SHERIFF APPEAL COURT

[2018] SAC (CIV) 18
DUN-SA1009-15

OPINION OF THE COURT

delivered by APPEAL SHERIFF N A ROSS

in appeal in the cause

VEHICLE CONTROL SERVICES LIMITED

Pursuer and Respondent

against

CRAIG LAIRD

Defender and Appellant

Pursuer and Respondent: Cargill; Mellicks
Defender and Appellant: MacRae; Finlay MacRae Gilmartin Warden

12 July 2018

[1] Mr Laird parked his Transit van in a private car park on Brown Street, Dundee on 22 occasions between April 2013 and April 2014. In the car park signage was prominently displayed and informed that this was private property, that parking was reserved for the holders of valid parking permits, and that there was a parking charge of £100 a day for those without a permit. The respondent and pursuer ("VCSL") performed enforcement services there, and had installed the signage. Mr Laird did not hold a valid permit. Undeterred, he parked his van and did not pay the 22 resulting penalty charges issued to him. VCSL seek payment.

[2] Mr Laird's appeal does not insist on a number of his initial claims. In evidence he said he had been told he could use the car park, that he had not seen any signs, that he could not remember receiving any tickets, and (unheralded by his written defence) that the van was parked on 18 of the 22 occasions by a friend, Sergei, who failed to inform him of the parking tickets. The sheriff did not accept any of that evidence.

[3] Mr Laird appeals on two issues. The first relates to title to sue. The second relates to admissibility of evidence.

Title to sue

[4] The first submission was that, while there may have been a contract (or 22 contracts) between VCSL and Mr Laird, it had not been proved that VCSL had authority from the land owner to act as parking supervisor or to issue penalty notices.

[5] The productions included a contract of appointment, described as a licence to occupy, between Home Group Scotland ("HGS") and VCSL, dated 20 February 2013. The sheriff acceded to a submission that this document was inadmissible as it was neither certified nor spoken to by a party. He did, however, hear oral evidence from VCSL's only witness, a technical manager, that such a contract was in existence. VCSL's evidence included, in relation to the right and title of HGS to grant that licence, an undated letter submitted by "Scotland Home Group" stating:

> "I confirm that Home in Scotland Ltd own all the properties within 12 & 16 Brown Street, Dundee. Furthermore, we own a number of car parking spaces that are intended for the sole use of our tenants that reside within these…To ensure that these spaces are managed appropriately, we have appointed Vehicle Control Services to do this on our behalf."

[6] The evidence from the technical manager at proof in October 2016 was that this letter was received "in the previous year".

[7] This, the appellant argued, left a gap in the evidence. It was submitted that there was no direct evidence that HGS was the owner prior to October 2015. It followed, it was submitted, that there is no direct evidence that they had title to appoint VCSL in 2013, or in turn that VCSL are validly appointed and have a licence to operate the car park, issue tickets and charge penalties.

[8] The appellant's written argument states:

> "In the absence of a Title Sheet or an Office Copy thereof being produced the respondent failed to lead sufficient evidence to enable the sheriff to properly be satisfied as to who in fact owned the land in question at the relevant time…The respondent failed to lead sufficient evidence to allow the sheriff to properly be satisfied as to the terms of any contract between the respondent and the heritable proprietor…"

The grounds of appeal are directed against the respondent's failure, rather than any error of the sheriff.

[9] This appeal is limited to sufficiency of evidence. No argument is made that the sheriff otherwise erred, for example by acting irrationally, or on the basis of irrelevant evidence, or failing to take into account relevant evidence.

[10] The test for sufficiency of evidence by itself is low. The sheriff heard oral evidence from VCSL's technical director that (i) VCSL had a licence from HGS to administer the parking arrangements at the locus; (ii) that VCSL regarded HGS, rightly or wrongly, as the relevant landowner; (iii) that they had received a letter in the last year from HGS (or rather Home in Scotland Limited) confirming that VCSL were the appointed managers for parking purposes; and (iv) that the contract had been operated for many months by VCSL without difficulty. That evidence was not contradicted and was accepted as credible and reliable. The appellant led no evidence. There was no logical basis to infer that VCSL's licence, spoken to by their witness, was invalid, or did not exist, or was not sufficient for their purposes.

[11] There was accordingly sufficient evidence to conclude that VCSL had the authority to act. It was not primary evidence. It was secondary and hearsay evidence. It proved to be sufficient for the purpose. The sheriff was entitled to accept on the balance of probabilities that HGS, or Home in Scotland Limited, had appointed VCSL to administer the car park at the locus. That finding cannot be described as illogical. It cannot be described as unsupported by evidence. It appears, in fact, to be the only logical conclusion in the circumstances, on the balance of probabilities.

[12] Once this evidential burden was satisfied by VCSL, it was for the appellant to challenge VCSL's position, whether by leading evidence, or by submission in law, or by advancing competing inferences. The appellant did not make any successful challenge, either at proof, or on appeal. The evidence led, minimal though it was, remained undisturbed. There was a sufficiency of evidence. This appeal must be refused.

[13] Two incidental points arise. The first arises on the face of the documents. It was not founded on by the appellant. The licence of February 2013 bore the name Home Group Scotland, but was signed on behalf of Home Scotland. The undated subsequent letter was headed Scotland Home Group, but refers to Home in Scotland Limited. This is confusing but not fatal. Ultimately, it can be reconciled as a use of different trading names by a single company, and the undated letter confirms, whatever title was used in the licence, that it was Home in Scotland Limited which issued both licence and letter. I mention this only because it is what the documents show. It does not assist the appellant, because the facts can be reconciled. There is no basis to find that there was more than one granter, of more than one licence.

