

Appendix B

Judgment in Excel Parking Services v Cutts (2011) – page 1

<u>IN THE STOCKPORT COUNTY COURT</u>	<u>Claim No. 1SE02795</u>
	The Courthouse Edward Street Stockport
	Thursday, 15 th September 2011
Before:	
DEPUTY DISTRICT JUDGE LATEEF	
Between:	
<u>EXCEL PARKING SERVICES LIMITED</u>	Claimant
-v-	
<u>MR. MARTIN ROBINSON CUTTS</u>	Defendant

Counsel for the Claimant:	MR. MIRZA
The Defendant Appears in Person	

JUDGMENT APPROVED BY THE COURT	
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APPROVED JUDGMENT	
A	1. THE DEPUTY DISTRICT JUDGE: This is an application by the claimant for the sum of £106.46, described in the claim form as unpaid parking charges. Proceedings were issued on 28 th February 2011. Mr Cutts filed a defence. The proceedings were allocated to the small claims track with the usual directions leading to today's hearing.
B	2. For the purposes of today, I have considered the bundle filed by the claimant, which includes the defendant's witness statement and documents. I have heard submissions from Mr Merizar for the claimant; I have heard evidence from Mr McKinnes(?) for the claimant, and I have heard evidence and submissions from the defendant, Mr Cutts, who represents himself.
C	3. At the outset, I made it clear that the burden was on the claimant to satisfy me on a balance of probability that it had brought to the defendant's notice its terms and conditions of business, thereby entitling it to the sum of money claimed.
D	4. By way of background, the claimant describes itself in the particulars of claim as engaged in providing and managing private parking facilities. Those services are provided at a number of sites, including the Peel Centre, Great Portwood Street, Stockport. It is claimed that on 29 th March 2010, the defendant entered the site in his motor vehicle, registration number M-K-0-5-O-M-X, but that he did not display when he left his vehicle a valid pay and display ticket.
E	5. At paragraph 12 of the particulars of claim, it is alleged that the defendant physically entering and leaving his vehicle represents a full and tacit acceptance of the claimant's terms and conditions of usage of the facility. Further, at paragraph 13, it states that the defendant's failure to purchase a valid pay and display ticket, therefore failed to comply with the terms and conditions of parking at this facility.
F	6. The claimant offers its services as set out on the display board to the entrance to the car park. For the defendant to accept the terms and conditions in respect of those services, it is, in my view, not enough for him to merely physically enter the site. Instead, the defendant has to be able to see the offer so that he can choose whether or not to accept it, and thereby enter in to a contractual relationship. I reject the claimant's submission, therefore, that by simply entering the site, the defendant has impliedly entered in to a contract.
G	7. The issue for me, as identified by Deputy District Judge Dight(?) at Coventry County Court, is whether the claimant has made reasonable efforts to bring the signs to the attention of the drivers entering the car park.
H	8. If I look at the signs, they tell me very little. It is by no means clear, whether from the coloured photographs of the signs, nor, indeed, from the inspection of the signs that took place by me, that this is a pay and display car park. It follows, therefore, that the claimant has not taken reasonable steps to bring to the attention of drivers that it is a pay and display car park that they are entering.
	9. The notice contains a lot of information, which can easily distract drivers from the key information. The key information is that it is a pay and display car park. Surely, it is that information that needs to be conveyed to the drivers, and not the consequences of failing to comply. The notices that I have seen have reference to failure to comply in an
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A	area of lettering that is about four times larger than the lettering that confirms that it is a pay and display car park. To my mind, that suggests that perhaps the claimant's real interest lies in a failure to comply, than actually seeking to bring to a driver's attention the fact that they are about to enter a pay and display car park.
B	10. For those reasons, I am not satisfied that the claimant has done all that it could reasonably do to bring its terms and conditions to the attention of Mr Cutts, and I dismiss the claim.
C	<i>(End of judgment)</i>
D	<i>(Application to appeal by the claimant follows)</i>
E	
F	
G	
H	
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