

IN THE IPSWICH COUNTY COURT

No. 7IP04280

8 Arcade Street
Ipswich IP1 1EJ

Thursday, 24th September 2009

Before:

HIS HONOUR JUDGE HOLT

B E T W E E N :

MICHAEL & LINDA STILES
(t/a Secure-A-Space)

Claimants

- and -

WELCOME FINANCIAL SERVICES LIMITED & Anor.

Defendants

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THE CLAIMANTS appeared in Person.

MR. K. JASPAL (instructed by Cleggs) appeared on behalf of the Defendants.

J U D G M E N T

(As approved by the Judge)

1 JUDGE HOLT:
2

3 1 This is a claim by Michael Stiles and Linda Stiles, trading as Secure-A-Space,
4 as claimants for storage charges and costs relating to the removal of a Megane
5 motorcar in July 2007 from a parking bay at Ramshaw Drive, Chelmsford.
6 The car was on hire purchase and the finance company are the first defendant,
7 and their client and the keeper of the car was Mr. Collins, the second
8 defendant. He lived at Ramshaw Drive, his address being 64 Ramshaw Drive.
9 He was an assured shorthold tenant of a Mr. and Mrs. Dunne.
10

11 2 Mr. and Mrs. Dunne were the leaseholders of the property, property originally
12 built in the early 1990s and sold as part of a development on a 999 year lease,
13 initially to a Mr. Simon Kenneth Groom, and then to Mr. and Mrs. Dunne.
14 Because it forms part of the development, 64 Ramshaw Drive is managed in
15 party by a management company, which it would appear is Victoria Housing
16 Trust.
17

18 3 The head lease makes it quite clear that the parking bay is a parking space.
19 There is no restriction on its use. The only covenant which could be invoked
20 in any way is clause 5 of the third schedule, which obliges the leaseholder not
21 to do or omit to be done on the property or the development any act, matter or
22 thing which may be or become a nuisance, annoyance or disturbance or
23 inconvenience to the company, the management company or the registered
24 proprietors to the titles to the leases.
25

26 4 It was in accordance with his rights under his lease that Mr. Collins parked his
27 Megane in the parking space. I have not been shown a copy of the lease. But,
28 if there were any doubt as to his rights to park there, there is a letter in the
29 bundle dated 8th October 2008 from the property company who organised his
30 lease, which states:
31

32 “We can confirm that we have spoken to our landlord, Mrs. Dunne, who
33 has provided us with a copy of HM Land Registry and plan of flat
34 parking spaces, which clearly indicates that number 39 is owned by our
35 landlord. The landlord also confirmed that she had no objection to
36 Mr. Collins parking his vehicle in her allocated parking space”.
37

38 5 The Megane is shown in a photograph, in particular, at 298 in the bundle. It is
39 parked amazingly neatly in what is clearly a car parking bay. The car is in
40 good condition, clean; indeed, it could be said to be shiny. The only concern
41 about it is that it was not taxed. The reason for that is Mr. Collins had
42 financial difficulties, he had a works vehicle and, therefore, for the time being

1 he chose not to tax it. He did, however, maintain the payments on the hire
2 purchase, which were some £310-odd per month.
3

4 6 Despite the clear lawfulness of his parking his vehicle in his parking bay, in
5 July 2007 the claimants were instructed, pursuant to an agreement they had
6 with John Price, who were agents of the management company, to remove the
7 car. Angela Pearce of John Price & Co. had decided that the car in some way
8 constituted a nuisance. The only ground for that appears to be that the car was
9 untaxed, and she took the view that vandals might, therefore, target the car and
10 make it unsightly.
11

12 7 She took no steps to contact Mr. Collins, which is remarkable, because he was
13 the tenant of the car parking space. She appears to have tried to back pedal in
14 the course of these proceedings, and finally, at p.370 in the bundle, in an email
15 dated 28th October 2008 she said:
16

17 “Up until the end of December 2007, I had not been advised that the car
18 belonged to a resident living in the apartment whose designated space
19 was occupied by the vehicle in question. Had I known these facts at the
20 outset, I would have withdrawn the instruction to remove the vehicle
21 pending discussions with the owner about health and safety issues and
22 liabilities”.
23

24 8 It beggars belief that she did not contact Mr. Collins before July 2007, but that
25 is apparently the way she went about her work, and she instructed the
26 claimants to remove it. They had a contract with John Price, which is at 297 in
27 the bundle, which is headed a “Parking Control Agreement”, and it is for them
28 to remove vehicles upon request. It is an agreement which contains on its
29 reverse terms and conditions, which do not seem to have been complied with.
30 Certainly, the terms and conditions seem to have in mind that the claimants
31 will provide warning notices at the entrance to any private parking area, and
32 state in clear and unambiguous terms the consequences of parking without
33 authority.
34

