IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

CLAIM NO. QB-2020-002702

BETWEEN:

(1) MULTIPLEX CONSTRUCTION EUROPE LIMITED

(2) LUDGATE HOUSE LIMITED (A COMPANY INCORPORATED IN JERSEY)

(3) SAMPSON HOUSE LIMITED (A COMPANY INCORPORATED IN JERSEY) Claimants

and

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

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CLAIMANTS' SKELETON ARGUMENT

Application to extend injunction against persons unknown.

Hearing on 27/2/2025

Suggested pre-reading (about 2.5 hours of judicial time)

- Re-Amended Particulars of Claim [9–13]
- 19/1/2024 Order of Ritchie J [195–199]
- Transcript of Ritchie J's *ex tempore* judgment of 19/1/2024 [AB88–93]
- 20/12/2024 Application Notice [4–8]
- 20/12/2024 Jamie Godden WS [61–67]
- 20/12/2024 Emma Pinkerton WS#1 [14–18]
- 17/1/2025 Order of Collins Rice J [192–194]
- 20/1/2025 Emma Pinkerton WS#2 [200–203]

- 4/2/2025 Emma Pinkerton WS#3 [204–205]
- 5/2/2025 Order of Ritchie J [206–208]
- 12/2/2025 Summary Judgment Application (made on a precautionary basis) [209–213]
- 12/2/2025 Martin Wilshire WS [214–218]
- 24/2/2025 Rachael Bott WS [255–257]

The application(s).

1. Cs apply for continuing protection of a construction site from trespassers. The particular danger is from urban explorers, for whom tall structures such as the tower crane on site are a particular attraction.

2. By order on 17/1/2025 [194–196], Collins Rice J directed Cs to apply for this matter to be listed for hearing, indicating that the transcript of Ritchie J's *ex tempore* judgment of 19/1/2024 [herewith] was "essential reading". Noting that Cs' application invited the Court to make an order on the papers for a further renewal of what is a succession of earlier interim orders, Collins Rice J indicated that in her view (with numbers added):

> "Real issues of concern must arise about the serial replication of *interim* orders over a period of years with no visible prospect of a final determination. I do not consider it appropriate for the Claimants to expect a further extension of 15 months to be determined on the papers. This Order makes provision for a hearing accordingly.
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> At that hearing, the Claimants should expect not only to be required (1) to make the case for the necessity of injunctive relief, on its merits and by reference to evidence of how matters stand now; but also to explain (2) why this comes to Court as a request for more *interim* relief and (3) how it is proposed the matter be brought to a litigation conclusion."

3. Cs complied with Collins Rice J's order. The matter came back for hearing before Ritchie J on 5/2/2025. Ritchie J made the order at [206–208]. He adjourned the hearing, so that it could be advertised / notified more fully, in case any "Persons Unknown" might wish to attend. Ritchie J also gave permission to Cs to apply for summary judgment on a precautionary basis, in case there exists a legal requirement for Cs to obtain something recognisable under the CPR as "final" relief in cases of this kind (contrary to Cs' primary case: see further below).

4. Taking Collins Rice J's three requirements in turn:

(1) The necessity of injunctive relief on its merits and by reference to evidence of how matters stand now.

5. As indicated by the transcript of Ritchie J's *ex tempore* judgment of 19/1/2024: since 2020, Cs have obtained a succession of interim injunctions to protect their

construction site at Bankside Yard from trespass, in particular to guard against the risk of "urban explorers" who are attracted to the temptation of tall cranes and the like. Prior to the events of this year, the most recent such injunction was granted by Ritchie J an injunction on 19/1/2024, to last until 20/1/2025. Ahead of that date, on 20/12/2024 Cs applied for the renewal of Ritchie J's injunction, preferably on the papers. As explained above: on 17/1/2024, Collins Rice J refused to renew the injunction on the papers and ordered that Cs bring the matter into Court for a hearing, extending the injunction in the meantime for long enough to enable this to occur.

6. When proceedings commenced in 2020, the application was supported by the evidence of Mr Wilshire in a witness statement dated 27/7/2020 [338–350]. Later statements have in essence adopted what was there said, shown that the injunction is serving its intended purpose and that it is still required in view of the continuing risk, which is unlikely to end before the works are complete which is expected in early 2027: Wilshire #2 of 25/1/2021 [451–456], Wortley #1 of 23/2/2022 [486–491] and Wortley #2 of 21/12/2023 [523–528] esp ¶23 (practical completion then expected on 30/1/2027). This meets the requirements of a periodic "review" of a "newcomer" injunction: *Wolverhampton* ¶225 [AB83]; *Valero (2025 review)* [2025] EWHC 207 (KB) *per* Hill J at ¶¶20–23.

7. Mr Godden's statement of 20/12/2024 [61–67] provides a further account, updated to current conditions. He explains that the works are proceeding in phases, the first two of which are now complete [62, ¶10]. The latest phase involves the construction of a 50-storey residential tower for a contract sum of circa £173 million [62, ¶11]. This phase is projected to last until February 2027. The concrete frame of the residential tower is already constructed for the first 26 storeys. The frame for the remaining 24 storeys is due to be constructed. A crane is in place to facilitate this [62, ¶14]. Mr Godden explains that "It is the presence of the crane, and an associated common tower which runs up the outside of the part of the building that has already been constructed (both shown on the photograph at [133]) that is of particular concern for the First Claimant. As explained further below these structures present an increased risk of trespass at Bankside Yards. It is for this reason that the Application and draft orders seek to extend the current interim injunction until 30 April 2026." [63, ¶14].

8. Mr Godden proceeds to explain (again) the hazards of "urban exploring", as well as the continuing allure of this activity for some people, culminating most recently on 13/10/2024 in yet another senseless death of a young man posing for social media [63, ¶¶15–28].

