

IN THE COUNTY COURT AT MANCHESTER

Claim No. C0DP9C4E/M17X062

Manchester County Court and
Family Court Hearing Centre
1 Bridge Street West
Manchester
M60 9DJ

Thursday, 8th June 2017

Before:

HIS HONOUR JUDGE SMITH

Between:

MR ANTHONY SMITH

Appellant

-v-

EXCEL PARKING SERVICES LIMITED

Respondent

Lay Representative for the Appellant:

MR CLAYTON

Counsel for the Respondent:

MISS A

JUDGMENT

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JUDGMENT

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HIS HONOUR JUDGE SMITH:

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1. I am dealing with two conjoined appeals by Anthony Smith against a decision of Deputy District Judge Cowell sitting in the Stockport County Court on 13th March 2017 in favour of Excel Parking Services Limited.
2. The claims are both claims which are very familiar to these courts in that they arise from the parking of a vehicle on private premises in what is ostensibly a public car park but in circumstances which, because of the existence of clear signage, give rise to a contract between the person who is driving the vehicle and parking it and the company which is entitled to charge for the parking. There seems to be no serious dispute in this case that all of the necessary elements of a contract were met on the dates in question, namely 2nd and 8th May 2015, but for the identity of person who was actually driving the vehicle.
3. Deputy District Judge Cowell in a very brief judgment which I have read, stated that both parties relied on a decision of the Court of Appeal, *Combined Parking Solutions Limited v AJH Films Limited* [2015] EWCA Civ 1453, and she found that there was nothing to significantly distinguish the facts in that case from this case.
4. I drew to the attention of the parties at the outset of this hearing the Practice Direction on the citation of authorities, going back to 200, which specifically states that a decision on an application for permission to appeal must not be cited unless it established a new principle or extended the present law. That was not the case in relation to the case of *Combined Parking Solutions v AJH Films*. It established no new principle. It was clearly and on its face decided on the specific facts of that case which involved the defendant being a company rather than an individual and it also was a very short judgment of a single Lord Justice. Therefore it is not a judgment which should have been cited to the deputy district judge and insofar as she appears solely to have based her judgment on that, it seems to me that she did fall into error.
5. Rather surprisingly, after having given her judgment, the deputy district judge was told for the very first time by the parties that there had been a judgment precisely one week earlier in the same court between the same parties by Deputy District Judge Hunter arising from another parking occasion on the same property on 7th May 2015, I think. The date does not really matter. That was a much more extensive judgment and again relied heavily on *Combined Parking Solutions Limited v AJH Films Limited*, and the Deputy District Judge Hunter reached the contrary conclusion to that of Deputy District Judge Cowell. She was therefore faced with a position where there were inconsistent judgments on exactly the same facts between exactly the same parties and it was for that reason that she gave permission to appeal. She was also critical of the parties, and I adopt that criticism, that neither of them had drawn this to her attention before the hearing commenced. Although both parties are at fault in that respect the greater share of the responsibility must fall on the legally represented party, Excel Parking Services Limited, who would have been more aware of the need to draw that to her attention.
6. The matter, as I say, comes before me today and, having raised the issue of the improper citation of *Combined Parking Solutions Limited*, counsel for Excel agreed with me that the appropriate approach was based on the law of agency in general terms even without

A reference to that specific case. In that respect I drew her attention to paragraph 8-068 of Bowstead on Agency which states:

“An undisclosed principal may sue or be sued on a contract made on his behalf or in respect of money paid or received on his behalf by his agent acting within the scope of his actual authority. Where a contract is involved the agent on entering into it must have intended act on the principal’s behalf.”

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7. In response she submitted, and I accept, that in addition to actual authority I can consider implied authority, namely, authority to do anything reasonably incidental to the use of the vehicle. I accept that this may be a situation for implied authority or actual authority.

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8. The position of Mr Smith is not challenged in that he says that although he is the registered keeper of the vehicle he had actually bought it for the use of his granddaughter, she had used it at all material times and she had used it on the occasions in question. He denies that there was ever any intention for her to enter into this contract on his behalf.

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9. In response Excel contend that there is in the facts of this case a unique relationship between Mr Smith and his granddaughter such that it was her intention to enter into the contract on his behalf and not her own, namely, he had chosen to retain the ownership of the vehicle and he had permitted her to drive it and he therefore would have retained specific legal responsibility in situations, for example, where she had been caught speeding or involved in an accident as registered keeper he would have been contacted in the first instance if she had not provided details on the scene.

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10. In my judgment, as suggested by Mr Clayton, who I have allowed to act as lay representative of Mr Smith, those are not particularly good analogies because there are specific legal obligations on a keeper of a vehicle in those circumstances and they are not governed by the general law of agency.

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11. There is, of course, a specific regime within the Protection of Freedoms Act 2012, schedule 4, to allow a parking company in precisely these circumstances to take proceedings against a registered keeper of a vehicle in circumstances where the identity of the driver is not known. Excel did not choose to take such proceedings and instead rely today on the general law of agency.

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12. I did express in the course of submissions some concern as to Mr Smith’s reason for simply not telling Excel in response to the notices served on him that it had been his granddaughter who was driving the vehicle and his son-in-law, Mr Clayton, in his submissions and also in the way in which the defence is drafted makes it clear that, if I can put it in colloquial terms, Mr Smith does not have a lot of time for Excel seeking parking charges in these circumstances. The fact is that they are legally entitled to do so, but his conduct does not derogate from the general law of agency.

