Case No: C1/2009/1313

Neutral Citation Number: [2009] EWCA Civ 1411
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
QUEEN'S BENCH DIVISION
(HIS HONOUR JUDGE OLIVER-JONES QC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday 27th November 2009

Before:

LORD JUSTICE SEDLEY

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Between:

	The Queen on the Application of Dawood	**Appellant**
	- and -	
	Parking & Traffic Appeals Service & anr	**Respondent**

- -

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Mr Simon Butler (instructed by BSG Solicitors) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT ATTEND AND WAS NOT REPRESENTED

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Judgment

(As Approved by the Court)

Lord Justice Sedley:

1. This is a renewed application made with his customary skill by Mr Simon Butler for permission to appeal against a decision of the Administrative Court. The decision was given by HHJ Oliver-Jones QC on an application for permission to seek judicial review of the adverse decision of a parking adjudicator.

2. The adjudicator had refused to quash a penalty charge notice issued to the applicant, Dr Dawood, in circumstances which would certainly raise eyebrows. The circumstances were that Dr Dawood had parked his motor scooter on a section of pavement in Cleveland Street London W1 of which he was the owner. One might have thought that nobody could commit a criminal offence by parking a motor scooter on his own land. But the adjudicator took the law to be otherwise and HHJ Oliver-Jones held that the contrary was not arguable. Moreover on application to this court Sir Richard Buxton took exactly the same view. Hence the renewal today.

3. The reason why the parking fine was upheld was that the restriction of parking which there undoubtedly is in Cleveland Street governs "any length of highway or of any other road to which the public has access" by virtue of section 142 of the Road Traffic Regulation Act 1984. The situation on the adjudicator's finding was therefore simply this: that, albeit Dr Dawood owned the subsoil, the surface was subject to access by the public as users of Cleveland Street. That being so, the offence was made out.

4. Mr Butler submits that it is a false reading of the legislation. He submits not merely that the word "or" in the formula which I have read is disjunctive but that it represents a two-stage inquiry, of which one only reaches the second stage if there is a negative answer to the first; in other words, if Cleveland Street is a highway, the inquiry ends there and it matters not whether it is another road to which the public has access. That in itself, it seems to me, does not get him out of his difficulties because if the highway which Cleveland Street constitutes includes a right of passage and repassage over the privately owned section of pavement with which we are concerned, he is no further forward. That appears to me to be his first difficulty.

5. The second is that for the disjunction on which he relies he founds upon the decision in Clark v General Accident [1998] 1 WLR 1647, a decision of the House of Lords. The issue for the House in two conjoined appeals was whether a multi-storey car park formed part of a road for the purposes of Motor Insurers Bureau liability. It was held that it did not. But in the course of so holding, Lord Clyde, giving the leading speech, said:

> "I turn next to consider the statutory definition of the word "road" in section 192 of the Act of 1988. In applying the definition the first question to be asked is whether the place in issue is a highway. We are not concerned here with that possibility and it is sufficient to observe that it includes such things as public footpaths and public bridleways. Failing an affirmative answer one then has to proceed to the words which follow; Does the place qualify as being 'any other road to which the public has access?'"

Lord Clyde goes on to explain how the latter question falls analytically into two parts. I

do not accept that Lord Clyde is there describing a rigid process of reasoning which has to be gone through in every case in which this form of statutory definition is employed. What he is describing is how one solves the problem that confronted the House, which was whether a car park was a road or highway such as to make the Motor Insurers Bureau liable for injuries occasioned there. For that purpose it is no doubt sensible first to ask: Is it a highway? Clearly a car park was not a highway. All that was then left was whether it was a road, and it was held it was not that either. It does not mean for a moment, in my judgment, that the process takes the form for the purposes of parking adjudication that Mr Butler submits it does. So that even if he were able to establish that Cleveland Street was a highway and -- what I very much doubt -- that by that token the piece of pavement owned by Dr Dawood was excluded from it, it would not relieve him of the need to show that Cleveland Street was not also another road to which the public has access in point not only of its road surface but of its pavement.

6. The latter was not only argued against him but it was conceded; so that all that Mr Butler can do is to fall back on this segregated approach to the defined meaning of the word 'road'. Even assuming in his favour that that will help him, it is not in my judgment an arguably correct approach in law. This may not be exactly plain English, but it is an intelligible formula which is intended to go wide, as wide as permitting the control of parking on any section of road or street which the public habitually and freely pass over. Counter-intuitive though it may be to say that even the owner of the land in question is caught by such provisions, it seems to me that the contrary really is unarguable, notwithstanding Mr Butler's valiant efforts to argue it, and I regret that I have to refuse him permission to appeal to this court. It may be some comfort to Dr Dawood that the refusal of permission means that he is not going to be at risk for very large costs indeed should he, as I fear would be inevitably the case, lose the full appeal.

Order: Application refused.