

Party: Claimant
Witness: M Wilshire
Statement: First
Exhibits: "MPW1" - "MPW7"
Date: 27.07.20

Claim Number:

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

B E T W E E N

- (1) MULTIPLEX CONSTRUCTION EUROPE LIMITED
- (2) LUDGATE HOUSE LIMITED
(INCORPORATED IN JERSEY)

Claimants

and

PERSONS UNKNOWN ENTERING IN OR REMAINING AT
THE CLAIMANTS' CONSTRUCTION SITE AT BANKSIDE YARDS WITHOUT
THE CLAIMANT'S PERMISSION

Defendants

**WITNESS STATEMENT OF
MARTIN PHILIP WILSHIRE**

I, MARTIN WILSHIRE of 99 Bishopsgate, 2nd Floor, London EC2M 3XD WILL SAY as follows:-

1. I am the Health and Safety Director for the First Claimant.
2. I make this witness statement in support of the Claimants' application for an injunction to prevent the Defendants from trespassing on the construction site owned by the Second Claimant and known as Blackfriars Road, London SE1 9UY as shown edged red on the plan at Schedule 3 to the Particulars of Claim ("Bankside Yards").

3. Where the facts referred to in this witness statement are within my own knowledge they are true; where the facts are not within my own knowledge, I believe them to be true and I have provided the source of my information.

Background / Property Ownership

4. Excluding Bankside Yards, the First Claimant is currently undertaking 8 major construction projects in central London. I am responsible for health and safety issues at each of these construction sites.
5. On Monday 3 August 2020, the First Claimant will take possession of another construction site in London to undertake a project known as Building 3 Bankside Yards "Bankside Yards".
6. The Second Claimant is the registered freehold and leasehold owner (and the party entitled to immediate possession) of the land and buildings on which Bankside Yards is to be constructed. Copies of the following registered titles which are vested in the Second Claimant are now produced and shown to me marked "**MPW1**"):-

Address	Interest	Land Registry Title No.
Ludgate House 245 Blackfriars Road London SE1 9UY	Freehold	TGL62703
Invicta Plaza - airspace and pillars	Leasehold	TGL541676

7. On 30 January 2020, the First Claimant and the Second Claimant entered into an early works agreement ("the Agreement") pursuant to which:-
- 7.1 the parties record their intention to enter into a construction contract adopting the JCT Design and Build (2016 Edition) form of contract (subject to amendments in Annex 2 to the Agreement) for a contract sum of around £179 million ("the JCT Contract");
- 7.2 pending the parties entering into the JCT Contract, the First Claimant is to undertake the early works provided for by the Agreement in accordance with the JCT Contract terms (clause 6(a) of the Agreement);
- 7.3 the Second Claimant appoints the First Claimant as principal designer for the purposes of the Construction (Design and Management) Regulations 2015 (clause 7 of the Agreement);

8. The provisions of condition 2.2 of the JCT Contract (which is incorporated into the Agreement) impose on the First Claimant various responsibilities to comply with statutory requirements which are relevant to the health and safety of those who work at / visit Bankside Yards.
9. The provisions of condition 2.3 of the terms of the JCT Contract (which is also incorporated into the Agreement) confer on the First Claimant the right to possession of the land and buildings for the duration of the works.
10. I have not exhibited copies of the Agreement (188 pages including schedules) and the JCT Design and Build (2016 Edition) form of contract (116 pages including schedules) to this statement but copies will be available at the hearing of the Claimants' application. I understand from Stuart Wortley of the Claimants' solicitors (Eversheds Sutherland) that copies will also be made available to any interested party who may request them.
11. Currently, the projected date for practical completion of the first phase of the Bankside Yards project is May 2022. The second phase should be completed by December 2023.

Urban Exploring

12. Urban exploring is an activity which involves the exploration of buildings and man-made structures within the urban environment. The activity is associated with trespassing on parts of buildings to which public access is prohibited and on other property including construction sites.
13. The term urban exploration is commonly abbreviated to *urbex*, *UE*, *bexing* and *urbexing*.
14. One particular variant of urban exploration is known as 'roof-topping'. This is an activity in which individuals will gain access to the roof of a building (without the consent of the building owner) in order to take photographs and / or videos. Typically urban explorers target the tallest "trophy" buildings in any given city – particularly those which offer the best views.
15. This issue is not limited to tall buildings which are occupied. It also affects structures under construction and the cranes which are used to construct them. I am informed by Mr Wortley that during 2018 and 2019 there has been a significant increase in urbex activity affecting construction sites.

