Case No: A2/2012/1804

Neutral Citation Number: [2013] EWCA Civ 186
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)
THE UPPER TRIBUNAL JUDGE
TC200915554

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 March 2013

Before:

LADY JUSTICE HALLETT
LORD JUSTICE LEWISON
and
LORD JUSTICE TREACY

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Between:

VEHICLE CONTROL SERVICES LIMITED	**Appellant**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	**Respondent**

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- -

Lord Marks QC and Martin Hirst (instructed by **Flint Bishop Solicitors**) for the **Appellant**
Sarabjit Singh (instructed by **The Commissioners for Her Majesty's Revenue & Customs**) for the **Respondent**

Hearing date: 4 March 2013

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Judgment

Lord Justice Lewison:

The issue

1. The issue on this appeal is whether Vehicle Control Services Ltd ("VCS") is liable to pay VAT on parking penalty charges. If those charges are consideration for a supply of goods or services, they will be subject to VAT. If, on the other hand, they are damages they will not be. Both the First Tier Tribunal ("the FTT") and the Upper Tribunal ("the UT") found against VCS. They held that the charges were consideration for a supply of services, and hence were subject to VAT. According to the FTT the services in question were the provision of parking to motorists, and the payments represented consideration paid by the motorists. However, according to the UT, the services in question were services of parking control that VCS supplied to car park owners; and the parking penalty charges formed part of VCS's remuneration. The decision of the UT is at [2012] UKUT 130 (TCC); [2012] STC 2065.

The facts

2. VCS's clients ("clients") are owners or lawful occupiers of car parks or land. VCS enters into a contract on standard terms and conditions with each of the clients under which VCS agrees to provide the client with "parking control services". There was some confusion about which contract was the correct version. The FTT and the UT both considered a version that the parties agreed was not the correct version. We have considered what we are assured is the right one. No one objected to this course.

3. Clause 1 of the contract identifies the car park "of which the Client is the lawful occupier". In clause 2 VCS undertakes to provide a parking control service at the car park. Clause 3 of the contract contains the obligations imposed on VCS. They are:

    i) To erect and maintain warning signs at the car park indicating that the car park is private property for the use of valid permit holders only, and that vehicles not clearly displaying valid permits will be liable to parking enforcement procedures including the issue of a parking charge notice, vehicle immobilisation and towing away, and indicating the fees for release (Clause 3.1)

    ii) To supply the client with parking permits for issue to authorised vehicles at a cost of £2 per permit and £2.50 per book of 50 guest permits, and a permit instruction sheet giving details on how to complete and display the permits (Clauses 3.2 and 3.3)

4. Clauses 3.4 of the contract was as follows:

> "3.4 Inspect the Car Park at such Intervals as the Company in its discretion thinks necessary from time to time and take such action in respect of vehicles there found as outlined in 3.1 and 4.3 including the issue of parking charge notices, vehicle immobilisation and/or towing away as the Company shall think fit

5. Clause 4 contained the client's obligations which included:

   i) Payment of a registration fee of £25 plus VAT;

   ii) Paying an annual fee for the warning signs;

   iii) Ensuring "that all vehicles authorised to use the Car Park shall clearly display upon the windscreen a valid permit supplied by [VCS]" (clause 4.3).

6. Clause 5 stated:

> "The Client request and authorise the Company to carry out its obligations hereunder and warrants to the Company its title and authority to do so."

7. Clause 6.1 of the contract gave VCS the right to alter the parking penalties referred to in clause 3.1.

8. The warning sign sets out the requirement for valid permits or tickets to be displayed, various other rules and the charges that are imposed for failure to comply with the rules. These include a parking charge notice (£80); a wheel clamping charge (£100) and a charge for towing away (£160 plus storage). It states "You are entering into a contractual agreement. Do not park in this area unless you fully understand and agree to the above contractual terms." If a car is parked in contravention of the car park's rules, VCS issues a "parking charge notice" which is placed on the windscreen of the car. The notice sets out, through the use of a code, the nature of the contravention, and makes demand for payment to VCS. VCS enforces collection of such payments, which it retains. The appeal concerns payments arising from some only of the contravention codes (24—Not parked correctly within the markings of the bay or space; 40—Parked in a disabled space without clearly displaying a valid disabled person's badge; 81—Parked in a restricted area of the car park; and 86—Parked beyond the bay markings).

