of and is a relatively unlikely occurrence.

6. **ARGUMENT 3**

- 6.1 This Application has been filed promptly and I did not delay unnecessarily in filing this Application.
- 6.2 I did not know about the CCJ so the delay of over a year is not the relevant delay for the court to consider as claimed by paragraph 40 of the Claimant's Witness Statement.
- 6.3 The circa 1-month delay is the relevant delay. However, this was because:
- (a) as having a CCJ against me was something I had never experienced before, I sought advice from the charity National Debtline a number of times to work out what this meant, who to make the application to, how much it cost, and whether to hire a solicitor;
 - (b) after I first heard about one CCJ from a debt claims company on 23 March 2018, this was quickly followed over the next few days with two similar communications about other CCJs. Understandably this added additional complexity to the legal problem, particularly for a litigant-in-person;

- (c) it proved difficult to track down all details of CCJs against me at my recent addresses and I did not succeed in getting these details despite trying. Eventually Debtline helped me track down the details necessary to file the Application; and
 - (d) I was seeking ad-hoc legal counsel which I needed as a litigant-in-person to draft my submission.
7. The White Book 2018 states in relation to acting "promptly" in responding to a judgement: *"The question whether in any particular case the applicant has acted with all reasonable celerity is to be answered in the context of an assessment of the relevant circumstances and what if any impact they had on the time it took the applicant to act. There is no arbitrary rule of thumb as to a particular period which will mark the dividing line between what is and what is not prompt (per Stadlen J. in Sir **John Fitzgerald Limited v MacArthur [2009] EWHC 2659 (QB); October 28, 2009**)"*.
- 7.1 In **Hart Investments Ltd. V Fidler [2006] EWHC 2857** the TCC judge concluded that a delay of 59 days was *"very much at the outer edge of what could possibly be acceptable"*, and one of the factors cited there was that the defendant had not had the benefit of legal advice during the relevant period, although the most important reason for setting aside of the default judgement was the real prospect that the defendant had of successfully defending the claim. I submitted well before 59 days, and I also happened not have legal advice during the relevant period between my becoming aware of the CCJs and my filing the Application.
- 7.2 I invite the Court to find that, for all the reasons stated at 6.3 above, a circa one-month delay falls within the meaning of "promptly in the circumstances.

8. **CONCLUSIONS**

- 8.1 For the reasons set out above, The CCJs should be set aside and costs for all the applications should be awarded in my favour.
- 8.2 Court fees for applications against each CCJ amount to £300 each and I have in total spent 70 hours in preparation for this case and pursuant to Practice Direction 46.3.4 the hourly rate for a litigant-in-person is £19. In

total this amounts to **£1330**. Further to conversation with solicitors I understand that were a solicitor to act in this matter as a minimum they would charge £220 per hour (plus VAT) and the preparation for this case together with attendance at the hearing would amount to 50 hours which is £11,000. As such the £1900 is well below the two thirds cap detailed at CPR 46.5(2).

8.3 In total therefore my costs are **£2230**.

APPENDIX I

Excel Parking

Agree with Excel Parking with the Terms and Conditions and agrees in full

HOW TO PURCHASE A TICKET

- 1 ENTER FULL REG NUMBER
- 2 INSERT MONEY
- 3 PRESS GREEN BUTTON
- 4 RETAIN VALID TICKET

Terms and Conditions

This is a PAY car park. Pay at the meter(s) or Pay by Phone.
 You must enter the FULL and ACCURATE VEHICLE REGISTRATION MARK/NUMBER (VRM) of the vehicle on site when making payment.

Retain your valid ticket for a minimum of 90 days.

After a vehicle has entered the car park, a maximum period of 10 minutes is allowed to purchase a valid ticket or make payment by phone.

Vehicles must be parked wholly within the lines of a single marked bay.

No lorries, HGVs, buses/coaches, caravans, caravanettes or mobile homes.

MOTORBIKES - Parking Tariff applies.

DISABLED - Parking Tariff applies. Marked Disabled Bays are for valid disabled blue badge holders only. A valid blue badge must be displayed in the front windscreen of the vehicle with the details clearly visible at all times. The named blue badge holder must be either the driver or passenger in the vehicle at the time of parking.

WEEK HOLIDAYS
 (DAY)
 £ 1.00

20p, 50p, £1, £2
 e Given
 (Accepted)
 ed and emptied daily

DISPLAY YOUR TICKET

lders

or pay by phone.
 e number

APPENDIX 2

← → ↻ 🏠 <https://www.rac.co.uk/drive/news/motoring-news/concern-over-anpr-camera-accu>

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Concern over ANPR camera accuracy

1st Oct 2014

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Tax discs are now a thing of the past but the new digital system could lead to innocent motorists receiving DVLA penalty notices, according to a new report.

The replacement system will partly rely on camera technology which reads vehicle number plates - but official data reveals up to 1.2 million are wrongly identified every day.

At a conference last week, Home Office and police officials revealed that four errors are made for every 100 number plates read by automatic number plate recognition (ANPR) cameras - the Telegraph reports.

RAC spokesman Pete Williams said: "Motorists clearly have some significant worries about the demise of the paper tax disc with two-thirds of drivers believing it could lead to an increase in non-payment. But this suggestion that one in twenty-five motorists could face an unwarranted penalty notice is further cause for concern and one which needs to be addressed rapidly.

"The DVLA has reassured us that motorists will benefit from these changes but it seems that there is still some convincing to be done."

Around a quarter of the mistakes (27%) involve numbers being confused with letters, while another 25% are due to affixing screws and bolts positioned too closely to the lettering.

Yet another quarter of cases (25%) are caused by broken plates and just over a fifth (22%) are simply because plates are dirty.

There are around 500,000 ANPR cameras in operation looking at 30 million plates a day. This could equate to as many as 1.2 million daily errors in total.

Independent ANPR consultant David Joy isn't sure how the DVLA will enforce penalties when many of them could be incorrect. The former policeman gave the presentation after examining data from the roads of Berkshire, Buckinghamshire and Oxfordshire.

The DVLA says all images taken by the cameras will be cross referenced to make sure the models and makes of vehicles involved are the same as those on their records.

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