PARKING APPEALS SERVICE

LONDON BOROUGH OF HAMMERSMITH AND FULHAM

WEST WALLASEY CAR HIRE LIMITED

CASE No. 1960174207 (PCN No. HF24060593)

APPLICATION FOR REVIEW OF THE DECISION OF THE PARKING ADJUDICATOR

DECISION

This is an application for the review of a decision of the Parking Adjudicator, Henry Michael Greenslade. On 3 September 1996, he refused the appeal of West Wallasey Car Hire Limited, who now seek a review of that decision.

The Appellant is (as its name suggests) a car hire company. At the time of the alleged contravention, it had hired out the relevant car (Registration No. N662 SOF), and say that they delivered it to Miller Civil Engineering Limited, Site Office, Willesden Power Station, Glade Lane, Southall. The vehicle was hired on 25 September 1995, and off-hired on 3 April 1996. The Penalty Charge Notice ("PCN") in this case was issued on 12 March 1996.

Before the Adjudicator (and on this review), the Appellant relied upon the ground of appeal that it is a hire firm and it had supplied the name of the hirer.

By virtue of Paragraph 2(4)(e) of Schedule 6 to the Road Traffic Act 1991, it is a ground of representation to a local authority (and a ground of appeal to a parking adjudicator, in the event that the local authority do not accept the representations) that:

> "The recipient [of the Notice to Owner ["NTO"]] is a vehicle-hire firm and

(i) the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement; and

(ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any [PCN] fixed to the vehicle during the currency of the hiring agreement..."

By Paragraph 3(3) of that same Schedule 6:

> "Where the ground that is accepted is that mentioned in Paragraph 2(4)(e) above, the person hiring the vehicle shall be deemed to be its owner for the purposes of this Schedule".

That means that the person hiring the vehicle is liable for any parking penalty.

By virtue of Section 82 of the 1991 Act:

> ""Vehicle hiring agreement" and "vehicle-hire firm" have the same meanings as in Section 66 of the Road Traffic Offenders Act 1988 (Hired Vehicles)".

Section 66 of the 1988 Act provides:

> "(7) This section applies to a hiring agreement under the terms of which the vehicle concerned is let to the hirer for a fixed period of less than six months (whether or not that period is capable of extension by agreement between the parties or otherwise); and any reference in this section to the currency of the hiring agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of the fixed period specified in the agreement, but otherwise on the terms and conditions so specified.
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> (8) In this section:
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> "hiring agreement" refers only to an agreement which contains such particulars as may be prescribed and does not include a hire-purchase agreement within the meaning of the Consumer Credit Act 1974, and

"vehicle-hire firm" means any person engaged in hiring vehicles in the course of a business".

I particularly note that ""hiring agreement" refers *only* to an agreement which contains such particulars as may be prescribed...".

In his decision, the Parking Adjudicator specifically referred to the hire agreement between the Appellant and Miller Civil Engineering Limited upon which the Appellant relied. He found that it did not comply with the relevant requirements.

Schedule 2 to The Road Traffic (Owner Liability) Regulations 1975 (SI 1975/324) is headed:

"Particulars required in a hiring agreement to comply with Section 3 of the Road Traffic Act 1974". They include the full name of the person accepting liability, his date of birth, his permanent address and details of his driving licence: they also include the registration mark and make of the vehicle the subject of the agreement, the time and date of the commencement of the hiring and any extension to the hiring and expiry of the agreement. It seems to me that the requirement for each of the particulars is mandatory: if an agreement does not contain any of the particulars listed, then it is not a "hiring agreement".

The Parking Adjudicator was patently correct in holding that the hire agreement in this case did not comply with the 1975 Regulations. The hiring agreement did not include the full name of the person accepting liability, or his date of birth, or his permanent address: and no details of his driving licence. It did not contain the time of commencement of the hiring, nor any details as to the expiry of the agreement. As I have indicated above, the absence of these particulars is fatal to the contention that the agreement is "a hiring agreement".