9. We were also shown the terms on which VCS issued permits. These received little attention before either the FTT or the UT; but it was common ground that we should examine them. Indeed, they grew in importance as the appeal proceeded. The permit is attached to (but removable from) a letter from VCS to the motorist. It begins by saying that:

> "The permit permits the vehicle registered below to use the parking facilities within the zone/area designated but it does not guarantee that a space will be available. Please read carefully the terms and conditions of use listed below prior to parking the vehicle."

10. Under the heading "Parking Permit Disc" appears the following term:

> "Prior to a permit being issued a written order in all circumstances must be received by [VCS] from the Client or authorised agent."

11. The General Conditions include:

> "Any vehicle causing an obstruction or parked in an unauthorised parking bay and/or zone will render the permit void."

12. The letter also contains the following:

> "Any breach of the former terms and conditions will result in the offending vehicle being issued with either a parking charge notice and/or the affixing of a wheel clamp and/or towing away and impounding. In such circumstances a charge will be levied prior to its release. No exceptions to this rule will be permitted."

13. VCS reserved the right to alter the terms and conditions without notice.

14. The only name that appears on the warning notices or on the parking permits is that of VCS.

The decision of the FTT

15. The FTT held that VCS had no right to sue in trespass because it did not have the right to possess or occupy the car park. It also held that there was a contract between VCS and the motorist; but that the parking and penalty charges were consideration payable under that contract, and hence within the scope of VAT.

The decision of the Upper Tribunal

16. The argument for VCS is that these charges are not liable to VAT either because they are damages for breach of a contract made between VCS and the motorist or because they are damages for trespass. The UT rejected both limbs of this argument. On the trespass argument they expressed their conclusion as follows:

> "[27] We conclude that in this case VCS did not have a contractual right to occupy or have possession with the effective control that is necessary if *Dutton* is to apply. The mere right of access afforded under the contract by the client to VCS did not give VCS any right to bring an action in trespass against the motorists who parked their vehicles in breach of the relevant restrictions.
>
> [28] Even if it had been the case that VCS had rights of occupation or possession sufficient to found an action in trespass, it is clear from Dutton that there are limits on the application of such a remedy. The remedy must protect, but not exceed, the legal rights granted by the licence. In this case the limited rights afforded to VCS under the contract do not require protection from motorists who park their cars in breach of the relevant restrictions. Indeed, such behaviour is of the very essence of the arrangements between the client and VCS. We agree therefore with the conclusion of the First-tier Tribunal in this respect."

17. In relation to the argument that the charges were a breach of contract, as noted the FTT had found that there was a contract between VCS and the motorist but that the penalty charges were consideration paid by the motorist for the supply of services. Thus they were subject to VAT. However, the UT concluded that the argument fell at the first fence, because there was no contract between VCS and the motorist. They expressed their conclusion to that effect as follows:

> "[40] In our judgment that was an error of law. On the facts of this case we do not consider that any offer was made by VCS that was capable of forming the basis for a contract between it and the motorist. VCS was not in a position, by virtue of its limited licence, to make any offer of a right to park. The ability to offer such a right was not conferred by the contract with the client, either expressly or by virtue of the nature of the interest in the car park conferred on VCS. That interest did not amount to a licence to occupy, or give VCS any right to possession. It merely conferred a right of entry to perform VCS's obligations under the contract.
>
> [41] The warning signs erected in the car park do not assist VCS in these circumstances. The reference in those signs to the fact that the motorist is entering into a contractual agreement cannot create a contract where there is no relevant offer from VCS that can be accepted."

18. Their ultimate conclusion was:

> "[48] The legal analysis is that VCS collects the various parking charges as agent for the client, which represents damages for trespass, or for breach of a contract between the landowner and the motorist. Such payments are outside the scope of VAT.
>
> [49] By allowing VCS to collect and retain the charges, the client was giving consideration, or further consideration, to VCS for its parking control services under the contract. That was consideration for standard-rated supplies by VCS to the client."

19. However, it was common ground between the parties that if there was a contract between VCS and the motorist then the payment of parking penalties would not have been consideration for the supply of parking services. To that extent, therefore, HMRC did not support the reasoning of the FTT. In that respect the UT followed the decision of the VAT Tribunal in Case 17665 *Bristol City Council* (15 May 2002) which HMRC did not challenge. This is in line with HMRC's declared policy contained in its Business Brief 57/08:

> "We have recently reconsidered that policy in the light of new legal advice and have concluded that, in the case of [*Bristol City Council*], the Tribunal's decision was founded as much upon the contractual relationship as the statutory regime.