16. Whilst trespass on construction sites is not a new phenomenon, the key difference with the recent focus of urban exploring on construction sites (and the reason for the First Claimant's concern) is the use of social media platforms (including YouTube, Instagram and Facebook) to upload videos and still images of urban explorers in self-evidently dangerous situations whilst trespassing.
17. There have always been people who have scaled tall structures for their own amusement. Whereas this was previously a niche activity involving a small number of individuals, it has become a form of entertainment for others. This is causing particular problems and risks. First, it has promoted the activity more widely and encourages others to participate in "copy-cat" acts, with some sites being repeatedly trespassed. Secondly, the desire for exciting and novel footage encourages urban explorers to engage in increasingly dangerous activities, such as footage of people using the horizontal arms of cranes as monkey bars, or performing acrobatic stunts on ledges at extreme height.
18. Construction sites which include tower cranes have become a particular target for Urban explorers. The Bankside Yards construction site will include a minimum of 3 tower cranes.
19. I understand that social media platforms pay those who post content upon them by reference to the number of 'followers' or 'subscribers' of the person posting and/or the number of 'views' of their content. I am informed by Mr Wortley that some urban explorers have many hundreds of thousands of followers on social media and some of their videos have been viewed millions of times. For example, before he was made the subject of a Criminal Behaviour Order in December 2018 Ally Law was one of the most prolific posters of videos of urban exploration. As at 26 June 2020, his YouTube channel shows him to have 3.15 million subscribers. The video on his channel entitled "*ROOFTOP POLICE ESCAPE *Arrested**", which shows him and others scaling the glass roof of Cabot Circus shopping centre and then running from security, before eventually being arrested, has been viewed 21,053,209 times.
20. Some urban explorers (including Harry Gallagher and Ryan Taylor) have been able to secure sponsorship from brands which wish to target a young audience – typically fashion brands for clothing and shoes.

Trespassing on Construction Sites

21. All urban exploring is dangerous, but trespassing on construction sites has particular hazards which construction workers are aware of and which they are

trained to deal with (but which trespassers will necessarily be unaware of). All lawful visitors to the site are obliged to wear full Personal Protective Equipment - which urban explorers never do.

22. The risks associated with such hazards are increased in circumstances where once they have been seen by on site security, urban explorers are often tempted to run away in an attempt to avoid being caught by security guards or the Police. Within the Bankside Yards Sites various arrangements are in place, such as scaffold guardrails to protect people from falling down voids – some of which are several stories deep. Urban explorers think nothing of vaulting over scaffold guardrails but on a construction site this is particularly dangerous. In addition to that there are various risks arising from normal construction hazards (including risks of tripping and falling).

Urban Exploring - Risks

23. The risks involved in this activity are apparent from the number of deaths around the world. I am informed by Stuart Wortley that a relatively brief search of the internet identifies the following deaths in recent years:-
- 23.1 June 2013 – Pavel Kashin (aged 24) died when he fell from a building in St Petersburg;
 - 23.2 April 2014 - Xenia Ignatyeva (aged 17) died when she fell from a railway bridge in St Petersburg;
 - 23.3 February 2015 – Carl Salomon (aged 19) died when he fell from a crane in Sydney;
 - 23.4 October 2015 - André Retrovsky (aged 17) died when he fell from a building in Vologda in Russia;
 - 23.5 December 2015 - Connor Cummings (aged 24) died when he fell from the roof of the Four Seasons hotel in New York;
 - 23.6 March 2016 – Tolya (aged 13) died when he fell from the roof of a building in Saratov;
 - 23.7 October 2016 - Christopher Serrano (aged 25) died when he was hit by a train in New York;

