

IN THE SCUNTHORPE COUNTY COURT

Ref: 1SE09849

The County Court  
Laneham Street  
Scunthorpe

16th May 2012

Before

DISTRICT JUDGE McILWAIN

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VEHICLE CONTROL SERVICES LIMITED  
(Claimant)

-v-

MR R IBBOTSON  
(Defendant)

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**PROCEEDINGS**

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APPEARANCES:

For the Claimant:

MISS COATES

For the Defendant:

IN PERSON

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VEHICLE CONTROL SERVICES LIMITED -v- MR R IBBOTSON

JUDGE McILWAINE: It is Miss Coates?

MISS COATES: It is, sir.

JUDGE McILWAINE: Okay, and Mr Dough?

MR DOUGH: That is right.

JUDGE McILWAINE: You are the ...?

MR DOUGH: I am the Regional Manager for Vehicle Management Services.

JUDGE McILWAINE: Very well. I have the bundle index. Have you seen that, Mr Ibbotson?

MR IBBOTSON: I have, yes.

JUDGE McILWAINE: Very well. As I understand matters, this arises out of a parking charge issued at the premises of Wickes. I have seen the correspondence and the emails that have passed between the parties and, as I understand it, previously this matter came before the court and a court order lifted the variation of the claim form to reflect the defendant, Mr Ibbotson, and awarded costs arising out of that.

MISS COATES: That is correct, sir.

JUDGE McILWAINE: In which case, as it is your case, please take me through your evidence, unless this matter is agreed. Is it agreed?

MISS COATES: No.

JUDGE McILWAINE: Very well. Carry on, please.

MISS COATES: On the 25th February, 2011 a vehicle, namely a red Renault Clio with the registration mark N570 NWT, was driven by the defendant, Mr Ibbotson, who parked at the Wickes car park in Scunthorpe.

We manage the car park on behalf of Wickes, our client. I have got a copy of our agreement. Obviously, it was not sent to Mr Ibbotson. Sir, if you would like ...

JUDGE McILWAINE: Yes, please. (Document passed to Judge McIlwaine). Mr Ibbotson, do you accept that Vehicle Control Services Limited are authorised to administer parking at the premises of Wickes?

MR IBBOTSON: Authorised?

1 JUDGE McILWAINE: Yes.

2 MR IBBOTSON: They are authorised to look after it, yes.

3 JUDGE McILWAINE: Thank you. Let me just have a ...

4 MR IBBOTSON: I think I would like to point out that I was within the two hour limit.

5 JUDGE McILWAINE: We will come to that in a minute. I am sorry, I do apologise. What I am  
6 going to do is I am going to hear the evidence from the claimant. I will give the opportunity to ask  
7 any questions which you wish to ask which are relevant and then after that I may ask some questions  
8 and then I will be quite happy to hear what your evidence is and for your opportunity to respond.

9 MR IBBOTSON: Okay, fair enough.

10 JUDGE McILWAINE: Have you filed a statement? I think you have, haven't you?

11 MR IBBOTSON: Yes, I have, yes.

12 JUDGE McILWAINE: Yes, I remember reading it. Very well, in which case, please carry on.

13 MISS COATES: As you can see from page 17 of our bundle, this is an overview of the car park  
14 of Wickes, Scunthorpe.

15 JUDGE McILWAINE: Yes.

16 MISS COATES: The yellow dots obviously show the information boards which detail the terms  
17 and conditions in operation. The blue dot indicates where the defendant parked the vehicle.

18 JUDGE McILWAINE: Okay.

19 MISS COATES: We were displaying six signs at the car park on the 25th February which  
20 detailed the terms and conditions. The terms and conditions of this car park is that it is customer  
21 parking whilst on the premises, a maximum stay of two hours.

22 If you look at page 72 of the bundle, this is the signage proof of the actual signs that were on the  
23 site.

24 JUDGE McILWAINE: I am looking at page 72.

25 MISS COATES: It is page 27 we are looking at.

26 JUDGE McILWAINE: Very well. Yes, thank you.

27 MISS COATES: We believe that this makes it clear that the signage in this car park is that the  
28 car park is for customers of the Wickes store only whilst they are on the premises.

1 The parking charge notice was issued to the vehicle, the Renault Clio, on the 25th February as  
2 our parking attendant observed the defendant walk off site. The actual parking charge notice is at  
3 page 79.

4 JUDGE McILWAIN: Can I just stop you there? Can you just take me to the sign at page 77  
5 and just draw my attention please ... I am reading very quickly. You say that it is clear that if you  
6 walk off the site you are liable? Is that right?

