

IN THE MIDDLESBROUGH COUNTY COURT

No. A3QZ2126

Russell Street,

Middlesbrough.

24th October 2014

Before:-

DISTRICT JUDGE BAILEY

COMBINED PARKING SOLUTIONS

Claimant

v

O'DONNELL

Respondents

=====
JUDGMENT

(As approved)
=====

The parties appeared in person.

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DISTRICT JUDGE BAILEY:

1. I am dealing today with a claim brought by Combined Parking Solutions against Mr. Philip O'Donnell. Both parties appear in person and Mr. O'Donnell is supported today by his daughter.
2. At the outset I should say that this is a civil case and therefore the burden of proof is to be determined according to that, that is, on a balance of probabilities, is it more likely than not that something has happened? We are not dealing with a criminal case where the balance is beyond all reasonable doubt.
3. First of all it should be noted that Mr O'Donnell has failed to comply with paragraph six of the order of District Judge Reid of the 3rd June 2014 and has not filed any evidence in support of his case. Therefore, neither I, nor the claimant, knew what his case was until today. This was unhelpful as well as a breach of an order of the Court. Orders are made to be observed, not ignored. I do not accept that the wording of the order was not clear.
4. Having said that I have heard today from Mr. Perkins who is a director of the claimant company and from Mr O'Donnell. I found that both tried to be as helpful as possible in all of the circumstances, although, as I stated earlier, the defendant's attempted trial by ambush was somewhat unhelpful in my task today.
5. On the 9th September 2013 somebody driving the defendant's car parked on land owned by a client of the claimant, the Sun Centre. I have sight of a licence agreement between the claimant and the Sun Centre dated 22nd September 2012. It is a car park controlled by CCTV. Parking tickets are not issued. I have had sight of a parking notice and I have also had the opportunity of looking at CCTV footage, although it is fair to say that it is not the defendant's case that the car was not parked on the land, as I understand his case to be.
6. In terms of the parking notice the one that is in the bundle before me is pink and white in colour, although I understand that on site the signage is red and white. The wording is as follows:

“Warning. Contractual agreement. This private land is for the parking of motor vehicles when complying with the terms below customers of Sun Centre whilst using facilities. All vehicles must be parked in their allocated bay, if applicable, and not causing an obstruction. The landowner and its agents hereby permit all persons parking in accordance with the above permission to park on this land in accordance with the above terms and conditions. The landowner and its agents also offers all members of the public who are not parking in accordance with the above terms the right to park on this land at a cost of £100 per vehicle for a 24 hour period. This will be reduced to £60 if full payment is received by CPS within 14 days of issue. A parking charge notice will be issued with instructions on how

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to pay this amount. One charge per vehicle per 24 hour period can be issued. To cover additional administration costs this charge will increase by £50 per charge and Court collection costs if the charge remains unpaid and debt recovery or legal action has commenced to recover the unpaid charge. Charges are in operation 24 hours a day, seven days a week. Registered keeper details will be requested from the DVLA if the charge remains unpaid after 28 days. Do not park or leave your vehicle here unless you understand and agree to all of the above terms and conditions.”

7. Were the signs seen? I do not think that it was part of the defendant’s case that the signs were not seen by the driver. I think it is worth mentioning, for the avoidance of any doubt, I do not think anybody here today thinks that Mr. O’Donnell was the driver of the car on the day in question, but rather the claimant relies on the recently changed law following the abolition of parking charges. He refers me to Schedule 2 of the Protection of Freedoms Act 2012 which relates to the recovery of unpaid parking charges which in effect makes the registered keeper liable for charges in the event that they do not notify who was driving at the time in question.
8. In any event it seems clear to me that the signage would have been apparent to any reasonable driver and the test is whether someone should reasonably have seen them? In any event the CCTV footage shows that the defendant’s car is clearly parked directly in front of the sign. In my view the onus is on the person parking a vehicle to ensure and check that they can validly park in an area. I find as a fact, having seen the signage itself -- and whether there were six signs or ten it matters not -- that they were clear and visible.
9. The second matter that I have to determine is whether the defendant was bound by the terms and conditions of the signage? Was there a binding contract? The claimant says to me there was a clear offer of parking. This was accepted by the defendant, or the person driving his car, and so in consideration the defendant had to pay £100 or £60 if paid within 14 days for the privilege. It is a matter of contract law. The claimant says it was open to the defendant to refuse their offer and park somewhere else, but they chose to park.
10. The defendant says to me that his daughter was a customer of the Sun Centre and that the car park was a facility of the Sun Centre and even though she did not go in there that day, she was using the facilities. I am sorry to say that I reject that argument. There was no evidence at all adduced by the defendant to confirm that his daughter was a customer of the Sun Centre. He who asserts must prove.
11. I do not accept the defendant’s contention that that can be any reasonable interpretation of the signage. Mr. Perkins actually used the analogy of Tesco car parks being used by customers of Sainsbury’s. Just because someone shopped at Tesco previously does not mean that they are a customer on that day. It is what would a reasonable person think it meant? The defendant says to me that there were plenty of other free spaces. What is the harm? Firstly, I

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take the view that that is irrelevant because this is an issue about contract law with a binding contract. In any event, there is potentially harm in my view to the claimant. If someone perpetually parks in an area then the claimant runs the risk that somebody might make a claim of adverse possession and lose rights over their land.

12. I am satisfied that the charges are not unreasonable. It is for the parties to determine whether they accept the terms and conditions and it is not for the Court to interfere with that. The case law is clear. If the defendant wanted to park somewhere else he could have, but did not.
13. I have been referred to the British Parking Association's Code of Conduct which is a voluntary code. The defendant failed to adduce this at Court today, but I have had the opportunity of considering this over the luncheon adjournment. The relevant sections are section 19.6 and 19.7. Having read it -- and I am not going to read it out at this stage -- I take the view that the claimant has complied with this in any event.
14. I consider that the charges are a core term of the parking contract and fall outside of the Unfair Contract Terms Act. It is an enforceable contract and therefore I give Judgment to the claimant.

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