

IN THE STOKE-ON-TRENT COUNTY COURT

No. 1QT43440

Bethesda Street, Hanley
Stoke-on-Trent

18th July 2012

Before:-

DISTRICT JUDGE SCHROEDER

COMBINED PARKING SOLUTIONS LTD.

Claimant

v.

DANIEL STEELE

Defendant

=====
Transcript of Proceedings
=====

MR PERKINS appeared on behalf of the Claimant
THE DEFENDANT appeared In Person

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INDEX

Page

SUBMISSIONS by Mr PERKINS	3
SUBMISSIONS by Mr STEELE	6
SUBMISSIONS IN REPLY by Mr PERKINS	7



1 DISTRICT JUDGE SCHROEDER: This a small claim brought by Combined Parking
2 Solutions. Mr Perkins, you are here on behalf of that company. You have with you Miss
3 Burden, I see.

4
5 MR PERKINS: That is correct, sir, yes.

6
7 DISTRICT JUDGE SCHROEDER: For the Defendant we have Mr Steele himself.

8
9 MR STEELE: That's right.

10
11 DISTRICT JUDGE SCHROEDER: I do not think that the facts of the case are actually in
12 issue between the parties. There does not seem to be any issue that Mr Steele parked
13 inadvisedly on the premises of Well Being & Health and thereby incurred a ticket. The
14 question seems to be, as I read the documentation that has been put before the court, what
15 the legal effect of his doing that was - in other words, can he be fixed with these parking
16 charges or not, as the case may be? Do you both agree that?

17
18 MR PERKINS: Yes, Sir.

19
20 DISTRICT JUDGE SCHROEDER: So, the issue is, effectively, I suppose, putting it in
21 very simple terms, can the parking charges be legally justified?

22
23 MR PERKINS: Yes, Sir.

24
25 DISTRICT JUDGE SCHROEDER: As it is Combined Parking Solutions' case they will
26 go first through Mr Perkins. Mr Perkins will give me his arguments. It is not really a
27 case for cross-examination because it is not that sort of case. We are not dealing with
28 factual issues between the parties. So, I will simply ask Mr Perkins to give me his
29 summation of the case from Combined Parking Solutions' perspective. I will then ask you,
30 Mr Steele, to do the same. I will then go through my decision and make any award that I
31 consider appropriate.

32
33 MR STEELE: Okay.

34
35 DISTRICT JUDGE SCHROEDER: Mr Perkins, please?

36
37 MR PERKINS: Sir, thank you. In essence the parking charge was issued -- This is
38 definitely not a case of tort. The Defendant was at no time a trespasser. Also, this is not a
39 case for a breach of a contract. The Defendant has not breached any contract. He did
40 exactly what was stated on the sign. He parked. He did not have a valid permit and did
41 not inquire about a valid permit. A parking charge was clearly issued as per the displayed
42 notice, which in this case was also pointed out by the shopkeeper. It was not a case of
43 there was a sign hidden fifty yards behind a wheelie bin. The Defendant was clearly
44 advised that parking was restricted at this location and in the Defendant's own witness
45 statement, Sir, he actually acknowledges that at the time of parking he knew that ----

46
47 DISTRICT JUDGE SCHROEDER: Yes.

48

1 MR PERKINS: Yes, Sir. As the facts are not in dispute, Sir, I will go straight to our legal
2 basis for the charges. The first one of major significance is the case of *Vine v. London*
3 *Borough of Waltham Forest*, highlighted at p.5 of the company's witness statement, Sir.
4 In this case it was adjudged by Lord Justices Roch, Waller & May that contractual
5 acceptance is actually deemed on an objective rather than a subjective matter. Within that
6 judgment, Sir, it was stated,

7
8 "-- the question whether a person voluntarily assumes a risk or consents to trespass
9 to his or her property is to be judge objectively and not subjectively. Once it is
10 established that sufficient and adequate warning notices were in place, a car driver
11 cannot be heard to say that he or she did not see the notice. Were that to be the law,
12 it would be too easy for car drivers who trespass with their cars to evade the only
13 method land owners have of stopping the unauthorised parking of cars in parking
14 spaces or parking areas on their property".

