

1 IN THE PORTSMOUTH COUNTY COURT

No.1QZ19191

2
3 Winston Churchill Avenue
4 Portsmouth P01 2EB

5
6 7th March 2012

7
8 Before:-

9
10 DEPUTY DISTRICT JUDGE HUMPHREYS

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13
14 COMBINED SOLUTIONS UK Ltd.
15 (Trading as Combined Parking Solutions)

16 Claimant

17 v.

18
19 DORRINGTON

20 Defendant

21
22
23
24
25 JUDGMENT
26 (As approved)
27

28
29
30 -----
31 Mr M PERKINS and Miss BURDEN appeared on behalf of the Claimant
32 THE DEFENDANT appeared In Person
33 -----

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N° of words: 2314
N° of folios: 33

1 DEPUTY DISTRICT JUDGE HUMPHREYS:

2 1 This is the case of Combined Parking Solutions v. Mr Dorrington. On 9th January
3 2011 Mr Dorrington, the defendant, parked his car on land that was owned by
4 clients of CPS. It was a Sunday; the business was closed. During the time that he
5 was away, CPS's representatives are alleged to have put a ticket on Mr
6 Dorrington's car; he tells me it was not there. CPS subsequently chased the matter
7 up by post and there followed a series of emails and letters between the parties that
8 I am not going to go into, and those culminated in today's hearing.
9

10 2 The initial charge has never been paid and the amount has now increased to £135
11 plus interest and costs. CPS say that they properly issued the ticket. They say that
12 warning signs are prominently displayed and Mr Dorrington will accept that. CPS
13 say that a ticket was properly issued and provided photos of the car parked near the
14 warning signs with what looks like a yellow sticker in the window. Mr Dorrington
15 showed me another yellow pass that he had which he said was on the dashboard
16 and what is seen in the photograph is a reflection of that.
17

18 3 CPS say that the ticket is not a penalty charge but a contract for parking and that
19 the defendant knew or ought to have known what he was agreeing to by parking
20 there, so he now cannot seek to change the terms. Mr Dorrington tells me that the
21 ticket was never issued in the first place. There is no proof that it ever has been
22 issued and he does not accept that the photograph of the car shows the ticket in the
23 window. He tells me that it is a commercial scam, it is not an attempt to manage
24 parking in any way and he refers me to words such as "bounty" and
25 "compensation" in the documentation that he supplied to me. He says that there
26 was a breach of the Data Protection Act in the way that the claimant recovered his
27 information from the DVLA database and he also tells me that the claimants have
28 not suffered any loss. He says he has visited the area on a number of occasions
29 over the weekend and there is never any business going on in the premises so they
30 have not suffered any loss at all by his parking there on that date.
31

32 4 Let me just tell you a little about the burden and standard of proof. The burden of
33 proof is a burden that lies on the person who brings the case. They have the
34 burden or the responsibility for proving the case, and the standard of proof is the
35 amount, if you like, by which they must prove their case. The standard of proof in
36 civil proceedings is on a balance of probabilities. You might have heard the phrase
37 "beyond reasonable doubt" in criminal proceedings, but in civil proceedings and
38 these proceedings specifically, CPS have to satisfy me that this case is as they say
39 and they have to do that on a balance of probabilities, and that means if I simply
40 cannot decide between you, I have to decide for the defendant because CPS have
41 not proved their case.
42

43 5 The law that this is alleged to come under, which obviously I need to consider but
44 this is alleged to be contractual law. For that, there needs to be an offer made by
45 one party, acceptance by the other party, consideration given by both parties and an
46 intention to create legal relations. There are a number of statutes, including, for
47 instance, the Unfair Contract Terms Act 1977 which requires any contractual
48 clauses to be reasonable.
49

1 6 The findings that I have made as a result of what I have heard, and I am very
2 grateful to both parties for the extent to which they have prepared their cases, and
3 these are the findings I have made. First of all, was the ticket actually issued in the
4 first place? The only evidence that there was, was the photograph that was
5 supplied by CPS and I have looked at that in great detail. It is a photograph that
6 has convinced me that the ticket was issued. It appears to me that a yellow ticket
7 has been stuck to the window of the car. I do not see it as a reflection of what is on
8 the dashboard because of the positioning, and clearly the sun is not at the front of
9 the car so it is unlikely that there would be a reflection in that direction. I also
10 considered why someone would take a photograph of the car without having put a
11 ticket there in the first place, and that did not make sense. It is obviously not a
12 CCTV photograph as it is too low down. So on the balance of probabilities, which
13 is what I have to make a decision, I accept the ticket was issued. I am not in any
14 way saying that the ticket was there when Mr Dorrington came back to the car
15 because he says it was not there and I do not dispute that, but I accept that the
16 ticket was issued and put on the car on the date in question.

17
18 7 Secondly, is it a commercial scam? We all know that parking matters can be
19 subject to abuse. We have seen all the headlines in the paper, and so forth. But the
20 point in this particular case is this. The signage was clear. We can see pictures of
21 the car parked near the signs and Mr Dorrington himself said that he saw the signs.
22 He had a choice whether to park there. He was not coerced into the contract at all.
23 He may have thought that because it was a weekend no one would bother, and
24 perhaps a lot of people would think exactly the same thing. But the point is that he
25 saw or should have seen the sign. He parked there anyway, and now he cannot say
26 that he does not accept the terms.

27
28 8 The relevant part in *Vine v. London Borough of Waltham Forest*:

29
30 “To show that the owner consented or willingly assumed the risk of his car
31 being clamped [as it was in that case], it has to be established that the car
32 owner was aware of the consequences of his parking his car so that it
33 trespassed on the land of another.”