The hiring agreement in this case refers specifically to The Road Traffic Act 1974. The 1975 Regulations were made under that Act. There is an argument that those regulations do not apply at all to the Road Traffic Act 1991, under which the decriminalised parking scheme in London falls. This argument was referred to in another decision made today, namely The London Borough of Harrow -v- Global Transport (19 March 1997), in these terms:

"Unfortunately, no particulars appear ever to have been prescribed under [Section 66 of The

Road Traffic Offenders Act 1988].

On 5 March 1975, The Road Traffic (Owner Liability) Regulations 1975 (SI1975/324) were made under The Road Traffic Act 1974. Regulation 4 provides:

> "The particulars complained in Schedule 2 to these Regulations are hereby prescribed for the purpose of Section 3(7) of the [Road Traffic Act 1974] (particulars to be contained in hiring agreements)".

Schedule 2 to those Regulations is headed:

> "Particulars required in a hiring agreement to comply with Section 3 of the Road Traffic Act 1974".

They include the full name of the person accepting liability, his date of birth, his permanent address and details of his driving licence: they also include the registration mark and make of the vehicle the subject of the agreement, the time and date of the commencement of the hiring and any extension to the hiring and expiry of the agreement. It seems to me that the requirement for each of the particulars is mandatory: if an agreement does not contain any of the particulars listed, then it is not a "hiring agreement" under the 1974 Act.

I have been unable to find any potentially relevant particulars, other than those prescribed in the 1975 Regulations. No particulars appear to have been specifically prescribed under any of the later legislation.

The 1974 Act (under which the 1975 Regulations were passed) was repealed by The Road Traffic (Consequential Provisions) Act 1988 (a sister statute of The Road Traffic Offenders Act 1988). By virtue of Section 17(2)(b) of the Interpretation Act 1978, which provides for the retention of regulations in circumstances where the founding statutory provision is repealed and effectively re-enacted, the 1975 Regulations apply as if they were made under the 1984 Act. Consequently, the particulars prescribed in Schedule 2 to the 1975 Regulations apply to "hiring agreements" under the 1984 Act.

However, these provisions of The Interpretation Act do not assist in so far as the 1988 Act is concerned. The 1988 legislation did not repeal the relevant part of the 1984 Act (of course, already repealed in 1984). The 1988 legislation did repeal Part III of The Transport Act 1982, which contains similar provisions, including a similar definition of "vehicle hiring agreement" in Section 45(8): but, again, I can find no particulars properly prescribed under the 1982 Act, either specifically or by virtue of The Interpretation Act. Therefore, I can find no relevant "deeming" provision which assists so far as the 1988 Act - and, consequently, the 1991 Act - is concerned.

Therefore, with some reluctance, I am forced to agree with the authors of the commentary on Section 66 of the 1988 Act in Halsbury Statutes of England and Wales (Fourth Edition), Volume 38 1995 Re-issue, page 1114:

> "....[N]o regulations have been made for the purposes of sub-s (8) above and none have effect by virtue of The Road Traffic (Consequential Provisions) Act 1988..."

What is the effect of no particulars having been prescribed? Without such particulars being prescribed, no agreement can be a "hiring agreement" under the 1988 Act. Similarly, no

agreement can be a "hiring agreement" under the 1991 Act, which is the relevant Act in this case and which merely takes in by reference the provisions relating to such agreements from the 1988 Act. Therefore, it seems to me that the provisions relating to "hiring agreements" under the 1988 and 1991 Acts have been and will be of no effect unless and until such provisions are prescribed. If this is right, then no leasing company can take advantage of Paragraph 2(4)(e) of Schedule 6 to the 1991 Act, which gives as a ground of representation against an NTO, that the recipient is a vehicle hire firm and "the vehicle in question was at the material time hired from that firm under a *vehicle hiring agreement*..." (emphasis added)."

However, because the hiring agreement in this case would not fall within the 1975 Regulations in any event, it is unnecessary for me to determine any of these points in this case.

Although not specifically relied upon by the Appellant, I should address one further matter, namely the question of who was keeping the vehicle at the relevant time.

It is a further ground of representation against an NTO (Paragraph 2(4)(a) of Schedule 6 to the 1991 Act) that:

"... the recipient:

(i) never was the owner of the vehicle in question;
(ii) had ceased to be its owner before the date on which the alleged contravention occurred; or
(iii) became its owner after that date..."