> Therefore, we now accept that there is a difference between the situation where the contract under which parking is supplied allows for an extension of the original terms, for which additional consideration will be payable, and the situation where the driver is not permitted to extend the original terms and a penalty for breach of contract ensues if this in fact happens. Thus, where a car park operator makes an offer of parking under clear terms and conditions, setting punitive fines for their breach, the fines constitute penalties for breaching the contract, rather than additional consideration for using the facilities. Consequently, they are outside the scope of VAT. Since the same contractual relationships arise between drivers and local authority car park operators as arise between drivers and other car park operators, we have also concluded that the VAT treatment of excess charges will be the same for all car park operators."

20. It was thus common ground between Lord Marks QC, appearing on behalf of VCS, and Mr Singh, appearing on behalf of HMRC, that the first critical issue was whether (as the FTT held but the UT did not) there was a contract between VCS and the motorist. If there was, then they both agreed that the appeal would have to be allowed.

The breach of contract issue

21. The Upper Tribunal's reasoning on this part of the case was that since VCS did not have the right under its contract with the car park owner to grant a licence to park, it could not have contracted with the motorist to grant such a right. In my judgment there is a serious flaw in this reasoning.

22. The flaw in the reasoning is that it confuses the making of a contract with the power to perform it. There is no legal impediment to my contracting to sell you Buckingham Palace. If (inevitably) I fail to honour my contract then I can be sued for damages. On the stock market it is commonplace for traders to sell short; in other words to sell shares that they do not own in the hope of buying them later at a lower price. In order to perform the contract the trader will have to acquire the required number of shares after the contract of sale is made. Moreover, in some cases a contracting party may not only be able to contract to confer rights over property that he does not own, but may also be able to perform the contract without acquiring any such right. Thus in *Bruton v London and Quadrant Housing Trust* [2000] 1 AC 406 a housing trust with no interest in land was held to have validly granted a tenancy of the land to a residential occupier. The tenancy would not have been binding on the landowner, but bound the two contracting parties in precisely the same way as it would have done if the grantor had had an interest in the land.

23. Thus in my judgment the Upper Tribunal were wrong to reverse the decision of the FTT on the question whether VCS had the power to enter into a contract. Having the power to enter into a contract does not, of course, mean that VCS necessarily did enter into a contract with the motorist to permit parking. So it is necessary to consider whether it did.

24. It is common ground that the charges with which this appeal is concerned are charges levied on motorists who were permit holders but, for example, who parked in the wrong place or parked outside the markings of a bay. It is not concerned with "pure" trespassers. Accordingly, in my judgment the place to begin is the terms on which permits were issued.

25. In my judgment the terms and conditions on which the permit is issued amount in law to an offer. The permit is issued by VCS at the request of the landowner. It is VCS who fill in the details on the permit (name, vehicle registration number, location of the car park and duration of the permit). The letter says in terms that the permit "permits the vehicle registered below to use the parking facilities within the zone/area designated". As a matter of interpretation that, in my judgment, amounts to an offer to permit the permit holder to park in the designated zone or area on the terms of the letter. The letter goes on to instruct the motorist to "read carefully the terms and conditions of use listed below prior to parking the vehicle." I would infer from this that acceptance of the offer takes place when the motorist first parks the vehicle after the issue of the permit. This is reinforced by the warning sign which indicates that by entering the car park the motorist is entering into a contract. That, therefore, is the acceptance. The acceptance is acceptance by conduct. As every law student knows Mrs Carlill accepted the offer from the Carbolic Smoke Ball Company by using the smoke ball as instructed, without the need for communication of the acceptance (*Carlill v Carbolic Smoke Ball Company* [1893] 1 QB 256). The consideration moving from VCS to the motorist is (at least) the provision of the permit itself. Accordingly in my judgment all the necessary elements of a contract are in place when the motorist first parks his car.

26. VCS can in fact perform the contract because the landowner allows it to. But that does not to my mind alter the contractual analysis. If VCS were unable to perform the contract, then the motorist might be entitled to sue VCS for the lost value of the right to park, as Lord Marks accepted.

