

IN THE COUNTY COURT AT CROYDON

Claim No. C6GF14F0

Altyre Road
Croydon
CR9 5AB

Friday, 16th September 2016

Before:

DISTRICT JUDGE COONAN

Between:

PACE RECOVERY

Claimant

-v-

MR [N. REDACTED]

Defendant

Representative for the Claimant:

MR CHARMAN

The Defendant appeared In Person

JUDGMENT APPROVED BY THE COURT

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Number of Folios: 24
Number of Words: 1,722

JUDGMENT

A

DISTRICT JUDGE COONAN:

B

1. I have to deal with this on the evidence that is before me now. I have before me a tenancy agreement which gives Mr [N. redacted] the right to park on the estate and it does not say “on condition that you display a permit”. It does not say that, so he has that right. What Pace Recovery is seeking to do is, unilaterally outside the contract, restrict that right to only when a permit is displayed. Pace Recovery cannot do that. It has got to be the other contracting party, Affinity Sutton, which amends the terms of the tenancy agreement to restrict the right to park on a place in circumstances in which a permit is displayed but that is not in this tenancy agreement and you as a third party cannot unilaterally alter the terms of the tenancy agreement.

C

MR CHARMAN: No, I would agree with that entirely, I would agree with that entirely.

THE DISTRICT JUDGE: So it seems to me there is a mismatch.

MR CHARMAN: Is there a reference for that tenancy agreement, Mr [N. redacted]?

D

THE DISTRICT JUDGE: I have not got it in front of me.

MR CHARMAN: No, no, but is there a number or something like that?

THE DISTRICT JUDGE: Let us just have a look. No, there is no number. You can just see the date of it, let us just check.

E

MR CHARMAN: Is there a heading, a specific heading or anything like that?

THE DISTRICT JUDGE: Well, this is through a tenancy, “Between us, Broomleigh.” Well, Broomleigh has been taken over, has it, by Affinity Sutton?

F

MR CHARMAN: Yes, by Affinity Sutton, yes.

THE DISTRICT JUDGE: No, there is no number so you are confined to the names of—

MR CHARMAN: So it is literally a Broomleigh—

G

THE DISTRICT JUDGE: Broomleigh Housing Association and that is the address of the tenancy and the date.

MR CHARMAN: Could I ask, Mr [N. redacted], this has not been replaced by another one?

H

MR [N. REDACTED]: No. This is the original one, this is the tenancy we have always had.

MR CHARMAN: So when it changed to Affinity Sutton—

THE DISTRICT JUDGE: There just would have been a block assignment to all the—

A MR CHARMAN: Yes, but they might have changed the tenancy in the name of, I don't know that, I am just asking.

THE DISTRICT JUDGE: I can see why Affinity Sutton is doing that, to prevent trespassers using those parking bays.

B MR CHARMAN: There is more to it than that as well and the fact that if you... you quite are rightly saying, "A vehicle" so that a resident cannot have two vehicles. So there is two people mentioned here.

MR [N. REDACTED]: There is one vehicle.

C MR CHARMAN: I agree, Mr [N. redacted], I am not disputing that but that is—

THE DISTRICT JUDGE: Yes, so there is that sort of abuse of the system.

MR CHARMAN: It must be *[inaudible]* and you cannot have vehicles that are in—

D THE DISTRICT JUDGE: Yes, I can quite understand why Affinity Sutton wants to do that and I am sure the tenants will be happy with that because it prevents other people clogging up the spaces that you would have, but the point is that there is no evidence before me in which Affinity Sutton has changed the terms of the agreement so that the tenant can only park in such a space on the estate, and it has got to be the tenant, if he is given a tenant's permit.

E MR CHARMAN: I think this *[might also?]* be badly worded—

THE DISTRICT JUDGE: Well, it may well be, it may well be.

MR CHARMAN: Yes. I need to address that with Affinity Sutton.

F THE DISTRICT JUDGE: Yes, I think that needs to be done but, in fact, because of that I am going to have to dismiss the claim.

MR [N. REDACTED]: Thank you.

THE DISTRICT JUDGE: All right, anything else?

G MR [N. REDACTED]: Would I be able to claim my costs of today?

THE DISTRICT JUDGE: What are your costs?

MR [N. REDACTED]: Well, I would have earned around £75.

H THE DISTRICT JUDGE: Why?

MR [N. REDACTED]: I am a graphic designer. I work from home, I had work to do.

THE DISTRICT JUDGE: Well, you have not lost a day, it is only now eleven o'clock.

A MR [N. REDACTED]: Okay.

THE DISTRICT JUDGE: Well, if you are saying you have lost work, I would need evidence of what that is and do you have that evidence?

B MR [N. REDACTED]: I don't have it with me.

THE DISTRICT JUDGE: No. What is your travel costs?

