Parking Eye Court of Appeal result

On the 23rd April 2015, England’s Court of Appeal delivered a judgement that may eventually have a trickle-down effect on Australia. The decision concerned the parking charges (or payment notices as they are called in Australia) that can be levied by private parking companies in the United Kingdom. The case pertaining to the court's decision had many similarities to the private parking situation in Australia. It was in an otherwise free car park and it involved a large payment notice of £85 for overstaying the limit.

Unfortunately, the court ruled that it was a valid and legal charge. This decision is bad news for consumers and drivers in the United Kingdom (and maybe one day Australia) but good news for large business such as Parking Eye who will profit from this decision should it stand up to appeal.

The case went right back to April 2013 when a Barry Beavis admitted he overstayed the parking limit at a shopping centre car park in England. The car park was managed by a parking company called "Parking Eye". The terms and conditions of the car parked allowed two hours of free parking, but Mr Beavis’ car was there for 3hours. Parking Eye runs a completely automated system with automatic cameras at the car park entrance together with cameras at the exit. The cameras automatically record the date, time, and registration number of each vehicle that comes and goes. Those vehicles detected to stay in the car park for longer than 2 hours receive a notice automatically in the mail within 14 days.

Sure enough, a few days later, Barry received a £85 invoice in the mail courtesy Parking Eye's automation. But Mr Beavis refused to pay this "fine". Then in 2014, Parking Eye Ltd issued legal proceedings in the County Court against Beavis. Mr Beavis lost this County Court case and was ordered to pay the £85 parking ticket, plus another £50 in legal costs. Mr Beavis appealed to London’s Court of Appeal, and Mr Beavis was represented by pro-bono legal representation. His legal counsel claimed that the amount of £85 constituted a penalty and was therefore void. It is well established in contract law around the globe, that if a contract is breached by one party, then the other party to the contract can only be required to pay the damages caused by that breach so as to put the other party back into the position they had been in had the contract not been breached. For example, if the upfront parking fee was £10, and the driver had not paid the £10, then contract law says that the driver could only be sued for the missing £10, plus perhaps a reasonable administration charge of £10 (or perhaps at most £20). Anything more than that amount has, in the past, been considered to be a penalty which in the past has made a £85 charge void under contract law. Usually, Councils and Police and other statutory authorities can charge penalties as a means of deterring certain types of behaviour, such as illegal parking. .

The Court of Appeal case centred around the question of whether the £85 charge can be considered a penalty, when the actual cost of parking was zero. Only points of appeal were discussed and the case wasn't re-heard from the beginning. The Court of Appeal ultimately said that whilst £85 was more than the loss incurred by Parking Eye Ltd:

- It was not extravagantly so, and therefore the court did not consider £85 to be a penalty.

- It didn’t fall outside of the Unfair Terms in Consumer Contracts Regulations 1999.

However, Barry Beavis has now appealed the decision to England's Supreme Court, with the appeal set to be heard on July 21st, 2015.

Background

In Britain in November 2012, the English parliament passed the Protection of Freedoms Act which (amongst other things) allowed private car park companies to pursue the owner of the vehicle for parking change notices if the owner refused to, or was unable to, identify the driver. The POFA legislation was created to compensate for the fact that at the same time, wheel clamping was outlawed. Under POFA, car park companies such as Parking Eye are able to hold the registered owner liable only if certain conditions are met, such as having signs of a certain standard and sending a parking charge notice (PCN) to the owner within 14 days. Similarly, private parking companies can only get owner details from the DVLA (Driver Vehicle Licencing Agency) if they are members of a parking organisation that subscribes to a code of conduct.