7 MISS COATES: The customer parking is whilst on the premises.

8 JUDGE McILWAIN: Where does it say that?

9 MISS COATES: In the white box at the top. "Customer parking whilst on premises".

10 JUDGE McILWAIN: Okay. Where does it say that if you leave the premises but leave your  
11 car on the premises you are liable?

12 MISS COATES: It does not state in those particular words. It is our view of Vehicle Control  
13 Services that, "Customer parking whilst on premises" makes it clear that you can only park in the car  
14 park at Wickes while you are in the Wickes store. Our client does not want the car park to be used for  
15 people as a park and walk. As you can understand, parking is at a premium which is why companies  
16 such as ourselves are employed to enforce terms and conditions on car parks. The parking charge  
17 notice was issued to the vehicle pursuant to the parking charge notice VC00920730. We then sent out  
18 a notice to owner and we filed a notice to the registered keeper of the vehicle. The parking charge  
19 notice was affixed to the vehicle but received no response.

20 It is our process that you have 14 days from receipt of a parking charge notice when it is affixed  
21 to the vehicle to respond to us and pay the reduced rate of £80. You can see that on page 77. It does  
22 detail the amount of the parking charge notices. Then, after 14 days we apply to the DVLA for the  
23 vehicle keeper details, at which point a notice to owner is then sent out to the registered keeper of the  
24 vehicle. On the back of the notice to owner is a statement that says ... I will just get the notice. Page  
25 32 is the notice to owner that was sent out, and we can see on the back there is a detachable slip that  
26 you can send back if you were not the driver of the vehicle. We received no correspondence from Mr  
27 Ibbotson after the notice to owner.

28 Fourteen days after that, a final demand notice was then sent, to which we still received no  
29 correspondence and the matter was passed on to our debt collectors, at which point an email was  
30 received ...

31 MR IBBOTSON: I think that is irrelevant, don't you?

32 JUDGE McILWAIN: That depends what it says. What does it say? Which email are you  
33 looking at?

34 MISS COATES: It is page 89, the last page of the bundle.

35 MR IBBOTSON: I apologise for that. They hassled my wife to death, even though she wasn't  
36 the driver. It made her quite ill actually.

1 JUDGE McILWAINE: Okay. Let's focus on the issues. You received the email. I am  
2 conscious of what it said.

3 MISS COATES: The matter was then passed back to Vehicle Control Services, at which point  
4 the claim was issued. We had received at no point any correspondence from Mr Ibbotson to inform us  
5 that she was not the driver of the vehicle on the day in question, so we issued the claim against Mrs  
6 Ibbotson and you can tell from the court papers that she was not the driver (inaudible).

7 The defendant, by physically entering and leaving the vehicle on our premises, represents a  
8 (inaudible) of the terms and conditions in operation. It is our position that the defendant breached the  
9 terms and conditions in operation by walking off the premises and we have suffered a loss as a result.

10 JUDGE McILWAINE: Very well. Can I just ask you to clarify for my understanding? This  
11 case is brought on the basis that the vehicle was left on the car park but that the driver of the vehicle,  
12 Mr Ibbotson, left Wickes and went somewhere else, off the premises?

13 MISS COATES: That is right, yes.

14 JUDGE McILWAINE: Is it accepted that the car was when it was on the car park at the time the  
15 ticket was issued within the two hours? It was the physical leaving of the premises that attracted the  
16 penalty? Is that right?

17 MISS COATES: It is.

18 JUDGE McILWAINE: I will allow you to ask questions, Mr Ibbotson, in a moment, but just in  
19 order that I can be clear on this, I believe that Mr Ibbotson says that £80 is not a fair reflection of your  
20 pre-agreed damages; it is a penalty which he says in relation to contract law is unenforceable.

21 MISS COATES: We disagree. You can see if you turn to page 21 of the bundle ...

22 JUDGE McILWAINE: Thank you. Yes.

23 MISS COATES: ... this is our losses.

24 JUDGE McILWAINE: No, they are not your losses. They are the costs of your pursuance of  
25 this case, is it not?

26 MISS COATES: If the driver of the vehicle is to pay up within 14 days it only costs us the £80  
27 whereas if it is pursued after 14 days and they have not paid up, it costs £120.

28 JUDGE McILWAINE: Okay. Let's have a look here. Image processing costs you £2 per item,  
29 image transfer costs you 52 pence, PCN costs, costs you 62 pence, a wallet costs you 37 pence and a  
30 PA uniform ... What is a PA uniform?