[14] The second point is that this appeal founds on an alleged failure to show that the 2013 contract was granted by the heritable proprietor. This is misconceived. The granter

need not be the heritable proprietor. The granter of the licence only requires to have a right to grant the licence. That right can be less than absolute ownership. For example, if the granter were a long-term tenant, it would be entitled (terms of the lease permitting) to sub-contract aspects of operation to third parties. Similarly, a sub-tenant, or assignee, may have title to grant a licence for such purposes. There may be other sources of title, such as liquidation or succession law. A licence is simply a specific contract for specific purposes. Such licences are commonplace, such as a licence to clean the windows.

[15] VCSL chose to lead what the sheriff described as "the minimum amount of evidence required" to show that they had title to issue and enforce the present penalty notices. In the event it was enough. For the reasons discussed above, the sheriff's findings cannot be faulted.

Admissibility of Evidence

[16] The second point is related to the first. It was submitted that, because none of the respondent's productions had been certified in terms of section 5 of the Civil Evidence (Scotland) Act 1988 as forming part of the records of a business, they needed to be spoken to by a witness. The relevant productions comprised photographs of the locus and the van, and also the 2013 contract. The only witness for the respondent had not been present when these productions were made. Similarly, none of the productions were certified as copies and were therefore inadmissible as evidence (section 6). The sheriff should not, it was submitted, have accepted the evidence of the technical director who was not present at the signing of the 2013 contract, or party to the taking of photographs and other evidence. The makers of the photographs and of the contract might have been cited, and in their absence the evidence should not be accepted (*TSB Scotland plc* v *James Mills (Montrose) Ltd* 1992 SLT 519). It was

submitted that the evidence was insufficient to allow the sheriff to draw inferences that the van was parked, that the contract existed and so on. It was submitted that section 6 meant that a photocopy, without authentication, is merely a blank piece of paper (*McIlveney* v *Donald* 1995 SCLR 802, Sheriff Smith). This was a defect which could not be remedied by treating a copy as a "statement" (*Japan Leasing (Europe) plc* v *Weir's Trustee (No 2)* 1998 SC 543). There were 22 separate contracts under which payment was sought.

[17] The respondent submitted that these terms of the 1988 Act were permissive only, and did not make the evidence inadmissible. In any event, reliance was placed on *Cumbernauld Housing Partnership Ltd* v *Davies* [2015] SC 532 to the effect that "parties are not entitled to lurk in ambush behind equivocal averments and less than frank denials" and "where, as here, the defender chooses to lead no evidence, only the most favourable inferences should be drawn from the pursuers' evidence."

[18] The appellant referred to the best evidence rule, but without discussing it in any detail. I will not discuss the rule further in the absence of submission, save to note (i) that it is unlikely to apply to documents which the requesting party already has (here, the 22 issued penalty notices), and (ii) in any event this action founds on an implied contract, not a written contract, which was complete when the van was parked and the signs either read or ignored.

[19] The appellant's submissions fall to be repelled. The effect of sections 5 and 6 of the 1988 Act are permissive. They allow short-cuts to be taken to minimise the need to lead evidence. These provisions might have proved useful in the present action. However failure to utilise these provisions does not render the evidence inadmissible.

[20] The sheriff did not require to rely on the 2013 contract. It was sufficient, as discussed above, that he accepted, as credible and reliable, oral evidence from an official of VCSL that

VCSL had been appointed, by some means, for the purpose of regulating parking at the locus.

[21] In relation to photographs and signage, the sheriff was entitled to rely on the same oral evidence. The signage and copies of the 22 tickets were lodged in evidence. Mr Laird has admitted he owned the van at the time. VCSL's technical director spoke to the photographs of Mr Laird's van, taken by a VCSL warden. He spoke to what they showed, namely the presence of the van at the locus, and the tickets which were issued. He spoke to the 22 tickets being issued. He did not personally issue the tickets or take the photographs, but he spoke on behalf of VCSL, the party responsible for taking the photographs and issuing the tickets. In circumstances where the sheriff was given no reason to doubt the origin or accuracy of that evidence, it was capable of amounting to sufficient evidence. The appellant did not lead any contrary evidence, but rested his defence on a somewhat inconsistent stance that he was entitled to park but nonetheless had not parked, and a rejected story that a friend parked the van. The sheriff had to decide what to make of the evidence, a logical exercise based on the evidence and reasonable inferences to be made. The sheriff explains his reasoning. He identified no reason, and was given none, to find that the VCSL witness's evidence was untrue or unreliable.

[22] In any event, VCSL was entitled to the benefit of the principle discussed in *Cumbernauld Housing Partnership* (above). The appellant led no evidence about title to sue. Where VCSL led uncontradicted evidence which did not support any contrary inferences, and where the appellant's evidence was found to be incredible and unreliable, VCSL were entitled that "only the most favourable inferences should be drawn from [their] evidence" (para [31]).

[23] VCSL's approach was not without risk. It led the minimum possible evidence. Had the appellant advanced any credible reason to doubt that evidence, or if such reason suggested itself as a matter of logic, or if contradictory evidence was available, then VCSL may have failed. In the event it did not, and this appeal will be refused. With more painstaking preparation (certification of documents, joint minutes, notices to admit, affidavit evidence and other mechanisms might have been considered) such risk might have been minimised or avoided. It would almost certainly have deterred the present appeal.