Thornton v Shoe Lane Parking Ltd

[1971] 2 QB 163
Chapter 6 (page 260)

Relevant facts

On 19 May 1964, Francis Thornton parked his car at a new automatic car park owned and operated by Shoe Lane Parking Ltd ('SLP'). He had not previously used the car park.

Outside the car park, there was a notice setting out the hourly fees and which stated that 'All Cars Parked At Owner's Risk'. At the automatic ticket machine at the entry to the car park, Thornton paid money and received a ticket in return. The ticket stated in small print in the bottom left hand corner that it was 'issued subject to conditions … displayed on the premises'. There was a sign on the pillar opposite the ticket machine that set out lengthy conditions. The conditions included a disclaimer clause seeking to exclude SLP's liability for any personal injury sustained by a customer on the premises, as well as any damage to the customer's vehicle.

Thornton looked at the ticket to check the time on it but did not see or read the further printing on it, including the reference to it being issued subject to conditions. After leaving his car in the car park for approximately 3 hours to play the trumpet in a BBC performance, Thornton returned to collect his car. An accident occurred that resulted in personal injury to Thornton and damage to his car.

Thornton sued SLP for damages for negligence. SLP sought to rely on the disclaimer. At first instance, the judge rejected the submission that the disclaimer was a term of the contract between Thornton and SLP and gave judgment for Thornton. SLP appealed to the Court of Appeal.

Legal issue

Had the disclaimer become a term of the contract between Thornton and SLP by way of reasonable notice?

Decision

On 18 December 1970, the Court of Appeal unanimously decided that the disclaimer had not become a term of the contract between Thornton and SLP because Thornton did not know of it and SLP had not done what was reasonably sufficient to bring it to his notice.

The members of the Court did not agree on precisely when the contract was formed. Lord Justice Denning MR held that the contract was concluded at the time Thornton paid at the ticket machine upon entering the carpark. On that basis, he held that the concluded contract could not later be altered by anything printed on the ticket.

According to Lord Denning:

…the customer is [only] bound by the exempting condition if he knows that the ticket is issued subject to it; or, if the company did what was reasonably sufficient to give him notice of it.

According to Lord Justice Megaw:

In my view the judge was wholly right on the evidence in the conclusion which he reached that the defendants have not taken proper or adequate steps fairly to bring to the notice of the plaintiff at or before the time when the contract was made that any special conditions were sought to be imposed.

I think it is a highly relevant factor in considering whether proper steps were taken fairly to bring that matter to the notice of the plaintiff that the first attempt to bring to his notice the intended inclusion of those conditions was at a time when as a matter of hard reality it would have been practically impossible for him to withdraw from his intended entry upon the premises for the purpose of leaving his car there.

According to Sir Gordon Willmer:

But it seems to me that the judge below was on the right track when he said, towards the end of his judgment, that in this sort of case, if you do desire to impose upon your customers stringent conditions such as these, the least you can do is to post a prominent notice at the entrance to the premises, warning your customers that there are conditions which will apply.

The Court also held that the nature of the intended exemption condition is a factor to be taken into account in assessing the reasonableness of what was done to bring it to the notice of the other party. According to Lord Justice Megaw:

When the conditions sought to be attached all constitute, in Lord Dunedin's words [1918] AC 846, 847, 'the sort of restriction ... that is usual,' it may not be necessary for a defendant to prove more than that the intention to attach some conditions has been fairly brought to the notice of the other party. But at least where the particular condition relied on involves a sort of restriction that is not shown to be usual in that class of contract, a defendant must show that his intention to attach an unusual condition of that particular nature was fairly brought to the notice of the other party. How much is required as being, in the words of Mellish LJ, 2 CPD 416, 424, 'reasonably sufficient to give the plaintiff notice of the condition,' depends upon the nature of the restrictive condition.

Significance

This decision affirmed the obiter dicta comments of Lord Justice Mellish in *Parker v South Eastern Railway Company* that the appropriate test to be applied in determining whether a term in an unsigned contract is an express term of the contract is whether reasonable notice has been given of the term at the time or before the contract is formed. It is also authority for the proposition that the nature of the disclaimer will be relevant to a determination of whether the steps that were taken to bring it to the attention of the other party were reasonable.