

BETWEEN

**AN
APPLICANT**

AND

**ZM Ltd
RESPONDENT**

Date of Order:

20 January 2012

Referee:

Referee Reuvecamp

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that that the respondent, ZM Ltd, pay the amount of \$250.00 to the applicant, AN, on or before 31 January 2012.

Facts

[1] The applicant states that on 15 November 2011 she parked her car in Z Town. She left the site for a small errand elsewhere before visiting the relevant shops on the property and found her car clamped on her return by the respondent. Her car was released after payment of a charge of \$250.00 under invoice [number] Site [number] for “off site parking”. The applicant says that she did not see any signs when entering the parking lot or while parking. Any signs, to the extent present, were not readable when entering the site because they were facing inwards or were obscured by large advertising boards or large vehicles, including a vehicle belonging to the respondent. She claims a refund of the amount charged, alleging that it was unlawfully charged.

Issue

[2] Whether the respondent was entitled to wheel clamp the applicant’s vehicle and charge \$250.00 for its release.

Law

[3] Law of Trespass and Remedy of Distress Damage Feasant.

[4] The respondent did not attend and did not present its case. No evidence was provided to the Tribunal that it had authority to wheel clamp the applicant’s vehicle.

[5] I accept that an owner or occupier of land has the right to protect its land against trespassers who park on its property without its permission or do not comply with any conditions applicable to the relevant use of his land.

[6] On the other hand a vehicle owner has a comparable right not to have its property, i.e. its car, interfered with without its permission. That also would constitute a trespass.

[7] The latter right is however subject to certain limitations. Such a limitation applies where the owner of the land has clearly signposted the conditions applicable to parking on its site, including for instance, the consequences that may follow if the conditions are not adhered to. In those circumstances an owner of a car who parks on that land and does not comply with those conditions may be deemed to have taken the risk of becoming subject to

those consequences. He or she cannot then complain about the interference by the wheel clamping owner or its agent with the car. Any consequences must however be as published and reasonable.

[8] I find in this case that I have not been provided with any evidence relating to the authority of the wheel clamping respondent to clamp the applicant's car. Even assuming that such authority existed, I have been provided with evidence that any signs containing conditions as referred to, to the extent present at the time of the applicant's visit to the premises were insufficient and obscured and were not sighted by the applicant. It may be that the respondent by parking its van in front of the major sign present has contributed to a considerable extent to this conclusion.

Decision

[9] I therefore accept the applicant's evidence that she did not see and could not reasonably have been expected to see the conditions, to the extent published, and therefore did not consent to them or was made aware of the risk that leaving the parking lot while leaving her car there, she ran the risk of it being clamped. I find that the application of the wheel clamp was not justified in the circumstances and order that the \$250.00 be refunded to the applicant.

[10] I note that even if it had been otherwise, any charge imposed for a release would need to be reasonable and relate to the loss suffered by the owner of the land in respect of its inability to use the relevant part of its land. I express some doubt whether a charge of \$250.00 where the relevant conditions refer to "up to \$250.00" is reasonable if the car owner's absence from the site is a short one, but do not have to decide that for the reason given in paragraph 6.

[11] In the absence of any submission on the application of the law of distress damage feasant which may in certain circumstances apply to the removal of unlawful property left on one's land and, possibly, may have some application in the case of wheel clamping, I see no need to address that aspect now no cost of removal of the car from the land appear to have been part of the charge imposed.

Referee: W Reuvecamp

Date: 20 January 2012