- 23.8 November 2016 - Yuri Yeliseyev (aged 20) died when he fell from a building in Moscow;
- 23.9 November 2016 – Wu Yongning (aged 26) died when he fell from a building in Changsha in China;
- 23.10 January 2017 - Nye Frankie Newman (aged 17) died when he was hit by a train in Paris. Nye Newman was a founding member with Rikke Brewer (the First Defendant) of the Brewman Group – an urban explorer collective of climbers;
- 23.11 January 2017 - Maxime Sirugue (aged 18) died when he fell from a bridge in Lyon in France;
- 23.12 March 2017 - Thomas Rhodes (aged 19) died when he fell from a building in Sheffield;
- 23.13 June 2017 - a young man who has not yet been named died when he fell from a bridge in Kiev;
- 23.14 August 2017, Leon Hoyle (aged 12) died when he fell through the roof of a disused industrial building in Lancashire;
- 23.15 October 2017 – Eric Janssen (aged 44) died when he fell from the London House Hotel in Chicago;
- 23.16 July 2018, Jackson Coe (aged 25) died when he fell from a building in New York.
- 23.17 September 2019, Johnny Turner (aged 28) died when he fell off the scaffolding at a site in Waterloo, London.
24. I understand from Mr Wortley that in January 2018, the body of Sam Clarke (aged 21) was found on the construction site at 1 - 5 Bank Street at Canary Wharf after he gained unlawful access to it although the precise circumstances of his death are unclear.

Other Multiplex Construction Sites

25. In July 2018, First Claimant obtained an injunction to restrain trespass at 3 construction sites in the City (namely 22 Bishopsgate, 100 Bishopsgate and Principal Place Residential) after those sites had been repeatedly targeted by urban explorers.

26. Copies of the interim and final injunctions relating to these sites dated 31 July and dated 19 September 2018 respectively are attached marked "**MPW2**".
27. In March 2019, First Claimant obtained an injunction to restrain trespass at 7 of our construction sites in the City (namely One Nine Elms, DAMAC Tower, 48 Carey Street, 80 Charlotte Street, Marble Arch House, Broadway, Chelsea Barracks) after those sites had been repeatedly targeted by urban explorers.
28. A copy of the injunction relating to these sites dated 1 March 2019 is attached marked "**MPW3**".
29. In December 2019, First Claimant obtained an injunction to restrain trespass at 2 Dovehouse Street, London SW3 6LA after the site had been targeted by urban explorers.
30. A copy of the injunction relating to the site dated 18 December 2019 is attached marked "**MPW4**".
31. Some of the construction sites which were covered by the September 2018 and March 2019 injunctions have been handed over to employers. Currently, the First Claimant has 8 major construction projects all of which are protected by injunction. From Monday 3 August (when the First Claimant assumes responsibility for the Bankside Yards construction site) it will have 9.
32. The First Claimant has been pleased to note that the injunctions referred to above have had a significant deterrent effect, with the number of incidents having reduced dramatically.
33. I am informed by Mr Wortley that several other major construction sites have been targeted by urban explorers within the last 18 months and that his firm has obtained injunctions to restrain trespass on behalf of:-
 - 33.1 Canary Wharf Contractors (in relation to the development at Southbank Place);
 - 33.2 multiple companies at Canary Wharf (including in relation to the construction sites at Newfoundland Tower and on Bank Street);
 - 33.3 Berkeley Group (in relation to 250 City Road and South Quay Plaza);
 - 33.4 Wates, Sisk, McLaren and Maclaleer & Rushe (in relation to 15 construction sites at Wembley Park); and

33.5 Sir Robert McAlpine Limited in relation to the major re-development of Victoria Square in Woking and 3 development sites in Manchester.