15
16 On p.6 of that same judgment, Sir, Lord Justice Roch stated, though in this case it was a
17 clamping issue though,

18
19 "To show that the car owner consented or willingly assumed the risk of his car
20 being clamped, it has to be established that the car owner was aware of the
21 consequences of his parking his car so that it trespassed on the land of another.
22 That will be done by establishing that the car owner saw and understood the
23 significance of a warning notice or notices that cars in that place without
24 permission were liable to be clamped. Normally the presence of notices which are
25 posted where they are bound to be seen, for example at the entrance to a private car
26 park, which are of a type which the car driver would be bound to have read, will
27 lead to a finding that the car driver had knowledge of and appreciated the warning.
28 In this case the Recorder might have reached such a conclusion about the
29 appellant's state of knowledge, but he did not do so".

30
31 DISTRICT JUDGE SCHROEDER: I am familiar with the authorities on clamping cases.

32
33 MR PERKINS: Sorry, Sir.

34
35 DISTRICT JUDGE SCHROEDER: You can take it as read.

36
37 MR PERKINS: Okay, Sir.

38
39 DISTRICT JUDGE SCHROEDER: I am well aware about the authorities on notices as
40 well.

41
42 MR PERKINS: Okay, Sir. The next one is listed on p.6 of our witness statement - *Credit*
43 *Exports Guarantee v. Universal Oil Products*. The Defendant in his statement, in essence,
44 is saying that the charge is exaggerated, etc. During that case Lord Roskill stated that,

45
46 "It is not and has never been for the courts to relieve a party from the consequences
47 of what may in the event prove to be an onerous or possibly even a commercially
48 imprudent bargain."
49

1 This is, in essence, what the Defendant is saying - that he does not feel that the charges are
2 justified. It has never been for a company to justify its charges, Sir. For example, one
3 could board a 'plane to New York and sit in Economy Class for £300. One could also sit
4 in First Class and pay £6,000. Now, it could be argued that the twenty-times increase in
5 fare is certainly not justified. However, one could not see British Airways in this position
6 because a person is saying they did not think they got value for money.

7
8 MR STEELE: Sir, may I comment at this stage?

9
10 DISTRICT JUDGE SCHROEDER: No. You will get your chance to have your say in
11 due course, Mr Steele.

12
13 MR PERKINS: The signage, Sir, is clearly visible. Even on the basis that the
14 conversation didn't occur between the shop owner and Mr Steele - if you just work on the
15 objective basis - if you look at the photographs which were taken at the material time, Sir
16 (Section 1 of our bundle) -- From the direction that Mr Steele's vehicle would have pulled
17 in, the sign would have been directly in front of him. It clearly states, "Warning" and
18 clearly displayed "Valid CPS permits only". The offer to make a contract, Sir, is clearly
19 there. "You are contractually agreeing to pay a parking charge of £85 payable within
20 twenty-eights from the issue of the notice, reduced to £60 if paid within fourteen days". It
21 states that one charge can be issued ----

22
23 DISTRICT JUDGE SCHROEDER: Where is that?

24
25 MR PERKINS: It is just on the second page, Section 1, Sir.

26
27 DISTRICT JUDGE SCHROEDER: Sorry. You have gone past the photographs. But, I
28 am fine with that.

29
30 MR PERKINS: It clearly states that one charge can be issued per twenty-four hours.
31 Working on the basis of Shoe Lane parking - that contract term cannot be added later - it
32 does clearly state what the charge will be should it remain unpaid, Sir, rather than just
33 saying "Additional charges". It is clearly a core contractual term that if it remains unpaid
34 and is referred to court what the additional charges will be.

35
36 The Defendant was given every opportunity to remove his vehicle before the charge was
37 issued. That is a fact that I don't think is in dispute, Sir. He was spoken to by the shop
38 owner and took the opinion -- he made the informed decision that he would park there
39 regardless. The parking charge was duly applied.

40
41 Sir, if I can draw your attention to Section 3 of our bundle? That was an e-mail sent on the
42 day from Mr Steele to the health centre, again stating that he was in a rush to post the
43 items and he will never park there again. Then, some two days after, when it was clear
44 that his appeal was going to be rejected as on no valid grounds, i.e. the ticket was issued
45 correctly, Mr Steele somewhat changed his tone with a rather threatening e-mail that he
46 will be contacting Sentinel and Watchdog.

47
48 The Defendant was subsequently contacted with a formal letter before action. That is
49 highlighted in Section 5, Sir, together with the certificate of postage.

1 Combined Parking is regulated by -- "regulation" is probably a bit strong - by the British
2 Parking Association, whose guidelines are under Section 6 of our bundle, Sir. It is fair to
3 say that this is not a regulatory authority as yet. However, their Code of Conduct, by
4 which we abide, is stated there. On p.7 of our bundle is the actual reverse of the ticket
5 which contains all the appeals, etc.