31 MISS COATES: The uniform of the parking attendant on site.

32 JUDGE McILWAINE: What has that got to do with this gentleman's parking? That is a cost to  
33 the business, is it not?



1 MISS COATES: That is the overall cost of issuing a parking charge notice.

2 JUDGE McILWAINE: No, it is not. It is a cost to the business. Do you claim tax against the  
3 uniforms provided to staff?

4 MISS COATES: I cannot answer that question.

5 JUDGE McILWAINE: I am afraid if you are not, you need a new accountant. Let us have a  
6 look a little bit further on, shall we? Office provision, rates, insurance, service charge, are they costs  
7 to the business? It is your evidence. You tell me.

8 MISS COATES: These are what we believe are our costs for having to issue a parking charge  
9 notice or the portion that was attributed to issuing a parking charge notice.

10 JUDGE McILWAINE: That would depend upon how many notices are issued and at how many  
11 sites, over how long and what your income and expenditure is, and I am certainly not going to go into  
12 a detailed analysis of your company accounts. That is not my job. Mr Ibbotson says, if I find that  
13 your case is correct, that the amount I should award should reflect the loss of the space that he took,  
14 not his contribution to the running of your business. That has, I think, on any interpretation a degree  
15 of force, does it not?

16 MISS COATES: Had Mr Ibbotson not parked in breach of the terms and conditions of Wickes'  
17 car park we would not have had to issue the parking charge notice.

18 JUDGE McILWAINE: I hear what you say about a contract. The point is about the amount of  
19 damages. The point that Mr Ibbotson has raised is that it is a penalty. You say, "No, it is a pre-agreed  
20 amount of loss". I have looked at the figures which you say are the pre-agreed amount of loss and a  
21 lot of them are, frankly, the costs of the business which are tax deductible or can be written off against  
22 profit, so I again come back to where is your loss, and we will come back to that in a minute because  
23 Mr Ibbotson ... Is there anything else you would like to say?

24 MISS COATES: No, sir.

25 JUDGE McILWAINE: Thank you very much indeed.

26 Mr Ibbotson, the situation is this. You can put questions to the claimant's representative here  
27 today which are relevant. I have read the email. I accept your apology, as I am sure that apology was  
28 also meant to the lady in the court room, and, in the circumstances, provided those questions are  
29 relevant, you may ask them. Do you have any questions you wish to ask?

30 MR IBBOTSON: Do you agree that the sign, the fact that it says it has got an £80 charge on it,  
31 is a penalty clause on the contract?

32 MISS COATES: No.

33 MR IBBOTSON: I think it is a penalty clause, personally. I mean, all the information I get is on  
34 an email here, not on an email but a bit off a law site, it states, "Do not ever pay a £5 car parking fine",  
35 and that is from a barrister. "Do not ever pay a £5 car parking fine".

1           There are several other matters as well. You will have to excuse me. I am a bit nervous. I have  
2 never been to court before.

3           I was a customer, albeit later rather than sooner. The mistake I made was being in the car park,  
4 coming back. The car was not parked for more than two hours. That is my own admittance. Parking  
5 was free. The entrance and exit were not gated. The car obstructed nobody and was correctly parked,  
6 and you can see that from the photos. There was hardly anybody in the car park at the time except one  
7 or two cars, as you would expect on a February morning in a DIY store. It is not the time of year that  
8 people do DIY much.

9           The contract that I am supposed to have agreed to does not satisfy the terms of reasonableness in  
10 contract law, and penalty clauses in contracts are unlawful at common law and, as I said, I think that  
11 £80 penalty is a penalty clause because the loss in contract law can only be claimed by the owner of a  
12 site and not his agent. That is the law, and it is the same for trespass. You have to prove what damage  
13 or what losses Wickes lost, not what you lost, what Wickes lost, by me being parked there. If that car  
14 park was choc-a-bloc full to the brim and I parked and stopped someone getting in who was going to  
15 buy £200 in equipment, fair enough.

16           What you are saying is if I parked the car, walked across the road to a cashpoint, if there was one  
17 there, for example, to get some cash out to go across the road and back into Wickes, I am guilty, under  
18 your contract.

19           The same goes ... If the judge notices, there is also a vet's surgery in that car park. I have seen,  
20 when I have been into Wickes, I have seen people take dogs out to the vets, walk across the road to the  
21 grass verge and come back. Have any of them been brought to court or fined? I very much doubt it. I  
22 just happened to be in the wrong place at the wrong time.

