

Summary of Claim Number 3QZ07260 – Portsmouth County Court.

Napier Parking Limited v Mr Matt Lander

Documents enclosed:

Appendix 1- Court Order for £826.20.

Appendix 2 – Court Transcript of Judgement.

The matter related to one unpaid Fixed Charge Notice (FCN) which was issued and attached to Mr Lander's car at Waterloo Central Car Park on 12th March 2013. The FCN was issued because the vehicle was observed to be parked without a valid pay and display ticket clearly visible.

Mr Lander failed to pay the charge, or to appeal the FCN, within the 28 day period set by the Notice.

Napier Parking Ltd applied to the DVLA and was provided with Mr Lander's details as the Registered Keeper. A Notice to Keeper was then served upon Mr Lander.

Mr Lander subsequently sought to challenge Napier Parking Ltd's charge on the basis that our charge of £90.00 was an unenforceable penalty and that, as a private parking company, we could not recover that sum. Mr Lander also sought to cast doubt at that stage as to who the driver may have been at the relevant time. Additionally, Mr Lander claimed that he had not entered into a contract with us. Mr Lander concluded by stating that further correspondence or contact with him would constitute harassment.

After careful consideration by Napier Parking Ltd, Mr Lander's appeal was rejected and he was offered the chance to pay a discounted settlement rate within 14 days. We also made considerable efforts to address the points that Mr Lander raised in his appeal. Napier Parking Ltd pointed out that under the Protection of Freedoms Act 2012, the Registered Keeper can in certain circumstances be held liable for the unpaid parking charges, regardless as to whether they (the keeper) were driving or not.

Mr Lander was also given the opportunity to appeal to POPLA (Parking on Private Land Appeals), but he opted not to do so.

Following the rejection of his appeal, Napier Parking Ltd sought to persuade Mr Lander to pay the debt without recourse to the Courts.

Throughout this correspondence, process Napier Parking Ltd and our appointed Solicitors strongly advised Mr Lander that he should seek independent legal advice if he was at all unsure about his position. We also informed Mr Lander that should he force us to go to Court, we would seek our full legal costs against him under Civil Procedure Rules 27.14(2)(g), on the basis that he has wasted our time and that he did not have, and had never advanced, any legitimate defence to the claim. He was advised that in appropriate circumstances, the rule permits a judge to award:

"...such further costs as the court may assess be the summary procedure and order to be paid by a party who has behaved unreasonably".

Napier Parking Ltd was eventually placed in the position where a claim had to be filed in the County Court against Mr Lander. Mr Lander defended the claim and made a counter claim against us.

As the attached Appendices show, Mr Lander lost in Court and had significant costs awarded against him.

Appendix 1 is a copy of the Court Order. Please note that Mr Lander had to pay not only the amount claimed of **£140** but also significant costs of a further **£686.20 (under Civil Procedure Rules 27.14(2)(g))**. This brought the amount that Mr Lander owed to Napier to **£826.20**.

Appendix 2 is a copy of the Transcript from the Official Court Tape Recording. Judgement was made in favour of Napier Parking Ltd.

General Form of Judgment or Order

APPENDIX (1)

07 MAR 2014

In the Portsmouth County Court	
Claim Number	3QZ07260
Date	4 March 2014



NAPIER PARKING LIMITED	1 st Claimant Ref
MR MATT LANDER	1 st Defendant Ref

Before Deputy District Judge Hartley sitting at Portsmouth County Court, Courts Of Justice, Winston Churchill Avenue, Portsmouth, Hampshire, PO 2EB.

IT IS ORDERED THAT

1. Judgment entered for the Claimant in the sum of £826.20.
2. The Defendant shall pay to the Claimant's £826.20 within 14 days of the date of this order.

Dated 24 February 2014

The court office at Portsmouth County Court, Courts Of Justice, Winston Churchill Avenue, Portsmouth, Hampshire, PO1 2EB is open between 10:00 am and 2:00 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 0239 2893000 Fax: 0239 2826385

APPENDIX (2)

IN THE PORTSMOUTH COUNTY COURT

Case No: 3QZ07260

The Courts of Justice
Winston Churchill Avenue
Portsmouth
Hampshire
PO1 2EB

Thursday, 20th February 2014

B E F O R E:

DEPUTY DISTRICT JUDGE HARTLEY

NAPIER PARKING LTD
(Claimant)

v.

MR. MATT LANDER
(Defendant)

Transcript from an Official Court Tape Recording.
Transcript prepared by:
MK Transcribing Services
29 The Concourse, Brunel Business Centre,
Bletchley, Milton Keynes, MK2 2ES
Tel: 01908-640067 Fax: 01908-365958
DX 100031 Bletchley
Official Court Tape Transcribers.

