

B2/2014/4255

Neutral Citation Number: [2015] EWCA Civ 1453
IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM WOLVERHAMPTON COBMINED COURT CENTRE
(HIS HONOUR JUDGE WORSTER)

Royal Courts of Justice
Strand
London, WC2

Thursday, 3rd December 2015

B E F O R E:

LORD JUSTICE RICHARDS

COMBINED PARKING SOLUTIONS LTD

Claimant/Applicant

-v-

AJH FILMS LTD

Defendant/Respondent

(Digital Audio Transcript of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

The Applicant did not attend and was not represented

J U D G M E N T

1. LORD JUSTICE RICHARDS: This is a renewed application for permission to bring a second appeal.
2. The underlying proceedings involve a claim by Combined Parking Solutions (CPS) to recover a parking charge of £100, in respect of the parking of a vehicle on land which was subject to a parking regime operated by CPS. The vehicle in question was hired to the defendant, AJH Films Ltd, but the driver at the time when it was parked on the relevant land has not been identified. CPS brought a claim in contract against the defendant. A District Judge held that the driver (whoever it was) had the authority of the defendant to drive the vehicle and to enter into the contract with CPS to park and to pay the parking charge on its behalf.
3. In the concluding paragraph of her judgment the District Judge referred mistakenly to "apparent" authority but on appeal it was held by a Circuit Judge, His Honour Judge Worster, that the District Judge was talking in the earlier paragraphs of her judgment about actual authority and had been satisfied that whoever was driving had actual authority from the defendant. The Circuit Judge said that this was an inference open to the District Judge on the evidence she had heard at trial, essentially for the reasons she gave, and that on the balance of probabilities she must be right. He therefore dismissed the appeal.
4. The application to this court seeks to challenge the Circuit Judge's decision. The application is made in writing by a director of the defendant, Mr Holder, who appeared before the judge below. The applicant has been given notice of the hearing, as appears from the court file, but there has been no appearance today by Mr Holder, who might have been expected to appear as the defendant's director before this court as he did below, or by anyone else on the defendant's behalf. There has been no communication

with the court to explain the failure to appear. The case was listed for hearing at not before 2.30 today. It is now about 3.20 and in the circumstances it seems to me that I can properly proceed to deal with this application and that it is open to me to dismiss it on the simple ground that nobody has attended to pursue it. However, I think it right in addition to make clear that I would dismiss it in any event on the ground that it lacks substantive merit.

5. From the written material it is evident that the submission on behalf of the defendant is that it was an error of law to find that any person driving a vehicle has actual authority to bind a company to a contract, that is to say (since one must focus on the circumstances of the particular case) that it was an error of law to find the driver of the vehicle in this case had the authority of the defendant company to enter into a contract with CPS to park and to pay the parking charge.
6. That is an argument that failed before the judge below. It did not impress Patten LJ when he refused permission to appeal to this court on the papers. Patten LJ's reasons were (1) that it is clear from the District Judge's findings of fact that if the use of the vehicle was authorised the driver must have had implied if not actual authority to incur the parking charges, so that the appeal had no real prospect of success and (2) in any event, the second appeal criteria are not satisfied, that is to say the proposed appeal, which would undoubtedly be a second appeal, would not raise some important point of principle or practice and there is no other compelling reason why an appeal should be heard.
7. Having considered all of the material before me, I agree entirely with Patten LJ and with the reasons he gave. This case involves a decision on the particular facts. In my view, for the reasons given by the Circuit Judge, the decision was open to the District Judge. But in any event I do not accept that the matter raised can properly be regarded as one of

public importance. The case is plainly not one that meets the criteria for a second appeal.

8. Accordingly, both by reason of non-attendance and because the application lacks substantive merit, the application is refused.