23           MISS COATES: I would just like to say at this point that the issue or non-issue of other parking  
24 charge notices is not relevant to this case.

25           MR IBBOTSON: Well, it is still breach of contract, no matter what.

26           JUDGE McILWAINE: Okay. Mr Ibbotson, I do not want to cut across your questioning. Can I  
27 just go to Vehicle Control Services Limited's terms and conditions of contract? This is a contract  
28 entered into between the Control Officer, Mr Ian Lawson, and the merchandising manager of Wickes  
29 Building Supplies. This contract provides, "The client agrees to pay the company £30 plus VAT per  
30 site per annum on the signing thereof: twelve warning signs". Next to it is, "N/A". There are,  
31 according to your plan, six.

32           I then turn over to the Vehicle Control Services Limited boundary plan and site instructions and  
33 there is on this document here a little box which has got an X against it which says, "Warning signs".  
34 Warning signs are indicated, I assume, by the Xs on the boundary, which is ten. Is all of the area that  
35 is delineated in this hatched area in red actually owned by Wickes?

36           MISS COATES: To the best of my knowledge, it is.

37           JUDGE McILWAINE: That is not good enough. The question is, "Is it all?" because there is a  
38 vet's premises here as well. Is part of this owned by the vet?

1 MISS COATES: No. I would like to point out that we are aware there were only six signs  
2 present ...

3 JUDGE McILWAINE: I do not criticise you for the accuracy of your evidence. I just draw to  
4 your attention that one of your tasks is to ensure that reasonable notice has been drawn to the attention  
5 of the people who park upon the premises and in your contract it would seem twelve warning signs is  
6 specifically mentioned although I accept there is a word, "N/A" against it. It is not countersigned, so I  
7 do not know when the words, "N/A" were attached. Furthermore, on the boundary plan and site  
8 instructions it is plain there should have been ten, so you have ten or twelve but in reality six.

9 MISS COATES: You would find at the minute there are ten signs in the car park.  
10 Unfortunately, we do find that we have vandals who feel the need to go and cut down those signs.

11 JUDGE McILWAINE: The point is this. Your evidence is that there are six signs. Is that right?

12 MISS COATES: There were six signs on 25th February.

13 JUDGE McILWAINE: Okay, that is the point. It is not Mr Ibbotson's responsibility to go and  
14 count the signs. It is his responsibility to look at the signs and take them on ... if there is reasonable  
15 notice drawn to his attention. Mr Ibbotson, please carry on.

16 MR IBBOTSON: They have also given you some enforcement on private land case law, the  
17 legal position and everything. I have been through it all and they have even got one here. It says on  
18 the law of contract, which is the one similar to this case, "VCS state", and then quote, "A recent  
19 decision in the Court of Appeal has confirmed that provided that adequate notice of the consequences  
20 of illegal parking is given, the person parking accepts the terms as set in the notice and therefore  
21 consents to the risks and consequences". However, like all the rest of the information on here, they  
22 forget to give a case number, date, anything on it, just ...

23 JUDGE McILWAINE: I am sure if there is case law that supports it ... Can I have a look at that,  
24 please? (Document passed to Judge McIlwaine). If there is case law that supports it at Court of  
25 Appeal level, then no doubt it will be drawn to my attention, as I am bound to consider their  
26 Lordships' guidance. There is (inaudible) law from LBC 2000, Court of Appeal, but that is a wheel  
27 clamping case apparently.

28 MR IBBOTSON: There is plenty of law on clamping cases of people who have over-stayed.

29 JUDGE McILWAINE: Okay. That is a matter of submissions. That is a matter of evidence and  
30 law. Perhaps we can just concentrate on your questioning at this stage. Are there any other questions  
31 you would like to ask of this young lady?

32 MR IBBOTSON: Yes. I have put it down here in writing because I cannot remember it all.  
33 "The terms shall not be regarded as not having been individually negotiated where it has been  
34 (inaudible) in advance". The signs obviously were. "The consumer has therefore not been able to  
35 influence the substance of the term".

36 One point I did mention was the fact that the warden was sat in his van. I do not jest when I say  
37 he was no more than from here to that cabinet away from us. He saw us start to walk out the car park,



1 me and my wife. He could have easily said, "Excuse me" and drawn us attention to the signs, quite  
2 easily.