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13. In my judgment the claimant in the action, Excel Parking Services Limited, who bear the burden of proof, have not satisfied me on the balance of probabilities either, firstly, that the contract was made on behalf of Mr Smith, secondly, that it was in the scope of his granddaughter’s actual or implied authority to do so, or thirdly, that she intended to act on his behalf. It seems to me that quite the contrary is the case, that somebody

A parking a car in a car park would expect themselves to be liable for any parking charges. For example, if the person parked the car and went to the machine to pay, the normal assumption would be that they would be paying with their own money and would not be looking for reimbursement from the keeper of the vehicle. That would be a parking contract. I can see no reason why a different analysis should apply if somebody does not pay at all or pays but overstates the period for which they are paying.

B 14. In all those circumstances it seems to me that Excel have failed to make out their claim. That, on the face of it, does put a company like Excel in a difficult position because they have to work on an assumption that the registered keeper was the driver unless the registered keeper tells them to the contrary and that enables a registered keeper to prevent the company from taking proceedings against the correct defendant, namely the driver. It may well be that that is precisely why schedule 4 of the Protection of Freedoms Act was enacted to enable companies in those circumstances to have a real remedy. Whether or not that is the case, and I do not know, this judgment does not leave companies like Excel without a remedy, for that reason. Accordingly the appeal is allowed.

C THE JUDGE: Yes, is there anything further that arises?

D MISS A: No, thank you, your honour.

THE JUDGE: No, thank you. Therefore the appeal is allowed and the order, or orders because I assume she made separate orders in both cases, are set aside and the claims are dismissed.

E MR CLAYTON: All right. Can Mr Smith get his costs by any chance?

THE JUDGE: What costs?

F MR CLAYTON: Because obviously I quite agree with what you say, it should have never been... got here in the first place. With regard to three separate cases that could all have been heard at once it was put to the court that they could be heard all at the same time. I think they have been disproportionate in putting three cases, you know... they put three cases obviously for the same thing as three separate cases so obviously we are here now because one judge has said one thing, one judge has said another thing, and there has been a conflict, an abuse of the court's process.

G THE JUDGE: I am sorry, you have not answered my question, what costs.

MR CLAYTON: Yes. So obviously he has had to draft... we have had to draft all this, pay fees for the court, a transcript, *[inaudible]* transcript, parking, you know, these things cost him money. He did not have to be here.

H THE JUDGE: Usually a successful appellant can recover any court fees and disbursements. The small claims costs regime will apply to his actual legal costs or costs of his own time, but is there any reason why Excel should not pay the disbursements?

MISS A: There are no details of any costs paid. We are not aware of what those costs may be.

A THE JUDGE: Do you have details?

MR CLAYTON: The transcripts cost Mr Smith £80. I know that the costs are limited in the way, you know, obviously... There was time obviously preparing paperwork, obviously you can see the trial bundle here. Stationery fees. You know, the nominal...

B THE JUDGE: Was there any appeal fee paid to the court?

MR CLAYTON: Not at this moment in time, no.

THE JUDGE: Because there is usually a fee. Is he fees exempt then?

C MR CLAYTON: I think so, yes. *[Inaudible]* fees exempt. So I think he is... so we did not hear from the court regarding the fees. We just ticked the box to say about the fees. So I do not know if they are going to come back and say we want our fees. I do not know. I do not know how that works.

THE JUDGE: No, if a fee was due it would have been collected when the documents were filed.

D MR CLAYTON: Right, that is fine. That is not a problem. So it is just really for Mr Smith's time and...

THE JUDGE: I am afraid for a small claims matter which includes an appeal no allowance is made for time.

E MR CLAYTON: That is not a problem, but he has paid out on stationery, transcripts, things like that.

THE JUDGE: I will allow the cost of the transcript. I will order that Excel pay to him the cost of the transcript upon provision to them of proof of what that is. The invoice or whatever.

F MR CLAYTON: Yes, that is fine. I have kept all the receipts. We have got a parking receipt here for today.

THE JUDGE: How much is that?

G MR CLAYTON: I think it is £9.

THE JUDGE: Right. That again is a normal disbursement, is it not? So transcript fee of £80 subject to proof, parking of £9. I am afraid I am not going to make an order in respect of stationery. That is just an overhead that I never order.

H MR CLAYTON: Right.

MISS A: Your honour, could we include within your order that the payment of £80 be paid within 20 days of receipt of the invoice?

A THE JUDGE: Fourteen days of receipt. Yes, so you need to send to Excel's lawyers a copy of the transcript invoice. They will then have 14 days from receipt to pay.

MR CLAYTON: So is it just the transcript? There is no parking?

THE JUDGE: Since you have got that here I am allowing that anyway.

B MR CLAYTON: All right, that is fine.

THE JUDGE: That will be payable.

MR CLAYTON: Right, that is fine. No problem. All right, thank you very much.

C THE JUDGE: Thank you. Thank you very much indeed. I will give you one of the two bundles back since they are effectively identical. Thank you.

MR CLAYTON: Thank you. I have got three here so... Just in case everyone did not have anything I brought copies.

D THE JUDGE: Yes, that is very helpful. Thank you.

MR CLAYTON: Thank you very much.

THE JUDGE: Good afternoon it now is.

MR SMITH: Good afternoon. Have a good day.

E THE JUDGE: Thank you.

MR CLAYTON: Take care.

[Hearing ends]

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