The reference to "owner" is somewhat misleading, because the Act specifically defines owner in terms other than the person with all of the benefits and burden of ownership. Paragraph 82(2) of the 1991 Act provides:

"... the owner of a vehicle shall be taken to be the person by whom the vehicle is kept".

Consequently, it is the *person by whom the vehicle is kept* that is responsible for parking penalties.

I know of very few of the facts surrounding this hiring. However, although who is "keeping" a vehicle at any point in time may turn on the facts, it is not purely a question of fact. The Court of Appeal have set out, as a matter of law, the proper approach to the question of keepership in R -v- The Parking

Adjudicator ex parte The London Borough of Wandsworth, Unreported QBCOF 96/1153/D. In that case, Stuart-Smith LJ (with whom Morritt LJ and Sir John May agreed) said:

> "The disposal and acquisition of the vehicle referred to in Paragraphs 2(5) and 2(6) [of The Road Traffic Act 1991] must involve the right to keep the vehicle. Clearly a sale or gift to another would satisfy the requirement but the keeper does not necessarily have to be the owner. The concept does, however, involve both a degree of permanence and the right to use the vehicle for the purpose for which it was manufactured, namely use on the road. Thus, a friend who borrows a car even for a comparatively long period would not as a rule become the keeper, nor would a garage proprietor who takes a vehicle for repair, since he has no right to use it for his own purposes and the duration of his possession of the car is insufficient. It is possible to envisage circumstances where a vehicle repairer might become the keeper, if, for example, the cost of repair was uneconomic and the owner asked the garage to dispose of the vehicle. Special provisions relate to hired vehicles: see paragraph 2(4)(e).
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> In my judgment it is necessary, when considering whether there has been a sufficient disposition of the vehicle, to satisfy Paragraph 2(4)(a)(ii) to rebut the presumption of ownership required by Section 82(3) to consider whether it was the sort of disposition which would require notification within Regulation 12 of the 1971 Regulations. The whole concept of ownership for the purpose of this part of the 1991 Act is related to what is or what should be the position in the public record. One starts with what is the position because of the presumption in Section 82(3). One then considers what ought to be the position at the time of the offence if there were instantaneous registration of a material disposition or acquisition."

I have set out the ratio of the judgment at some length, because it is important to see it in context. It is clear that, in that case (which concerned the position when a true owner left a vehicle at a garage for repair), the Court was specifically considering the position where someone who clearly "kept" the vehicle argued that he had "disposed" of the keepership and was consequently entitled to rely upon the ground in Paragraph 2(4)(a)(ii) of Schedule 2 to the 1991 Act to rebut the presumption of ownership in Section 82(3), i.e the presumption that the registered keeper was in fact keeping the vehicle at the relevant time.

It seems to me that this case before me concerns a similar situation. On the facts, there seems to me no doubt that the Appellant "kept" the vehicle prior to hiring it to Miller. For the Appellant to have disposed of ownership, the disposal must "involve a degree of permanence". It seems to me that, in the case before me, it did not. Indeed, the very nature of the hire was such that no permanence of disposal was ever contemplated or made. Following the Wandsworth case, such "a degree of permanence" of a disposal is a pre-requisite if the Appellant wishes to bring itself within the ground of paragraph 2(4)(a)(ii). Consequently, the Appellant has failed to bring itself within that ground. It seems to me that the grounds set out in Paragraph 2(4)(a)(i) and (iii) clearly do not apply to this case.

Therefore, on the basis of the approach in the Wandsworth case, I find that the Appellant was keeping the vehicle in this case, at the relevant time, and was consequently liable for any parking penalties incurred during the period of hire. Of course, it may be that they have a contractual remedy against the company to which it hired the vehicle, under their agreements with them: but this is not a matter for this forum to consider.

In conclusion, I find that the agreements between the Appellant and its drivers were not "vehicle hiring agreements" under the 1991 Act: and that the Appellant was keeping the vehicle at the relevant time.

In the circumstances, having reviewed the decision, I do not propose either revoking or varying it. The decision of Mr Greenslade will stand.

G R Hickinbottom

19 March 1997