3 JUDGE McILWAIN: Is the warden here today?

4 MISS COATES: The warden is not, sir.

5 MR DOUGH: Unfortunately, he is no longer in our employ, sir. He left some time actually in  
6 February.

7 MISS COATES: I would just like to state that it is not the job of a parking attendant to advise  
8 people on parking. He is there to enforce ...

9 MR IBBOTSON: No, but he saw me breach the terms but he could have easily ...

10 JUDGE McILWAIN: Mr Ibbotson, I hear the point you are making but I have to say if Mr  
11 Ibbotson had denied that he had left the premises, the non-attendance of the witness would have sunk  
12 your case. Mr Ibbotson, to his immense credit, does not deny that he left the premises. The  
13 unavailability of the individual is irksome but not necessarily fatal. However, there is a point, of  
14 course. This is a contract dispute, effectively, is it not?

15 MISS COATES: It is.

16 JUDGE McILWAIN: Will you please correct me if I am wrong? I believe that there is a  
17 concept of mitigation of loss. Is that not the case?

18 MISS COATES: It is, sir.

19 JUDGE McILWAIN: Whose duty is it to mitigate the loss?

20 MISS COATES: The claimant's.

21 JUDGE McILWAIN: Thank you, and so if on the evidence of Mr Ibbotson, which has not  
22 been challenged, the parking attendant was there and saw Mr Ibbotson walking away, whilst it may  
23 not be his responsibility to stop him walking away, as he is a lawful authorised member of the  
24 company at the time he is there and there is a duty to mitigate the loss, can you explain to me why he  
25 did not say to Mr Ibbotson, "You can walk off, not a problem, 80 quid"?

26 MISS COATES: Because obviously when we have parking attendants advising motorists on  
27 parking it can cause problems further down the line, so we have a policy where parking attendants do  
28 not advise on parking. If he has issued a notice, a parking attendant will advise the motorist to appeal  
29 in writing to the company.

30 JUDGE McILWAIN: I know, but this is before the notice is issued. He could have said, "Mr  
31 Ibbotson" - he did not know his name, of course - "Mr, whatever your name is, I am out here to  
32 enforce the parking. I don't want to ruin your day. I don't want to have a bad day myself. Can I point  
33 out that I have to, under the contract you have entered, if you leave these premises I have to charge

1 you £80". If Mr Ibbotson says, "I am going to the vet just over there", how does he know when he  
2 leaves the premises and how does your attendant know when he leaves the premises?

3 MISS COATES: Because our attendant was there.

4 JUDGE McILWAIN: Yes, but you do not know where the premises are. I have got no proof  
5 as to where the vet's premises actually start. I cannot believe for one moment the vet is in the middle  
6 of an oasis to which nobody can get to. He must have a right on the premises to park. I do not know,  
7 but I have got no evidence to the contrary. Where does the premises start and where does the  
8 premises finish? This leads me to the next point. Can you tell me in which direction Mr Ibbotson  
9 went?

10 MISS COATES: I cannot, sir.

11 JUDGE McILWAIN: No, so you say he left the premises. Mr Ibbotson says he left the  
12 premises. Where do the premises end? Where did you go, Mr Ibbotson? You do not have to answer  
13 the question.

14 MR IBBOTSON: We didn't actually go off the premises. We had the intention of going to  
15 Wickes on our return. You know, it was just one those things.

16 JUDGE McILWAIN: What did you do when you left the premises, Mr Ibbotson?

17 MR IBBOTSON: Went to the market, came back and went in Wickes and got some washers.

18 JUDGE McILWAIN: How long were you gone for?

19 MR IBBOTSON: I think we arrived there around 20 to nine and got back about 25 past nine or  
20 ten o'clock, as there was a ... Even then, assuming we got back at ten o'clock, we were still well  
21 within the two hour period.

22 JUDGE McILWAIN: You accept that you parked on their premises but you went shopping  
23 somewhere else?

24 MR IBBOTSON: Initially, yes.

25 JUDGE McILWAIN: Right, okay. Is there anything else you would like to ask this lady, Mr  
26 Ibbotson? I do not need issues of law. I need just what you want to ask about this dispute.

27 MR IBBOTSON: In your statement you are saying that any shop can put up a sign with a  
28 contract on it, £80 fine. You go into the shop, you leave your handbag behind, right, and you come  
29 back, or you leave your purse behind, should I say - you would miss your handbag easily - and you  
30 came back, you went out the premises rather, and you had left your purse in the shop and you came  
31 back just over two hours later. How would you feel if the shop assistant said, "That will be £80,  
32 please?"