27. Mr Singh's answer is to argue that VCS was the landowner's agent for the purposes of contracting, and that the only contract that the motorist made was a contract with the landowner. It is perfectly true that the contract was made with motorists nominated by the landowner; and that, so far as the contract documents reveal, VCS could not refuse to issue a permit to a nominee of the landowner. But in my judgment the significance of that is that in effect VCS promised to contract with persons nominated by the landowner. It does not make the contracts contracts entered into as agent for the landowner. No landowner's name appears on the permit or the terms and conditions. By clause 4.3 of the contract between VCS and the landowner, the landowner agreed to ensure that all authorised vehicles displayed a VCS permit. The effect of that clause was that the landowner gave up the right to grant direct authorisation to anyone to park in the car park. The right to park could only be conferred by means of a contract between VCS and the motorist. If there was any agency it was an agency for an undisclosed principal. In the case of an agent acting for an undisclosed principal, the agent can sue and be sued on the contract. So even if Mr Singh is right in saying that there was an agency, that agency would not preclude the agent from entering into contracts by which it was bound.

28. However, Lord Marks argued that there was in fact no agency. VCS was an independent contractor, providing services for the landowner as principal. The

landowner was simply the recipient of the services, in the same way as a building owner might receive services from a contractor. If I call in a plumber to mend my tap, he renders me a service, but he is not my agent. As Lord Marks submitted, the contract between VCS and the landowner lacks the usual indicia of agency:

i) VCS had the right to determine (and alter) the parking charges;

ii) VCS had the right to decide what kind of enforcement action to take;

iii) VCS had no obligation to account to the landowner which is a fundamental feature of agency;

iv) VCS was pursuing its own commercial objectives in taking enforcement action, whereas an agent is in a fiduciary relation with his principal.

29. As Lord Marks also submitted, HMRC's analysis of the arrangements (to use a neutral word) with the motorists is very artificial. It analyses them on the hypothesis that the motorist who pays a parking charge is to be treated as making the payment to VCS for the account of the landowner; VCS is to be treated as accounting to the landowner for the amount of the payment; and the landowner is to be treated as having repaid the amount of the payment to VCS by way of remuneration. But as he pointed out:

i) The landowner does not in fact receive any money;

ii) The landowner does not know how much money VCS has recovered;

iii) The landowner has no control over the amount of money that VCS recovers;

iv) The landowner has no right to know;

v) No money passes from the landowner to VCS which is attributable to parking charges.

30. Although Mr Singh relied on clause 5 of the contract ("The Client request and *authorise* the Company to carry out its obligations hereunder") I do not consider that that single word will carry the weight that he suggests. It does not, to my mind, turn a contract for the provision of services into a contract of agency. Mr Singh also stressed the expectation that VCS would be paid for the provision of its parking control services, and that one would expect the consideration to flow from the landowner. I accept, of course, that VCS is in business to make money. But it does not follow that VCS expected to make money by being paid by the landowner. What it obtained under the contract (apart from the small fees charged for permits and signage) was the right to exploit the opportunity to make money from the motorists. The fruits of that exploitation cannot, in my judgment, sensibly be described as payment by the landowner. Mr Singh also accepted that if the contract between VCS and the landowner had given VCS the right to occupy the car park, then the penalty charges would not have been consideration for the supply of the parking services; and hence would have been outside the scope of VAT. But I do not see why that should make all the difference. Whether as occupier or merely as service provider, one of the rights that VCS acquired under the contract was the right to enforce parking restrictions and keep the proceeds.

31. I would hold, therefore, that the monies that VCS collected from motorists by enforcement of parking charges were not consideration moving from the landowner in return for the supply of parking services. I would therefore allow the appeal on that ground.

The trespass issue

32. The traditional view is that a licensee cannot maintain an action for trespass. In the well known case of *Hill v Tupper* (1863) 2 H & C 121 Mr Hill was the tenant of land adjoining the Basingstoke Canal. His lease granted him "the sole and exclusive right or liberty to put or use boats on the said canal, and let the same for hire for the purpose of pleasure only." The owner of a pub on the other side of the canal began to let out boats for hire. But when Mr Hill sued for disturbance of his right his claim was roundly rejected by the Court of Exchequer Chamber. The court held that since he had no proprietary right in the canal, any action had to be brought in the name of the proprietors of the canal.