MR. MANNERING appeared on behalf of THE CLAIMANT COMPANY.

THE DEFENDANT appeared IN PERSON.

JUDGMENT
(As approved)

Thursday, 20th February 2014

DEPUTY DISTRICT JUDGE HARTLEY:

1. This hearing is a claim for damages in relation to breach of contract issued by Napier Parking on 7th August 2013. The claim totals £140, which represents the £90 for a fixed charge notice, and £50 under the terms of the contract. Mr. Mannering represents Napier, and he is accompanied by Mr. De Savary, who has provided me with a very full statement. Mr. Lander is a litigant in person today, and he defends the claim and indeed counterclaims against Napier. This hearing takes place in accordance with the small claims procedure, and I have been helpfully presented with a very carefully prepared bundle, of which Mr. Lander has also received a copy in good time for this hearing.
2. At the outset of this hearing, Mr. Lander gained an understanding of the law of contract that had previously not been clear to him. He now accepts that when he parked his car in a pay and display car park in Waterlooville on 12th March last year, without buying a ticket, he was indeed in breach of contract. So it is now agreed that he owes damages arising from that breach. However, he argues that the penalty which is being imposed is unfair and represents business losses rather than it representing a genuine pre-estimate of loss. Mr. Lander also accepts that, as a result of that admission, his defence and counterclaim falls away. I therefore dismiss the counterclaim at this stage.
3. In relation to the £50 element which relates to the terms and conditions, he generally refers me to the Unfair Contract Terms Act. In relation to that, I find that Napier did indeed take full and proper steps to advertise not only their charges and the fact that it was a pay and display car park, but also their terms and conditions, both in full on the site, which is unusual, but also as to their availability elsewhere, for example on the website which is printed and advertised, and also by post on supply of stamped addressed envelope.
4. Additionally, Mr. De Savary has assisted me with an explanation as to the type of users of the car park; that is people who buy tickets as they arrive or people who have contracts with Napier, and people who buy tickets the night before, so it is not in every case that a person parking their car will leave their car without bearing a ticket. It is not to be assumed by a parking attendant on site, that they are indeed in breach. But in this case, when the defendant left his car without buying a ticket. Of course he was in breach, but the parking attendant was not to know that.

5. So whilst if I had to decide the issue of whether or not there was a breach, I would be doing that on the balance of probabilities and the burden of proof would be on the claimant, in fact there has been an admission as to the breach itself I am simply deciding whether the damages sought are appropriate.
6. I was at the outset of the hearing referred to Schedule 4 of the Protection of Freedoms Act, as to who is the registered keeper of a vehicle. As to whether that in fact was in issue, and it appears not to be in issue I do not need to worry about that.
7. I have been referred to the fact that Napier identified two means of establishing how to deal with situations like this, where there has been a breach of the contract and parking tickets have not been paid. They can look at it in two ways: either a minute accounting system for each ticket that is not bought, in breach of contract, or instead to estimate the average cost to recover loss in each of those situations. I have had set out very, very fully for me by Mr. De Savary in his witness statement, precisely how the charge is arrived at. He has distinguished for me very carefully and very fully what are business losses and how they are arrived at, dealing with damages and charges in a matter such as this.
8. Both sides have helpfully provided case law for me. From the claimant it was a case listed in Milton Keynes on Monday, 13th April 2012 before District Judge Perusko, and Mr. Mannering was in fact present and assisted the District Judge on that occasion. Mr. Lander has referred me to an audio transcription of a case in the Scunthorpe County Court later, a month later on 16th May 2012, which purports to deal with parking issues on the premises of Wickes. Now, that was in fact a transcript of a hearing, and the judge dismissed the application. It refers to bundles of documents provided to the court, but of course not made available to me, and I do not find this case on all fours with the one that I am considering today. So whilst I am grateful for it being brought to my attention, I distinguish it from today's facts.
9. What I do find helpful is paragraphs 10 and 11 in relation to District Judge Perusko's judgment, where he looks in that case at whether or not the claimant is imposing a penalty unreasonably or otherwise, a penalty which is not a genuine attempt to pre-judge or pre-estimate its losses. Having carefully read the entirety of Mr. De Savary's witness statement, and heard from him and heard submissions from Mr. Mannering, I do find that in this case I am satisfied that this is a genuine pre-estimate of loss, as opposed to a penalty, and therefore I too am satisfied in this case that this is a fair and transparent and lawful system operated by Napier as part of their running of this particular site.

10. So in that case I give judgment to the claimant for the damages asked for, and as I have already said, I dismiss the counterclaim from Mr. Lander.