34
35 I will come back to that in a little while, this issue of trespass.

36
37 “That will be done by establishing that the car owner saw and understood
38 the significance of a warning notice or notices that cars in that place
39 without permission were liable to be clamped. Normally the presence of
40 notices which are posted where they are bound to be seen, for example at
41 the entrance to a private car park, which are of a type which the car driver
42 would be bound to have read, will lead to a finding that the car driver had
43 knowledge of and appreciated the warning.”

44
45 9 We are not talking about trespass in this particular case but the point there is that if
46 the notices are prominent enough and big enough then the owner of the car is
47 deemed to have read and accepted the contents of that notice, whether or not he
48 actually did.

1 10 So I am satisfied that this is a contract freely entered into by the defendant. An
2 offer was made by the owners of the land that if someone wanted to park there they
3 could, subject to a charge. That offer was accepted by the defendant when he
4 parked there. There was consideration on both sides of parking by the defendant
5 and the sum of money that the claimant was entitled to expect and, because of the
6 way it was set up, because it was at arm's length, because there were formal legal
7 notices there, there was clearly an intention to create legal relations, and the law
8 will simply hold the defendant to that contract.
9

10 11 Is it reasonable? Lord Roskill in *Export Credits v. UOP* said:

11
12 "It is not and never has been for the court to relieve a party from the
13 consequences of what may be in the event proved to be erroneous or
14 possibly even a commercially imprudent bargain."
15

16 12 The point is this. Mr Dorrington read or should have read the sign. He knew what
17 was expected of him if he parked there and he still did it. He was not coerced into
18 it and he cannot turn round at a later date and say it was not something he wants to
19 be held to.
20

21 13 Thirdly, was there a breach of the Data Protection Act? I am not sure about this
22 one because the claimant says it was simply a typo on the application form to the
23 DVLA. I have not been given any confirmation at all whether the claimant was a
24 member of ATA at the time but if the Data Protection Act has been breached then
25 that does not affect this issue of the contract that is before the court today and the
26 defendant must take that up with DVLA. He may very well have a case under the
27 Data Protection Act with them but that does not affect the ticket that has been
28 issued and it does not invalidate the ticket.
29

30 14 Fourthly, the defendant said to me that there was no loss at all to the client in him
31 parking there. I do not agree with that because if people keep parking on land over
32 some period of time, the rights over that land can accrue and it is very important
33 for owners of land to make sure that those rights do not accrue, as they could lose
34 interest in their land. That alone is a good and valid enough reason to stop
35 someone from parking on that land because, quite simply, if he had parked there
36 loss could at some point have accrued to the owner.
37

38 15 Again, though, it comes back to the contract. The defendant entered into it freely
39 and he accepted that term. I find that the contract was offered, the defendant knew
40 of that and freely entered into it and the law will hold him to pay his side of the
41 bargain.

42 DEPUTY DISTRICT JUDGE HUMPHREYS: So now the terms. I am told the claim has
43 been issued in the sum of £142.29. There is an initial court fee of £25 on top of
44 that. This is a small claims matter. I am trying to find the claim form.
45

46 MR PERKINS: A fee of £25.
47

48 DEPUTY DISTRICT JUDGE HUMPHREYS: There is no allocation questionnaire.
49

50 MR PERKINS: No. We have a mileage breakdown, ma'am.

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2 DEPUTY DISTRICT JUDGE HUMPHREYS: Thank you.

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4 MR PERKINS: And the exact mileage breakdown is on the second sheet, ma'am.

5
6 DEPUTY DISTRICT JUDGE HUMPHREYS: The expenses are effectively loss of
7 earnings.

8
9 MR PERKINS: That's correct, ma'am, and the parking, etc., here today.

10 DEPUTY DISTRICT JUDGE HUMPHREYS: Interest is on what?

11
12 MR PERKINS: Interest is on the £135 a month after the parking charge was issued. It's
13 pleaded on the claim form from the 9th of the second, 11.

14
15 DEPUTY DISTRICT JUDGE HUMPHREYS: But you already have £142.29 that you are
16 claiming.

17
18 MR PERKINS: That's correct, and then from the 10th of the 10th 11 until today, ma'am,
19 that's the remainder.

20
21 DEPUTY DISTRICT JUDGE HUMPHREYS: That is purely on the original claim itself.

22
23 MR PERKINS: That's correct, on the 135. I think it works out at three pence per day as
24 claimed, as pleaded.

25
26 DEPUTY DISTRICT JUDGE HUMPHREYS: Mr Dorrington, what is being claimed is
27 under the small claims procedure there is very, very limited costs that can be
28 claimed. As I am sure you are aware, there are no legal fees but what is being
29 claimed is the original charge of £135 which is now £142.29, plus a further £4.47
30 interest from the date of the issue of the claim to today. Then there are two court
31 fees of £25, one paid initially when the claim was issued and £25 for today's
32 hearing. There is 340 miles' travel at 45p a mile, which – if you want to check
33 that, that is a MapQuest.

34
35 MR DORRINGTON: What is the mileage rate?

36
37 DEPUTY DISTRICT JUDGE HUMPHREYS: 45p a mile.

38
39 MR DORRINGTON: And that's set by?

40
41 DEPUTY DISTRICT JUDGE HUMPHREYS: That is set by the HMRC. That is a
42 standard 45p a mile.

43
44 MR DORRINGTON: I don't (inaudible)

45
46 DEPUTY DISTRICT JUDGE HUMPHREYS: And expenses of £50, which covers his
47 loss of earnings today, which is effectively less than he could have got really. The
48 total is £399.76. Can I just get you to sign that? The court will type that order up
49 and send it out to you but it might take 14 days or so. Thank you very much.

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