33. This principle has, to some extent, been modified in more recent times. In *Manchester Airport plc v Dutton* [2000] QB 133 the National Trust had granted the airport company a licence to "enter and occupy" a wood, for the purpose of lopping and felling trees which would obstruct a proposed second runway. The issue was whether the airport company could maintain proceedings under RSC Order 113 against protesters who had set up camp in the wood. The Court of Appeal, by a majority, held that it could. Giving the leading judgement for the majority Laws LJ said:

> "I would hold that the court today has ample power to grant a remedy to a licensee which will protect but not exceed his legal rights granted by the licence. If, as here, that requires an order for possession, the spectre of history (which, in the true tradition of the common law, ought to be a friendly ghost) does not stand in the way….
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> In my judgment the true principle is that a licensee not in occupation may claim possession against a trespasser if that is a necessary remedy to vindicate and give effect to such rights of occupation as by contract with his licensor he enjoys. This is the same principle as allows a licensee who is in de facto possession to evict a trespasser. There is no respectable distinction, in law or logic, between the two situations. An estate owner may seek an order whether he is in possession or not. So, in my judgment, may a licensee, if other things are equal. In both cases, the plaintiff's remedy is strictly limited to what is required to make good his legal right. The principle applies although the licensee has no right to exclude the licensor himself. Elementarily he cannot exclude any occupier who, by contract or estate, has a claim to possession equal or superior to his own. Obviously, however, that will not avail a bare trespasser.
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> In this whole debate, as regards the law of remedies in the end I see no significance as a matter of principle in any distinction

> drawn between a plaintiff whose right to occupy the land in question arises from title and one whose right arises only from contract. In every case the question must be, what is the reach of the right, and whether it is shown that the defendant's acts violate its enjoyment. If they do, and (as here) an order for possession is the only practical remedy, the remedy should be granted. Otherwise the law is powerless to correct a proved or admitted wrongdoing; and that would be unjust and disreputable. The underlying principle is in the Latin maxim (for which I make no apology), "*ubi jus, ibi sit remedium.*"”

34. Although Kennedy LJ delivered a judgment of his own, he said that he agreed with the reasons given by Laws LJ. In my judgment the two principles that emerge from this case are:

    i) The court has power to grant a remedy to a licensee which will protect but not exceed his legal rights granted by the licence; and

    ii) In every case the question must be, what is the reach of the right, and whether it is shown that the defendant's acts violate its enjoyment.

35. The House of Lords dismissed a petition for leave to appeal. It is true that *Hill v Tupper* was not cited, but in *Mayor of London v Hall* [2010] EWCA Civ 817; [2011] 1 WLR 504 this court held that that omission did not impugn the validity of the decision. I do not consider that these two principles are limited to cases in which the licensee has a right to possession or occupation. In my judgment Laws LJ makes it clear that the extent of the remedy is commensurate with the right.

36. *Monsanto plc v Tilly* [2000] Env LR 313 was another protest case. The protests in that case were against the growing of genetically modified crops. Monsanto was licensed by the government to carry out trials of genetically modified crops at licensed sites. With one exception Monsanto did not own the sites. It began proceedings for an injunction to restrain trespass by the protesters. This was not, therefore, a case in which an order for possession was claimed. Stuart-Smith LJ said:

> “[22] Ordinarily growing crops do not become goods until they are severed from the land. Once they are so severed the owner of the crop can maintain an action for wrongful interference with the goods. The defendants' actions in uprooting the crop amounted to severance, and therefore an action for trespass to goods will lie. For practical purposes it makes little difference in this case whether the tort is trespass to land or goods, though in my opinion it should properly be regarded as trespass to land which affords Monsanto somewhat wider protection, for example in relation to a poisoning of the crop without uprooting.
>
> [23] The arrangements between the farmer and Monsanto are governed by a standard form of agreement. It is unnecessary to set it out at length. The seed is the property of Monsanto; the drilling, spraying and co-ordination of the trial is done by

> Monsanto's contractor. More importantly it is provided that "the crop resulting from the tests are all the property of Monsanto". This is clearly sufficient to enable Monsanto to maintain the action for trespass both on sites which they do not own as well as those they do."

