HARROGATE COUNTY COURT

No. 7QZ73627

2 Victoria Avenue,
Harrogate

16th November 2007

B e f o r e:-

DEPUTY DISTRICT JUDGE TEEMAN

COMBINED PARKING SOLUTIONS

Claimant

v

DE BRUNNER

Defendant

JUDGMENT
(As Approved by the Judge)

MR PERKINS appeared on behalf of the Claimant.

The Defendant appeared in Person.

Transcription by:
Audio and Verbatim Transcription Services
25 South Park Road, Wimbledon, London, SW19 8RR
Telephone: 020 8540 0766 : Facsimile: 020 8543 2227
and at
10 Herondale, Haslemere, Surrey, GU27 1RQ : Telephone: 01428 643408 : Facsimile: 01428 654059
Members of the Department of Constitutional Affairs Official Tape Transcription Panel
Members of the British Institute of Verbatim Reporters

Nº of words:	1696
Nº of folios:	24

Deputy District Judge Teeman:

1. This is a case brought by Combined Parking Solutions against Mr. Mark De Brunner. I am hearing it in the Small Claims Court in Harrogate.

2. This case has involved an inordinate number of hours, chiefly by the litigants themselves in dealing with what is essentially an extremely small matter, which is about the parking of a car. I have heard from the Defendant, and I am genuinely sorry, that this has caused him a considerable amount of anxiety.

3. He has said that, had he known that he was going to park somewhere which required him to be authorised, he would and could have obtained authorisation. I completely and wholeheartedly accept that I have in front of me a man who would not knowingly contravene any regulations.

4. That said, it is a fact that he did not have on that day appropriate authority to park in the area where he did. He has not adduced any evidence that he was authorised to park. He has not, on his own admissions, any permit to park.

5. The issues are threefold. The first is he says that he did not know that when he entered into the parking area (and I will call it a "parking area" because there is some dispute about what constitutes a car park) in which he intended to and did park his car, he did not see either the green sign, which I have now seen in a photograph which says: 'Grosvenor House – Overflow Car Park – Permit Holders Only'; nor did he see the red sign, which again I have seen a copy of, which says: 'Warning – Contractual Agreement – Authorised Persons/Permit Holders Only – Do Not Park Here Unless You Agree to the Contractual Charges'. Those charges are then set out in some detail.

6. He says, first, he did not see it and, secondly, he accepts that, had he seen the sign, he would have been bound by its conditions, subject to two caveats, which he then goes on to make.

7. The first issue for me is did he, or ought he to have seen the signs?

8. I have to decide this on an objective basis. Clearly I cannot possibly say what he did see, or what he did not see. I have to take an objective decision. Again, I have to decide this on the balance of probabilities.

9. I have had the great benefit of Mr. De Brunner explaining to me his views of the matter and how he regards the whole matter. He has dealt with it with the ultimate courtesy.

10. The signs that I have seen are clear. They are two-coloured. They are legible, I find, taking the view from the size that I can see and the size of the writing and the photographs.

11. The evidence from Mr. De Brunner is that he did not see them. They were not directly in front of him. They are not directly at the entrance. He said he did not see them. He knew that it was a car parking area, but he did not know to what the car park related to, what was this particular car and who did it belong

to. He did not see the signs. They were not in an area that he saw. They were not drawn to his attention.

12. I have looked at the matter. I have heard the parties. I have looked at the very useful photographs. I have had an explanation of the area. I want to say the following things.

13. First, on Mr. De Brunner's own careful evidence, he did not know precisely where he was going. Nor did he know precisely where, if anywhere, he could park. In my judgment, it is up to the person who is seeing to park in an area to make sure that he can validly park in that area. The onus is on the person parking. He should have been on notice as to where he was parking and whether or not he was expressly permitted so to park.

14. Secondly, I find on the facts that the signs were there to be seen. Having been at the level of observances such as I have said is necessary, namely that one is on enquiry as to where it is one is parking and what are the terms of the parking, he ought to have seen them. They were there to be seen. They were clear. The red sign is elsewhere in the car park. He may not have seen that. I accept that. But certainly the signs were there to be seen.

15. Having decided that, he is bound by the terms and conditions because, by parking there, that amounts to an acceptance of the terms and conditions.

16. That is not always enough in relation to an offer and acceptance. The terms have to be legal. They have to be clear and they must not contravene any penalties. They have to be fair and not contravene any exclusions. It is not enough to say that I have found that there is a valid agreement between the parties. I then have to go on to consider whether the terms are binding.

17. Mr. De Brunner has carefully drawn my attention to two aspects.

18. First, he says that the fact that you can pay the charges £85, reduced to £60, means that emotional harm £85 is a penalty, and there are special provisions in relation to penalty.

19. Secondly, whether or not the £50 administration fee has been sufficiently well-explained, particularly in terms of amounts. I have again had the benefit of reading all the statements that the parties have very helpfully sent to the court. Both parties have sent their statements in late. Neither of them have taken objection to the admission of those statements.

20. Mr. De Brunner, in his statement, refers to the fact that in the notice, which was left on his car, it said that he must make the payment of £85, which would be reduced to £60 for payment within fourteen days. It also said in that notice, which he received at the time, that the amount would increase to £135 (£50 plus £85) to "cover administration costs".

21. Whilst I agree that he was not signifying his acceptance to the £50 charge, he was aware, or ought to have been aware, that administration charges would flow. I do consider it noteworthy that those administration charges have not as

it were been plucked from anywhere, but they had been specified at the time the charge was made.

22. I reject the charge that the £50 is not due and payable. The £50 is the amount detailed in the initial contract and detailed at the time in which the matter was definitely drawn to his attention. In other words, he was aware, or he ought to have been aware, that not paying either the £60 or the £85 would lead to a further £50 administration fee. That was part of the escalating contract, as I find, which was the contract made between the parties. I am satisfied, first of all, that the £50 is due and payable and, secondly, that the £50 does not amount to a payment. It is part of the charges which have escalated in accordance with the warnings given on the ticket.

23. The next issue which falls to me to consider is the penalty charge, which is asserted by the Defendant, and the fact that really the charge is £60 and the £85 is by way of penalty. It is perhaps unfortunately phrased. Perhaps too big a discount is offered for early payment. I can, however, well see the force in a scenario such as this where administration costs in chasing the debts will be enormous in making a very real incentive to make payment early. I cannot really see how such a business – and it is a legitimate business, as Mr. De Brunner has been fair enough to accept, although not in his written evidence – it is a legitimate business and it is clearly necessary for them to provide a real incentive to make early payment. That is what I find it is. £60 is an incentive, rather than that the £85 is a penalty.

24. Having considered all those matter, to which Mr. De Brunner has made me aware and drawn my attention, and noting the distress that this matter has caused him, and noting that he has unfortunately found the procedure which we in these courts pride ourselves in making life easy for the litigant in person, on this occasion, in his view, we do not seem to have made it easy for him to proceed. He seems to have found it rather troublesome and tiresome, for which I am sorry. However, I do find that there was a valid contract between the parties. I do find the terms and conditions were incorporated into the contract. I do find that the terms and conditions were valid terms and condition. I find no reason to exclude them.

25. I will, therefore, grant the claim in full, which is £136.92, together with the court fee of £30. This claim is allowed in full together with costs. The moneys are due and payable within fourteen days.