MR [N. REDACTED]: I had to take a taxi, it was £12 and I have to get home as well.

THE DISTRICT JUDGE: A taxi? Why did you not go by public transport?

C MR [MR N. REDACTED]: I don't have a Connect card or anything. I don't use public transport, I have an anxiety issue and—

THE DISTRICT JUDGE: What do you say to that, Mr Charman?

D MR CHARMAN: I think I am allowed to claim 45p a mile if I was claiming mine.

THE DISTRICT JUDGE: Yes, yes. Well, how many miles away is it?

MR [N. REDACTED]: It's five miles.

THE DISTRICT JUDGE: Five miles, I will give you 45p. Five miles there and five miles back?

E MR CHARMAN: £4.50.

THE DISTRICT JUDGE: £4.50

F MR CHARMAN: That was an easy one. Just on a point, madam, and do excuse me if I am being silly.

THE DISTRICT JUDGE: Yes.

MR CHARMAN: If we wish to appeal—

G THE DISTRICT JUDGE: Well, you can seek permission to appeal from me.

MR CHARMAN: Yes.

H THE DISTRICT JUDGE: You must do it formally now because it is all being recorded. I am going to refuse you permission to appeal but you can appeal and I will put it in the order within 21 days from today's date to the circuit judge and so you would need to seek permission to appeal.

MR CHARMAN: You have answered the question, madam, thank you very much.

A THE DISTRICT JUDGE: All right, thank you. I will make sure it goes in the order.
MR CHARMAN: Yes.

THE DISTRICT JUDGE: All right. “The claimant shall pay the defendant’s travel costs of £4.50 by” if I give you 14 days to do that, Mr Charman, “the 30th.”

B MR CHARMAN: Are you happy to accept £10 cash today, Mr [N. redacted]?
MR [N. REDACTED]: Pardon?
MR CHARMAN: Are you happy to accept £10 cash today?

C MR [N. REDACTED]: Yes, sure.
THE DISTRICT JUDGE: It is not £10.
MR CHARMAN: It is £4.50, are you happy to accept that now?

D THE DISTRICT JUDGE: I am just going to... permission to appeal is refused.
MR CHARMAN: Yes, I will appeal today.
THE DISTRICT JUDGE: I think this needs to be sorted out quickly because if you have still got a car there and there is no—

E MR CHARMAN: More importantly, madam, there are numerous other cases waiting to come through. This is not a simple matter, as I said. We are aware that there has been a lot of correspondence between Mr [Mr N. redacted] and Affinity Sutton. They are aware. They also volunteered their services to give evidence and so on and so forth. As you can see from this, we rely on solicitors, which maybe we should not really have done, but we have relied on solicitors who at this point have said, “No, there is not a need” and maybe if they had seen the lease, a copy of that—

F THE DISTRICT JUDGE: And of course, Mr [Mr N. redacted] had raised it.
MR CHARMAN: He raised it but he has not produced it.

G THE DISTRICT JUDGE: No, no, but once it is raised, it is for you to prove your case, you say, “Well, hang on a minute, we had better see that tenancy agreement” and that would have shown you that there is a difference here between the *Parking Eye Ltd v Beavis [2015] EWCA Civ 202* cases and this. There is a *[prior?]* licence—

H MR CHARMAN: *[Inaudible]* several cases and because this is all we do, we only deal with residential and I have had this come up before. I know it is entirely on a judge, well, we have had a judge who said, “Well, look, yes, this is a problem” *[inaudible]* and so forth but my point—

A

THE DISTRICT JUDGE: I am going to refuse you permission to appeal but if you are concerned to seek clarity about this particular issue then you need to seek permission to appeal from the circuit judge and get the circuit judge to—

MR CHARMAN: I think it is very important we do.

B

THE DISTRICT JUDGE: Yes, or get Affinity Sutton to amend the tenancy agreements.

MR CHARMAN: Well, they might already have that in place but I am not aware—

C

THE DISTRICT JUDGE: Well, that is something that perhaps you need to sort out first. “Permission to appeal refused. Permission to appeal can be sought from the circuit judge.” If you do make that appeal it will have to be heard at Central London County Court because there is no civil circuit judge sits here.

MR CHARMAN: That is fine, madam.

THE DISTRICT JUDGE: All right.

D

MR CHARMAN: As I said, there are several other ones and it might be that we can deal with it in the next hearing but be better prepared—

THE DISTRICT JUDGE: I understand what you are saying. So, “Permission to appeal can be sought from the circuit judge by 21 days from the date of this order.” All right?

E

MR CHARMAN: Thank you very much.

THE DISTRICT JUDGE: Thank you very much indeed.

MR CHARMAN: Thank you.

F

THE DISTRICT JUDGE: Thank you, Mr Charman. Thank you, Mr [N. redacted].

[Hearing ends]

G

H