37. Mummery LJ said:

> "The relevant causes of action relied on by Monsanto for summary judgment are trespass to land and to goods. The defendants deny that Monsanto was the owner of or was in possession of the relevant GM oilseed rape and other plants growing on licensed trial sites which do not belong to Monsanto. An action for trespass to land may, however, be brought by a person who is entitled under an agreement with the landowner to exclusive possession of the growing crops… Monsanto have that entitlement under their written agreements with the growers. This defence cannot succeed."

38. It is clear that Monsanto did not have possession of the land itself. Nor did it occupy the land in any real sense. Its ownership of the crop was sufficient to found the claim in trespass.

39. *Countryside Residential (North Thames) Ltd v T* (2001) 81 P & CR 2 was another case of a protest camp. Countryside were developers who had an option to acquire land for development. Clause 6 of the option entitled them to have access to the property to carry out surveys and technical investigations (including soil pollution and archaeological investigations) of the site. The question was whether Countryside could rely on that clause to support proceedings under RSC Order 113. The Court of Appeal held that the limited right given to Countryside was not sufficient to support the action. Waller LJ said:

> "It seems to me that there is a clear difference between a licence granted for the purpose of access, which does not provide effective control over the land, and a licence to occupy which does. In the instance case, if the developers had occupied the land prior to protest camps being set up, they might have been able to argue that as a fact they did occupy and have effective control so as to bring themselves within that concept as recognised by Laws LJ. However, it does not seem to me that it was in any way legitimate to imply terms into the licence or to construe the licence, clause 6, so as to provide for that degree of control by contract. In my view, the first appeal should be allowed. The developers did not have a contractual right to occupy or have possession with the effective control that is necessary if *Dutton* is to apply. They simply had a contractual right to access which is not sufficient for Ord 113 purposes."

40. However earlier in his judgment he said:

> "In my view it is important not to confuse contractual rights, in relation to which the developers may well have rights against any person who seeks to interfere therewith, with the right of possession, which is the foundation of an Ord 113 remedy."

41. What was in issue was simply the form of the action. *Countryside* does not in my judgment stand for the proposition that a licensee whose rights are interfered with is without a remedy against the person who interferes with them.

42. A similar point arose again in *Alamo Housing Co-operative v Meredith* [2003] EWCA Civ 495 [2003] HLR 62. Alamo was the tenant of residential property which it sub-let. Its lease was terminated by its own landlord. The lease provided that on termination Alamo's interest in the property would cease "except for the purpose of enabling eviction if required" by the landlord. Alamo served notice to quit on its sub-tenant and began proceedings for possession under CPR Part 55. It was argued that since Alamo no longer had any right to enter and occupied the land, it could not rely on CPR Part 55. That argument received short shrift in this court. Schiemann LJ, giving the judgment of the court, said:

> "[42] The situation must be judged as at the time when the Council's Notice to Quit had taken effect. At that time Alamo no longer had an estate in the land. However, since the Council had, as is conceded, required Alamo to take proceedings to evict the tenants so as to be able to hand over the properties with vacant possession, it seems to us that the effect of the Exception was to confer on Alamo a continuing right to possession for that purpose and therefore the situation is exactly as that described in para 39 above. That was the evident intention behind its inclusion in the Lease, against the background of the decisions in Dutton and Countryside. Had the Council intended to grant Alamo any lesser right it would have been ineffective for the very purpose which the Council wished Alamo to achieve.
>
> [43] The defendants do not claim any right themselves to occupy the premises and the Council, which is entitled to the premises, has asked Alamo to evict the defendants so as to be able, as near as may be, to fulfil its covenant to hand over the premises with vacant possession. Possession proceedings seem eminently suitable for achieving this aim."

43. Thus what the court did was to allow Alamo the remedy which was most appropriate in order to achieve the vindication of its right to secure eviction.

44. In the present case the contract between VCS and the landowner gives VCS the right to eject trespassers. That is plain from the fact that it is entitled to tow away vehicles that infringe the terms of parking. The contract between VCS and the motorist gives VCS the same right. Given that the motorist has accepted a permit on terms that if the conditions are broken his car is liable to be towed away, I do not consider that it would be open to a motorist to deny that VCS has the right to do that which the contract says it can. In order to vindicate those rights, it is necessary for VCS to have

the right to sue in trespass. If, instead of towing away a vehicle, VCS imposes a parking charge I see no impediment to regarding that as damages for trespass.

45. I would allow the appeal on this ground too.

Lord Justice Treacy:

46. I agree.

Lady Justice Hallett:

47. I also agree.