33 MISS COATES: Could you tell me, please, what the actual question is?

1 MR IBBOTSON: Well, you have left an item of yours and I have left an item of mine on  
2 someone else's premises with a sign at the door that said, "If you do not collect any items left behind  
3 within two hours, if you leave the premises, you will be fined £80".

4 MISS COATES: I am not seeing how this line of questioning is relevant.

5 MR IBBOTSON: It is the same thing. I left a car behind, you left a purse behind.

6 JUDGE McILWAIN: I think, Mr Ibbotson, the fact of the matter is that you, to your immense  
7 credit, have admitted that you parked on the premises and, in your own words, left the premises and  
8 you went shopping somewhere else. That is the purpose by which Vehicle Control Services Limited  
9 are engaged to stop that behaviour.

10 You have raised issues of interpretation of the sign and there are issues in relation to the amount  
11 of the penalty, the point also is I am just quietly looking through this as you have spoken to see where  
12 there is an assignment to permit Vehicle Control Services Limited to sue individuals who have  
13 trespassed on the land belonging to a customer. I do not quite see it. This is not a straightforward  
14 case, is it? Can you help me on that point?

15 MISS COATES: What is your question, sir?

16 JUDGE McILWAIN: Where is it in this contract set out that you have the right when there is a  
17 trespass or a breach of contract by Mr Ibbotson with Wickes or a trespass on Wickes' property, where  
18 have they assigned you the right to issue proceedings in your own name for a breach of contract  
19 against Mr Ibbotson?

20 MISS COATES: It is not actually written in the contract. It is part of the service that we offer.

21 JUDGE McILWAIN: That is the point, is it not? You offer a service to your customer and  
22 your service to your customer is, "We enforce parking". That is very well, but then the enforcement  
23 that you do is a matter for you and your customer until you issue proceedings and then, once those  
24 proceedings are issued, then I must ask where is your right to issue proceedings in your own name for  
25 a breach of contract or a trespass upon land which is not owned by you or, indeed, as I can see here,  
26 assigned to your specific control?

27 If I have missed that on this contract, I am quite happy to be directed to it, but I do not see where  
28 that happens. There is a distinction between you being permitted to try and recover the amount of  
29 compensation that you adduce is due through one route. I have to say that is a matter for yourselves  
30 but, once you issue proceedings, then the question is, "What is your right ..." If this case was brought  
31 by Wickes, I would not be raising the issue, but it is not; it is brought by yourselves, and it would be  
32 very helpful to me if you could explain to me where your right to issue proceedings arises in this  
33 contract.

34 MISS COATES: It is an implied right.

35 JUDGE McILWAIN: No, it is not an implied right. This is a significant step. You have no  
36 locus in this contract to take this step. You cannot have an implied right, otherwise it would get pretty  
37 messy out there pretty quickly. Where is your assigned right to enforce ... Take it one step further, I

1 suppose. If I have parking issues at my house and I say to Mr Ibbotson, "Enforce the parking", and  
2 somebody beaches it, I do not give Mr Ibbotson the willy-nilly to go and issue proceedings to whoever  
3 he likes from whomever he likes.

4 MISS COATES: Why not?

5 JUDGE McILWAIN: It is not his right. Where is the right for you to bring this action, which I  
6 think is the point that you have made, Mr Ibbotson, is it not?

7 MR IBBOTSON: Yes.

8 JUDGE McILWAIN: I am sure this must have been tested somewhere. You must have dealt  
9 with it somewhere and there must have been a court case somewhere where this has been dealt with  
10 and sorted. Help me.

11 MR DOUGH: You are looking at me. I am a Regional Operations Manager. My side of it is ...  
12 Excuse my ignorance on the law side of this, sir, but the way I am looking at this is we are working as  
13 a representative or an agent of Wickes.

14 JUDGE McILWAIN: Be careful here ...

15 MR DOUGH: Okay.

16 JUDGE McILWAIN: ... because the next point is ...

17 MR DOUGH: Excuse my ignorance.

18 JUDGE McILWAIN: No, no, no. I am not criticising you, but it is illegal to act as an advocate  
19 for another party when you do not have a right of audience. In any event, you are not guilty of that  
20 today because you have brought the action in your own names and your advocate has come today  
21 impeccably prepared except for the issues that I really need to get to and I cannot believe that this has  
22 not been tested somewhere, and you are the ones here today. It is not for Mr Ibbotson to disprove, it is  
23 for you to prove, and I am not going to adjourn this and bring this back again, so let me just go  
24 through it again so that we are absolutely clear. On what basis do you say you have the right to issue  
25 an action against Mr Ibbotson for a breach of contract with Wickes or a trespass upon their premises?

