IN THE MILTON KEYNES COUNTY COURT

Case No: 1MK02144

Milton Keynes County Court
351 Silbury Boulevard
Witan Gate East
Central Milton Keynes
MK9 2DT

Monday, 13th April 2012

B E F O R E:
DISTRICT JUDGE PERUSKO

NAPIER PARKING LTD
(Claimant)

v.

MR. DARREN YAU
(Defendant)

Transcript from an Official Court Tape Recording.
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MR. MANNERING appeared on behalf of THE CLAIMANT COMPANY.

THE DEFENDANT appeared IN PERSON.

JUDGMENT
(As approved)

Monday, 13th April 2012

DISTRICT JUDGE PERUSKO:

1. This is a small claim which arises out of Mr. Yau parking his motor car, a Toyota MR2, at a car park in Willen Lake, Milton Keynes on 9th April 2011, almost exactly a year ago.

2. The claimant is a company which manages the car park and has assigned to it, by a company called Whitecap, the rights arising out of Whitecap's lease of the car parking area. There are signs at the car park, which I will come to in a second.

3. There are a number of issues that arise as a consequence of the claimant issuing a fixed charge notice on 9th April. The claimant alleges that the defendant parked his car in contravention of the terms and conditions which the claimant says were clear, or should have been clear, to the defendant.

4. The central factual issue for me to determine is this: was it reasonable for the claimant to issue the fixed charge notice when it did in circumstances where, so the defendant says, he was in the process of obtaining a ticket from a parking machine. The defendant essentially says that the claimant was premature in issuing the fixed charge notice.

5. The factual issues in relation to that matter are these. The defendant came into the car park at around 2 o'clock in the afternoon. The claimant's witness statement recorded that the parking attendant was a Ms. Chris John, who recorded first seeing the defendant's car parked without a ticket at 13.58, so two minutes to two. The defendant in his witness statement says that it was about five past two. I prefer the claimant's evidence on when it exactly was that the parking attendant first recorded it, because I take the view that the parking attendant was probably more likely to be clearer in recording the time than the defendant's recollection. So there we have it, two minutes to two. It is the claimant's standard practice to allow a period of grace before issuing a fixed charge notice, so I am told. The records show, and I find, that the penalty notice was printed at 14.12, so 14 minutes afterwards. It is not in dispute that the ticket which the defendant did buy, was purchased at 14.16, so 18 minutes after the car was first observed by the parking attendant. The question really is whether 14 minutes, nearly a quarter of an hour, was a reasonable period of grace, or whether it should have been longer.

6. The defendant's explanation for the delay is that he was more interested, completely understandably, in his daughter's safety. She was going to party with some friends. She was only seven years old at the time and after the car was parked she ran off with her friend, having got herself out of the car. As that happened defendant spotted friends and had a conversation with his friends for, he says, 5 to 10 minutes, though in fact I suspect it was more like 15 minutes or certainly 14 minutes. He did that before he bought his ticket.

7. In my judgment, that is too long a time in which to deal with emergencies like a child running off and then going to buy a ticket. There is a machine very close by. That is not denied and indeed I have seen the machine close to the

Defendant's car in photographs. 14 minutes is a long time, and too long to get a ticket, in my judgment. So there is on that central factual issue, a difficulty with the defendant's case.

8. That is not the end of the case necessarily, because there are other issues raised by the defendant in his defence. First he raises whether there is a valid contract here between him on the one part, and the claimant on the other. He does that by reference to, he says, the inadequate signage in the car park. I have had a look not just at the signage that there is, but the number of signs around the car park. They are not all the same. I am familiar with this car park and so I have some sympathy for the defendant when he says, '*the main sign at the entrance of the car park, and, which was the one that we referred to in our exchanges, which does make clear*,' as the defendant accepts, '*that vehicles may be issued with an £80 fixed charge notice for failing to display a valid ticket, is different from others'*. The defendant says that the signs around the car park are not that specific.'

9. Where, in my judgment, the defendant's arguments fail to be established, is that this is a car park with which he is very familiar, having parked there for many years. So he has had many, many opportunities, and to his credit he accepts this, to have a look at the signage in detail, or indeed refer to the website, and there is reference on the signs to a website, for terms and conditions. There is even reference to the full terms and conditions being displayed at the entrance to the car park. Were this his first visit to the car park, it may be, I am not saying it would, but it may be that I would take a different view. I do not have to do that in this case. It is clear that he, in my judgment, should have been aware of the full terms and conditions, and he should have known that were here to be in breach there would be a fixed charged notice. So I am not with him on that. It is clear that he contracted to park there, contracted to buy a ticket, he did not do that within a reasonable period of time, therefore on the face of it he is in breach of contract.

10. The other point he raises, which is an interesting one and which causes me to pause and think for longer, is whether the £80 fixed charge notice is a penalty, which would be unenforceable (by reference to the authorities) because there would be a failure on the part of the Claimant to prove loss or damage, which is the remedy for breach of contract (putting a party back into the position that they would be had the contract not been breached), as opposed to a genuine attempt by the claimant to estimate its losses as a consequence of a breach or potential breach of contract. That is an interesting point. It is interesting because there are many companies who impose significant penalties which have been found to be, and clearly are, penalties as opposed to genuine losses. Is this one of those cases?

11. I have looked at the evidence, and the conclusion that I have reached is that this is not one of those cases where the claimant is imposing a penalty, unreasonable or otherwise – a penalty which is not a genuine attempt to pre-judge or pre-estimate its losses. I have looked at the claimant's witness statement and the evidence attached to it in that respect and the attempt to estimate in some detail the number of hours engaged in pursuing these

particular issues, and how the £80 penalty is worked out. I am satisfied that we have here is a genuine pre-estimate of loss as opposed to a penalty. I am satisfied myself that this is a fair and transparent and lawful system operated by the claimant as part of their running of this particular site. I do not criticise Mr. Yau for raising that particular issue, because they are issues which are genuine as opposed to fanciful. So for those reasons I find for the claimant and I will enter judgment accordingly for the amount of the claim, which is £80.

MR. MANNERING: Sir, can I just have a quick word with -----

DISTRICT JUDGE PERUSKO: Yes. (Pause)

MR. MANNERING: Sir, the costs (Inaudible) on summons are £80, so if the usual order were to be made, it would be judgment for £165.

DISTRICT JUDGE PERUSKO: Yes. But you've got solicitors costs. Have you got solicitors on the record?

MR. MANNERING: Sir, the answer is no. However -----

DISTRICT JUDGE PERUSKO: So you're not entitled to solicitor's costs, are you?

MR. MANNERING: What I would say about that is that the – in actual fact, the costs that the – I'm not sure that the Rules – when the Rules were drafted that direct access work was – was in existence. However, the principle is that a small amount, but only a small amount, should be allowed in respect of legal costs properly incurred. In this case it would be drafting the claim form and drafting the Particulars of Claim. In reality, the costs paid me are -----