

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

B E T W E E N:

(1) MULTIPLEX CONSTRUCTION EUROPE LIMITED

(2) 30 GS NOMINEE 1 LIMITED

(3) 30 GS NOMINEE 2 LIMITED

Claimants

and

PERSONS UNKNOWN ENTERING IN OR REMAINING AT

THE 30 GROSVENOR SQUARE CONSTRUCTION SITE

WITHOUT THE CLAIMANTS' PERMISSION

Defendants

NOTE OF VIRTUAL HEARING ON 6 MAY 2021

BEFORE ROGER TER HAAR QC

SITTING AS A DEPUTY HIGH COURT JUDGE

Toby Watkin ("TW") of Landmark Chambers appeared for the Cs.

Background

TW introduced the application, stating that Cs sought an interim (temporary) injunction to stop Ds from trespassing on their construction site. The Judge had a copy of the hearing bundle, authorities bundle and TW's skeleton argument (written summary of legal submissions).

The Judge had printed off the documents which TW had suggested be read in advance of the hearing including the witness statements of Martin Wilshire and Stuart Wortley (both dated 27 April) and the draft Order.

TW pointed out 2 typographical errors in paragraphs (1) and (8) of the draft Order.

TW explained the nature of urbex activity and the attractions of a construction sites with tower cranes.

TW set out his submissions on the law by reference to his skeleton argument.

- TW explained that the application was for an interim injunction on a *Quia Timet* basis (meaning that the injunction was being sought on an anticipatory basis);
- TW explained that the risks about which Cs were concerned were general risks from urban explorers in general rather than particular individuals - hence the action had been brought against Persons Unknown.
- TW set out the propositions on which the Court would need to be satisfied when granting an injunction to stop trespass by reference to the *Vastint* case (see below);
- TW set out the additional propositions on which the Court would need to be satisfied when granting an injunction against Persons Unknown by reference to the *Boyd v Inneos / Canada Goose / Cameron v Liverpool Victoria* cases (see below).

The Judge agreed that TW had accurately summarised the legal principles.

Service of the Application

TW informed the Judge that as there were no named Ds, Cs had not served the application.

For completeness, TW referred the Judge to the comments of Nicklin J in *Canterbury City Council v Persons Unknown* case suggesting that Cs should (on the facts of that case) have served the application on parties who might be affected by the order. That case followed an earlier decision of Nicklin J in which the Council had been criticised for failing to engage with members of the traveller community.

TW submitted that there would have been no equivalent benefit of serving an application in this case. Para (6) the draft Order provided for service of the application to be dispensed with.

The Judge said that he was content with this.

Service of the Proceedings / Order

TW explained that the nature of proceedings against Persons Unknown is such that there is no Defendant unless and until a party knowingly breaches the terms of the injunction at which point, that person / those persons automatically become a Defendant / Defendants. Paragraphs (8) to (14) of the draft Order provided for alternative service of the Proceedings and the Order.

TW referred to the Judge to the draft notice at p 295 of the hearing bundle which the Judge approved.

In support of the application, TW made the following submissions:-

(1) Real and imminent risk or “strong possibility” of tort ...

- TW referred to the continuing difficulties with urbex activity identified in MW / SW WSS
- TW referred to the fact that significant parts of central London would be visible from the tower cranes on this site – incl Buckingham Palace and Marble Arch – making it an attractive and obvious target

... irreparable harm

- TW referred to the risk of serious injury arising from unlawful activity on construction sites

- TW referred to the evidence of fatal accidents recorded in MW's w/s
- TW referred to the recent decision of Mrs Justice Stacey re: 40 Leadenhall Street (exhibited to SW's w/s) in which she had been satisfied as to irreparable harm

... has C taken other steps

- TW referred to MW's w/s which recorded various security measures and which stated that all sensible precautions have already been taken

(2) Impossible to name Ds

- TW said that although SW's ws named 12 individuals who had recently uploaded videos / photographs, it is impossible to know which urban explorers will target a site
- TW referred to the fact that at one time urban explorers used to disclose their intention to climb buildings or construction sites but they stopped doing this once they appreciated that websites were being monitored

(3) Possible to give effective notice

- TW referred to the committal proceedings following breaches of injunctions at Canary Wharf in 2018 and The Shard in 2019 – demonstrating that the Courts accept that service by (a) erecting warning notices on hoardings; and (b) uploading court papers to a company website are an effective method of bringing an injunction to the attention of Persons Unknown

(4) Injunction must correspond to the threat

- TW said that an injunction to prohibit access without consent is the only way of stopping urbex activity
- TW said that the injunction does not prohibit any lawful activity
- TW said that this was not a protestor case – so there was no need to undertake a balancing exercise of the landowner's rights against protestor rights (freedom of expression etc)

(5) Injunction must be sufficiently clear and precise

- TW referred to the draft order
- TW referred to the paragraphs in SW's w/s which demonstrate that injunctions to restrain trespass on construction sites are effective in practice

(6) Clear geographical and temporal limits

- TW said that the terms of the draft Order are intended to be "self-limiting" in that the injunction is only effective for as long as hoarding / security fencing is in place
- TW said that practical completion of the construction work is scheduled to be completed in 2024 sought and on that basis he sought an interim injunction until December 2023

TW offered to take the Judge through each paragraph of the draft Order but the Judge considered this unnecessary as he was familiar with its terms.

The Judge was satisfied that the grounds for the injunction were satisfied and that it was right to grant an injunction.

The Judge corrected the typographical errors in paragraphs (1) and (8).

The Judge was unwilling to grant the injunction until December 2023. Instead, he granted the injunction for 2 years with a return date of Friday 5 May 2023 at 10.30.

SSW
07.05.21