26 MISS COATES: Could I ...

27 JUDGE McILWAIN: Please do. It is your contract. (Document passed to Miss Coates).

28

29 MR IBBOTSON: If I can I turn it up to you, there is, in my Defence actually, a very large one ...

30 JUDGE McILWAIN: Thank you. I will come to it in a second. Where does it say that in the  
31 contract you are authorised to issue proceedings?

32 MISS COATES: It does not, sir.

1 JUDGE McILWAIN: Right, in which case this case is struck out, and I will tell you why it is  
2 struck out, because of the following, and I am not hearing any more evidence.

3 Are you aware of the British Parking Association Code of Practice? It says, page 6, clause 6,

4 "Under the Code you must have written authorisation of a land owner or his  
5 appointed agent before you can carry out parking control and enforcement of the land  
6 in question. The authorisation must say that the land owner requires you to keep to  
7 the Code of Practice."

8 I am not sure if it says that in your contract. I have quickly read it. I am not going to comment on any  
9 of that, unless you wish me to do so.

10 I go to clause 6(i)(i). "It must" - the word is "must" - "also set out" - and it goes through a  
11 number of issues.

12 "The definition of the land on which you may operate so that the boundaries of the  
13 land may be clearly defined."

14 I have raised my point on that before.

15 "2. Any conditions or restrictions on parking control and enforcement operations  
16 including any restrictions on the hours of operation; any conditions or  
17 restrictions on the types of vehicles that may or may not be subject to parking  
18 control and enforcement."

19 I do not think I have seen any of that on your contract.

20 "Who has responsibility for putting up and maintaining signs?" That is in your contract. "The  
21 definition of services provided by each party to the agreement", and then the clincher,

22 "Whether or not the land owner authorises you to take legal action to recover charges  
23 due from the drivers charged for unauthorised parking,"

24 and you do not have it. I have to say ... Are you going to point something to me to the contrary?

25 MISS COATES: In 3.4 we have got, "Takes such action in respect of vehicles there found as  
26 outlined in 3.1 and 4.3, including the issue of parking charge notices".

27 JUDGE McILWAIN: Yes, that is fine, parking charge notices, yes.

28 MISS COATES: "(inaudible) or turning away, as the company shall be ..."

29 JUDGE McILWAIN: Yes, I see. I do not disagree with that, but you do not have authority to  
30 issue proceedings, and in your own Code of Practice, to which you are supposed to adhere, and I have  
31 to say I have asked this question on a few occasions, what does that say?



1 MISS COATES: "The client requests and authorises the company to carry out its obligations  
2 hereby (inaudible) the authority to do so".

3 JUDGE McILWAIN: Yes, and does it say that you are authorised to issue proceedings?

4 MISS COATES: It is not stated.

5 JUDGE McILWAIN: No, which is the point that I have made. I am not against you. I  
6 appreciate your position and I appreciate that you do the best for your client and I appreciate your  
7 position here today. However, Mr Ibbotson is entitled to come to the court and he is entitled to be  
8 heard fairly and I have to decide this matter fairly.

9 What I will say to you is this. I am dismissing your action. Mr Ibbotson is still liable for the  
10 costs of the amendment, I might add, because he did not turn up. I will deal with that in a moment,  
11 but it seems to me this whole action is ill-founded. You have no right to bring this action. Moreover,  
12 on my interpretation of your Code of Practice, you are in clear breach. You have signed statements of  
13 truth which say you adhere to the Code of Practice. You do not. To sign a statement of truth when it  
14 is not correct has significant implications. If you have issued any other proceeding in this land on the  
15 basis of this dispute, you are in serious trouble. Am I absolutely clear?

16 MISS COATES: Yes, sir.

17 JUDGE McILWAIN: Right. How many of these are going through the court system at the  
18 moment?

19 MISS COATES: Not that many, your Honour.

20 JUDGE McILWAIN: I have to say to you that when you get into the office tomorrow morning  
21 you had better have a look pretty quickly at what is going on. I will tell you now after these  
22 proceedings I will issue an alert so you are clear. I have had this case in my court and all judges with  
23 this case and this dispute are advised to look at the terms and conditions of contract. If you continue  
24 to pursue those cases on this flawed premise, the consequences will be significant. If there is another  
25 case in the Scunthorpe County Court, Grimsby County Court or Hull County Court live by four pm on  
26 Friday, you will be coming to see me and I suggest you bring a toothbrush. Am I clear?