35 9 Mr. Stiles says this was not complied with, because it was not that type of
36 private parking area, and it seems to me that he is probably right. This parking
37 area was tenanted by Mr. Collins, and he had full authority to park where he
38 did. But, nevertheless, the claimants, in accordance with the instructions they
39 received, put a notice on the car for seven days, which of course Mr. Collins
40 working away did not see. The first he knew was, after the seven days had
41 expired, his car had gone. He kept a low profile. He carried on making the
42 payments to the finance company. In due course, the claimants did an HPI
43 check and they discovered that the finance company, the first defendant, had

1 this relationship with the car. So they informed them that they were incurring
2 storage fees at a rate of £40 a day, and they expected the finance company to
3 pay.

4
5 10 The finance company, who had no rights of control of the vehicle, took the
6 view that it was not a matter for them, and the upshot was that the claimants
7 instituted proceedings, firstly, against the first defendant. The first defendant
8 then compounded the situation, or almost did, by applying to have Mr. Collins
9 added as a second defendant. They realised that was a silly application and
10 withdrew it, but they applied to have the second defendant as a Part 20
11 defendant and, in the fullness of time, last December Mr. Collins was added as
12 second defendant by the claimant, and he put in a defence and counterclaim.
13 His counterclaim is for damages for wrongful interference of his motorcar and
14 the return of it.

15
16 11 There is a preliminary issue as to what is the cause of action. There are three
17 possibly to consider. The first is whether there is any contractual relationship
18 between the claimant and either the first or second defendant. This was not
19 parking on land owned by the claimants or by someone for whom the
20 claimants acted, so that, if somebody parked on that land and a notice were put
21 up, such as at a supermarket, then, if the conditions of the notice were not
22 complied with, the claimants could take possession of the car and claim
23 storage.

24
25 12 There is no such contract, and nor could there be, because the second
26 defendant had a right under the lease to park his car. The nearest one gets to
27 consideration of a contract is the covenant in the lease, which I have already
28 referred to in the third schedule clause 5. There seems to have been some
29 attempt by Mrs. Pearce, before she backtracked further, to argue that a car,
30 because it is not taxed, either is or may become a nuisance because it may be
31 targeted by vandals. That is a hopeless argument and, in any event, there has
32 been no attempt to found this claim in accordance with such a breach of
33 covenant. For the avoidance of doubt, if there were any attempt to amend and
34 any success in assigning the rights from the housing trust as head lessor down
35 to the claimants, I would say that such an argument would have no prospect of
36 success whatsoever.

37
38 13 The next matter to consider is the one which is added by amendment to the
39 claim to say that the claimants are entitled to make their claim because they are
40 involuntary bailees. The problem with this is that the car must be parked
41 unlawfully in the first place, and clearly, it was not. Therefore, ingenious as
42 that argument may appear to be, it is a non-starter.

1 14 The finance company would also say that, in any event, it was misconceived to
2 sue them. They were not the bailor at the time. It was the registered keeper,
3 and indeed, they point to the notice which was put on the car, which is at
4 p.322, which clearly targets the registered keeper of the vehicle and not the
5 finance company, if the car is not removed in accordance with the notice.
6

7 15 It seems to me that the finance company could never have been in the frame
8 here and, as far as Mr. Collins is concerned, nor could he, because he was
9 parking his Megane in his parking space, which he was fully entitled to do and
10 which Mrs. Pearce, somewhat belatedly, seems to be accepting to be the case.
11

12 16 It may be that Mr. and Mrs. Stiles, as the claimants, are pig in the middle.
13 I know not. They accepted instructions from Mrs. Pearce. Those instructions
14 were bad in law. Then their remedy, if they have one - and I am not deciding
15 any such issue, and I emphasise that - is against John Price or others. It is not
16 against the first defendant or Mr. Collins.
17

18 17 Mr. Collins has been deprived of his car for two years. It seems to me the car
19 has undoubtedly deteriorated over two years, and he has had the loss of its use,
20 whatever that might have been, whatever he chose to put, whatever his
21 financial fortunes may or may not have been. He was paying, at the time the
22 vehicle was taken, £310-odd a month in finance charges. Those have been
23 discharged by the effluxion of time before today. It seems to me that, from the
24 beginning of August 2007 (to make matters simple), up to and including this
25 month, I should award damages at £300 a month, and I shall order the vehicle
26 to be returned forthwith. On that basis, I calculate the damages to be £7,400.
27 Presumably, there is an application for costs.
28
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