Multiplex Security at Bankside Yards

34. The First Claimant takes all safety and security issues extremely seriously. Our arrangements as Principal Contractor exceed the minimum requirements in relation to these issues which are prescribed by key legislation, namely the Construction Design and Management Regulations 2015.
35. In an attempt to deter trespassers, my team will be implementing the following security measures at Bankside Yards:-
- 35.1 timber site hoardings which are a minimum of 2 metre high;
 - 35.2 lighting;
 - 35.3 24 hour security personnel;
 - 35.4 intruder alarms (both audible and silent);
 - 35.5 anti-climb measures on hoardings and tower cranes; and
 - 35.6 closed circuit television (including - in some instances - motion sensors).
36. I am satisfied that all sensible precautions that could be taken to prevent urban explorers from gaining access to the construction sites which are the subject of these proceedings have been taken.
37. Notwithstanding these steps, I believe that Bankside Yards remains under the imminent threat of trespass from urban explorers.
38. There have been incidents of trespass and attempted trespass at other Multiplex construction sites:
- 38.1 on 16 October 2019, an unidentified male cyclist unsuccessfully attempted to gain access to the Broadway construction site, the individual was spotted by security and escaped;
 - 38.2 on 17 October 2019, three males accessed the Broadway construction site in breach of the March 2019 injunction. Two of the individuals have been identified as Alexander Galliker and Joel Merki and an application for

contempt of court against them is in hand. The third individual escaped and his identity remains unknown;

38.3 on 8 December 2019, three unidentified individuals climbed the fire escape at 22 Bishopsgate in breach of the September 2018 injunction but were successfully chased away by contractors;

38.4 later on 8 December 2019, the same individuals gained access Damac Tower in breach of the March 2019 injunction;

38.5 on 20 February 2020, two unidentified males entered the Broadway construction site in breach of the March 2019 injunction but escaped over the hoarding after being intercepted by security; and

38.6 on 27 June 2020, four unidentified males entered the DAMAC tower construction site where they were intercepted by security and ran off after being informed of the injunction.

The reasons for seeking an injunction

39. I have sought to assess the threat which urban explorers pose to our security and health and safety operations carefully. I have also sought to ensure that the Claimants' response to the threat is proportionate and properly reflects the health and safety threat that this activity represents.

40. Whilst I am satisfied that the security arrangements are as robust as they reasonably can be, our construction sites can never be 100% secure.

41. The risk posed by urban explorers represents a particular and serious concern for the Claimants in relation to the properties which are the subject of these proceedings for the following reasons:-

41.1 we take our responsibilities for the safety of our construction sites seriously and wish to do everything reasonably possible to prevent another tragic accident;

41.2 the Bankside Yards construction site is in a prominent location and will become an obvious target for urban explorers as the construction phase proceeds (the tower cranes are already a target);

41.3 given the prevalence of urban exploring activity across London, there is an obvious and serious risk that urban explorers will attempt to access the

Bankside Yards construction site unless they are prevented from doing so by an injunction;

41.4 the activities which urban explorers engage in are inherently dangerous and are generally carried out by juveniles and young adults. The activities are dangerous not only for the individuals concerned (as the examples of fatal accidents in paragraph 23 above so clearly demonstrate) but also for the emergency services and others who would have to come to their assistance should they get into difficulty;

41.5 those engaging in urban exploring appear to show little insight into the risks they are running. For example their videos often contain forms of attempted disclaimer, suggesting (somewhat artificially) that people should not replicate the activity and that the activity is being carried out responsibly. For example, Mr Law's video referred to above says "*The acts in it are performed by trained, experienced or otherwise supervised individuals*". This suggests that Mr Law somehow believes his activity is safe which is evidently not the case;

41.6 there are particular hidden dangers on construction sites which urban explorers will be unaware of and which they are not trained to deal with. Those dangers are exacerbated given that once spotted urban explorers will generally attempt to run away;

41.7 the behaviour of urban explorers is the irresponsible behaviour of individuals who have no comprehension of the impact which their activities have on the efforts of our security team to keep the construction sites safe and secure;

41.8 as I have stated, I am informed by Mr Wortley and I believe from my own experience and knowledge of the construction industry that the activity levels of urban explorers on construction sites remain high.

42. The potential consequences of trespass to this site are self-evident. As well as the risk of death or serious injury to the trespassers, they place those protecting the sites and trying to remove them at risk. Whilst the potential financial impact to the owners of the sites and to First Claimant of someone being killed or seriously injured on one of these sites is a secondary consideration, it is nevertheless significant.

43. One of the reasons that injunctions are an effective deterrent against urban exploring activity is that the more experienced individuals who are engage in this

activity understand that breaching an injunction constitutes “contempt of court” which is a serious matter.