27 MISS COATES: Very clear.

28 JUDGE McILWAIN: I am sure that you did not intend to breach the law in this way. I suspect  
29 what you have done is that you have done your best without the engagement of competent legal  
30 advice. However, Mr Ibbotson has drawn to your attention that you were in trouble and I have to say  
31 Mr Ibbotson, in my view, is right. You are also quite clearly now on the record saying one thing and  
32 being found that it is not correct. If Mr Ibbotson contacts the British Parking Association and draws  
33 to their attention this Code of Practice and if they request this tape, I do not know what is going to  
34 happen next insofar as your membership. This is a serious matter.

35 Mr Ibbotson, you have heard what I have to say. It is my view that in light of my train of  
36 thought, I am dismissing this case. I am now considering whether or not the managing director of this  
37 company should be expected to file with me a statement explaining just exactly what has gone on, as I

1 may consider this to be a contempt of court. I will say with not one moment's hesitation, the previous  
2 costs order against you, have you paid it?

3 MR IBBOTSON: Yes, I have.

4 JUDGE McILWAIN: Right, fine. You are going to be having it back.

5 MR IBBOTSON: Thank you.

6 JUDGE McILWAIN: The order will be,

7 "Upon hearing the authorised representative of the claimant and the defendant in  
8 person, the court orders the following, given the fact it has become clear that the  
9 claimant has no contractual right to issue proceedings and, further, has not complied  
10 with the British Parking Association Code of Practice, clause 6, page 6, the  
11 following:

12 (1) The case is struck out;

13 (2) The order of DJ Stefanson dated 3-2-12 is hereby rescinded and the claimant is  
14 ordered within 14 days of today to refund the defendant, Mr Ibbotson, £42.50;

15 (3) The managing director, Simon Richard Smith, shall by four pm"

16 - I think he might want to take some legal advice and I shall give you further time to do that -

17 "by four pm on 29 June file at this court an explanation as to the manifest  
18 discrepancies pleaded and unproven and show cause why he, the claimant  
19 company, and the ..."

20 Hold on a minute. I have got some bad news for you. You are representing the company today,  
21 are you not, and you are the litigation authority for the company?

22 MISS COATES: Yes.

23 JUDGE McILWAIN:

24 "Upon receipt of same, the court will consider if the claimant's authorised officers  
25 shall be required to answer to contempt of court.

26 (4) A copy of this order shall be sent by the court to the BPA within 14 days."

27 Very well. All I will say to you is this. If it is the case that you have issued proceedings ... This  
28 opens another can of worms, doesn't it? If you have issued proceedings and you have obtained  
29 judgments and those judgments are flawed, you have got to set those all aside. Not a good day at the  
30 office, is it? Do you wish to say anything else?

31 MISS COATES: No.

1 JUDGE McILWAINE: Mr Ibbotson, you have attended here today in court. Have you lost any  
2 income today?

3 MR IBBOTSON: No, I am retired.

4 JUDGE McILWAINE: Have you lost any travel expenses here today?

5 MR IBBOTSON: I wouldn't consider it ... It is only a few miles.

6 JUDGE McILWAINE: Fine, in which case then I will not order any travel expenses or costs as  
7 none are claimed.

8 I have to say I would respectfully suggest that when you get into the office tomorrow the first  
9 thing you should do is take independent legal advice ASAP. Can I ask you for a copy of your contract  
10 again, please?

11 MISS COATES: Yes. (Document passed to Judge McIlwaine).

12 JUDGE McILWAINE: Thank you. That is now evidence before the court in relation to the  
13 seriousness of this matter. Thank you very much indeed.

14 MISS COATES: Could I just ask you to repeat point 3, please?

15 JUDGE McILWAINE: Yes, of course.

16 "The manager director, Mr Simon Richard Smith, shall by four pm on 29 June file at  
17 court an explanation as to the manifest discrepancies pleaded and unproven and on  
18 receipt of same the claimant's authorised officers shall be required to answer to  
19 contempt of court."

20 I cannot help but wonder if now you are going to be reading about yourself on the internet.

21 Unfortunately, Mr Ibbotson has decided to leave the room, but it is not applicable to him. There  
22 is a tape running. Of course, you have the right to appeal my decision. There is a time line of 14 days  
23 in which to do so and, of course, you need to ask for my permission to appeal my decision or you will  
24 need to ask permission from a circuit judge in the event that you wish to appeal my decision.  
25 However, the contract is clear.

26 Thank you very much indeed.

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