6
7 Sir, you are right in what you say. I mean, it is, in essence, quite a simple case. The
8 Defendant parked his vehicle. It is our contention that even if the Court believes that Mr
9 Steele did not see the sign, this is something that has to be judged objectively. The
10 photographic evidence shows that he would have passed the sign. It is not in dispute that
11 he was spoken to by the owner of the shop. It is not in dispute that he had every
12 opportunity to move his vehicle. He refused to. As a result, the parking charge was
13 issued. The Defendant has made various references to cases which are neither binding,
14 nor persuasive on the Court, Sir, of some other parking company. In our witness
15 statement we've said that the judges in those instances were correct. Those tickets were
16 issued as a forbidden action, rather than an acceptance.

17
18 Within Section 9 of our bundle, Sir, we have enclosed a formal counsel opinion and that is
19 the basis that we work under, Sir. I think it's also noteworthy that the issue of trespass,
20 tort, damages has never actually been mentioned by the Defendant until he's posted on a
21 well-known internet site, Sir, who advises people never to pay these charges; ignore them;
22 take everybody to Court, etc. In all of the correspondence to ourselves, this trespass
23 theory is not there. So, this is not a claim for damages for his breach of the contract. The
24 Defendant hasn't breached the contract, Sir. The terms were clearly on display on the
25 basis of Shoe Lane parking. He accepted them when he parked by his actions. Now the
26 Defendant just seems to be bringing up various unfair consumer terms. That's not what
27 that legislation was ever designed for, Sir.

28
29 Really, as far as referring you to more legal argument, there is really no more substance
30 from that, Sir.

31
32 DISTRICT JUDGE SCHROEDER: No. I agree. I am grateful, Mr Perkins.

33
34 MR PERKINS: Thank you, Sir. Mr Steele?

35
36 MR STEELE: First of all, regarding *Vine v. Waltham Forest* -- This issue was to do with
37 clamping and therefore is totally irrelevant to this case. Basically I'm in dispute, Sir, of
38 the witness statements by Lyn Hargreaves. Sir, basically, she's advised that
39 (indistinguishable) was there for a duration of ten minutes. This is absolutely not the case.
40 I posted one letter. This took approximately three minutes and an absolute maximum of
41 five minutes. There was absolutely no mention of tickets being put on my car. If a ticket
42 was mentioned there would absolutely be no problem at all me getting in my car and
43 parking around the corner, for example, or somewhere else, or further up.

44
45 So, regarding the red sign - this was on the passenger side as I was driving in, on an angle,
46 off a busy main road. This sign was not seen. When I got out the car I was just about to
47 go into the post office -- This is when Lyn Hargreaves came out of the Well Being health
48 centre and she advised me I couldn't park there basically. She advised that this is for
49 customers, which I advised that I'd just be a couple of minutes: "I'm just going to post a
50 letter". I then entered the post office to post the letter. Lyn never pointed to the sign.

1 So, again, I've never actually seen this red sign. The only signs that I did see were the
2 white ones and they were the only noticeable ones which were below the window. Again,
3 that was near the post office where I was stood at the time.

4
5 So, I disagree that was a contract -- I disagree that the contract was ever entered into and I
6 would like Mr Perkins to advise on what losses they have incurred from the trespass and to
7 justify the losses. So, again, I think basically the charges are unfair. I was just a few
8 minutes to post a letter. I don't believe a contract was entered into and this is why I
9 dispute the charges.

10
11 DISTRICT JUDGE SCHROEDER: Thank you both. I propose now to go on to the
12 judgment unless either of you want to add anything?

13
14 MR PERKINS: If I can just respond to a point that the Defendant made, Sir? The
15 Defendant mentioned that there was no losses. As I've stated, it's not for us to actually
16 demonstrate any loss, Sir. Again, I'll use the analogy of the British Airways ----

17
18 DISTRICT JUDGE SCHROEDER: Yes. I see your point.

19
20 MR PERKINS: -- and also the fact that the *Credit Exports Guarantee v. Universal Oil*
21 *Products* judgment states that it's not for us to prove a loss. As I say, the Defendant hasn't
22 breached the contract. He wasn't given a ticket for not doing something. The charge was
23 a core term of the contract, Sir, to which he could've removed his vehicle if he didn't want
24 to be bound by it, Sir. That would be my only submission Sir. Thank you.

25
26 DISTRICT JUDGE SCHROEDER: Thank you.

27
28 (Judgment given)

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Signed: _____ (Christine Kriehn)

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