44. I am informed by Mr Wortley that:-

44.1 in December 2018, his team acted for the owners of Canary Wharf in an application for committal for contempt of court against 5 well-known urban explorers who in September 2018 climbed Newfoundland Tower (which was then a construction site) in breach on an injunction to restrain trespass;

44.2 each of the respondents to that application was informed by the Judge that if they were found to be in contempt of court in similar circumstances in the future they would be given an immediate custodial sentence;

44.3 in October 2019, Mr Wortley’s team acted for the owners of The Shard in an application for committal for contempt of court against George King-Thompson who in July 2019 climbed The Shard in breach of an injunction to restrain trespass;

44.4 Mr King-Thompson was given an immediate custodial sentence of 24 weeks (of which he served half);

44.5 both of these cases received a lot of publicity and they are well known amongst the urban exploring community – contributing to the deterrent effect of injunctions to restrain trespass.

45. Copies of the judgments given in both committal hearings are attached to this witness statement marked “**MPW5**”.

46. Having carefully considered the position, the First Claimants’ senior managers have decided that applying for this injunction is in the best interests of maintaining the safety and security of urban explorers, the First Claimants’ employees, members of the public and the emergency services.

47. We cannot possibly know who all these people are let alone where they all live. Furthermore we are not only concerned with British nationals but with people from around the world. Urban explorers do not advertise their intended targets in advance. For that reason, it is impossible to know when the next attempt will be made.

Justification for an Injunction

48. The Order sought by the Claimants is to prevent unlawful activity, for which there can be no lawful justification.
49. Unlawful attempts to enter these construction sites for the purposes of urban exploring entail a significant risk of death and personal injury. In those circumstances, damages would clearly not be an adequate remedy for the Claimants.
50. Conversely, since the Order which the Claimants seek is only to prevent unlawful activity, there is no question of the Defendant suffering any actionable loss or needing compensation in damages. However, I believe that it can be properly inferred from the other activity in central London, and the activity at the two nine elms sites, that trespass, or further trespass, to each of these sites is a strong probability in the immediate future unless an injunction is granted.
51. Although I can foresee no way in which the Defendant could suffer loss or damage from this injunction, I am nevertheless authorised to provide the necessary cross-undertaking to pay any sum which the Court considers appropriate to compensate the Defendant for any loss if it is subsequently determined that the Claimants are not entitled to the Order which they seek. There is now produced and shown to me marked "MPW6" a copy of the First Claimant's accounts for the period ending 31 December 2018.

Permission to issue without a named defendant and to dispense with service

52. Since no named individual is a defendant to these proceedings, I am informed by Mr Wortley that the permission of the Court is required to issue the Claim Form, pursuant to CPR 8.2A and I respectfully ask that the Court grant the necessary permission.
53. Since no person will become a defendant to the proceedings unless they knowingly breach the injunction it is not proposed to serve the proceedings on anyone. I have been advised that if a party knowingly breaches the Order I ask the Court to make in this case, they will automatically become a party to the proceedings by that act.
54. However, in order to ensure that service of the proceedings on that party has been successfully effected, I ask the court to order substituted service on any such party by means of a reference in the notice of the order to be posted, referring to the

fact that copies of all the documents in the proceedings (Claim Form, Application Notice, Particulars of Claim and Witness Statement in support) can also be found at the website identified in the warning notice, and at the site office.


55. As to the service of the injunction I am informed by Mr Wortley that the procedure which has been adopted before and which it is proposed to adopt in this case, is:-

55.1 to upload a complete copy of the injunction to a Multiplex website; and

55.2 to post copies of a warning notice around the perimeter of the Bankside Yards construction site at frequent intervals informing people of: the existence and nature of the injunction; the potential consequences of breaching it; an address at which copies of the proceedings can be sought; and the web address at which the injunction can be viewed.

56. I attach to this statement a suggested form of notice marked "**MPW7**".

I believe that the facts in this Witness Statement are true

A handwritten signature in black ink, appearing to read 'M. Philip Wilshire', written over a horizontal line.

Martin Philip Wilshire

27 July 2020