9. Mr Godden also explains the extensive measures put in place by Cs from the point of view of site security. The site has continued to attract interest from presumed

would-be "urban explorers", including with what appeared to be a "scoping" exercise on 18/10/2024. However, the incidents of trespass and attempted trespass have decreased since the injunction has been in force. He considers that the injunction has served an important deterrent effect [65, ¶¶29–33]. There has been one further "major breach" of site security in the very recent past: see further below at ¶26. As explained in ¶26 below: the timing of this event strongly suggests that the injunction is working effectively.

10. Overall, Mr Godden's assessment is that the site will continue to be a target for urban explorers for as long as it remains a construction site. He considers that the site currently poses a higher risk as a result of the presence of the crane and high level platform, and associated common tower, which he anticipated would probably be removed in or around April 2026 [66, ¶36]. The most recent evidence is from Mr Wilshire, who in his statement of 12/2/2025 provides an update about the timetable and anticipates that the Site is likely to become safe enough for lifting the injunction at the end of 2026 [215–216, ¶¶11–14].

11. The exact details as described by Mr Godden and Mr Wilshire (and in the earlier evidence) are of course unique to the case — but the risk is generically similar to the one described by Sweeting J in *Elephant and Castle Property Co Ltd v. PU* [2023] EWHC 1981 at ¶¶5–12, esp ¶¶6–7 [AB3]:

> "6. The Claimants say that there is a threat of trespass by so called 'urban explorers' who trespass on high rise buildings and construction sites and commonly upload photographs and / or video recordings of their exploits to the internet. These recordings can then be viewed for entertainment by their subscribers or followers on social media. The purpose of posting this material appears to be to depict the individuals involved at heights and in precarious or exposed situations. The Claimants believe that there is a real and significant risk that trespassers will enter the Site (or attempt to do so) in order to climb the tower cranes and/or the buildings under construction, unless they are restrained from doing so by the Court.
>
> 7. Such activity is inherently dangerous and involves risks for other people such as the Claimants' employees or contractors and the emergency services and others who have to assist if those attempting to scale cranes or buildings get into difficulties. There have been well publicised fatalities both in this country and elsewhere as a result of urban exploring leading to falls from high buildings and other structures The Claimants' experience is that when challenged urban explorers will often run away. Attempts to do so feature in videos posted online. This is in itself dangerous in the context of a construction site where there may be an elevated risk of falls and other injury to those who are not familiar with the layout, who have not received specific training and who are not wearing safety equipment. Where there is an incursion by trespassers, equipment and structures on site, including cranes, must be checked before work can resume. This means that one of the potential consequences of such trespass is delay and interruptions to work on site with associated financial loss."

12. In his *ex tempore* judgment on 19/1/2024, Ritchie J enumerated the 13 factors which he considered arise for consideration when the Court is asked to grant an interim injunction against persons unknown, at ¶¶11–24. Ritchie J derived those factors from

the then-recent decision of the Supreme Court in *Wolverhampton City Council v. London Gypsies and Travellers* [2023] UKSC 47; [2024] AC 983 [AB8]. Essentially the same requirements might be expressed in different ways (eg, in *Jockey Club Racecourses Ltd v PU* [2024] EWHC 1786 (Ch) at ¶¶14–20 [AB100–103]; in *Shell Oil UK Ltd v. PU* [2024] EWHC 3130 (KB) at ¶59 [AB126–127]) — but in substance Ritchie J's checklist has stood the test of time to date, so far as I am aware.

13. In *Wolverhampton*, the Supreme Court recognised the important role of the High Court and Court of Appeal in developing the "relevant principles and safeguards … in the light of experience" ¶187 [AB75]. Since January 2024, there has been a certain amount of such evolution, including in the light of the experience of injunctions against persons unknown in the context of environmental protest. In particular, many airports applied for injunctions in the summer of 2024. There has been some refinement in the approach to requiring "informal notice" as distinct from "service" of applications etc on "persons unknown", in recognition of the point that a person "served" with proceedings or by an order is, strictly speaking, fixed with the normal consequences of service, including (for example) the consequences of failing to attend when informed of a hearing date: whereas one of the significant clarifications to have emerged from *Wolverhampton* is that a "persons unknown" injunction remains available (prior to breach) for modification / discharge on the application of any interested person, on any available grounds, including any which could have been deployed when the order was made. "It is inherently an order with effect *contra mundum*, and is not to be justified on the basis that those who disobey it automatically become defendants": *Wolverhampton* ¶238(ii) [80]. The language of "service" thus creates an unnecessary area of legal risk / uncertainty for potential defendants / persons unknown. Accordingly, although some orders continue to speak of "alternative service", it is now more normal (and more correct, in the sense of being more strongly protective towards potential defendants / persons unknown) to provide for "notification".

14. Cs submit that the circumstances continue to demonstrate the necessity for injunctive relief in relation to the site, including in light of the 13 factors listed by Ritchie J.

(2) Why this comes to Court as a request for more *interim* relief.

15. Cs' solicitor, Emma Pinkerton, provided a 2nd WS [200–203] in light of Collins Rice J's order of 17/1/2025.

16. Ms Pinkerton states her understanding of the law by way of explanation, as required by the Court.

17. Additionally, however, Cs submit that Ms Pinkerton's understanding of the law is, in fact, correct — as explained in *Jockey Club Racecourses Ltd v PU* [2024] EWHC

1786 (Ch) at ¶¶14–16 [AB100]. In somewhat more detail and so far as immediately relevant:

(1) "The injunction against newcomers is a wholly new type of injunction": *Wolverhampton* ¶144 [AB57]. The legal framework for such is one "enabling an escape from the twin silos of final and interim injunctions and recognising that injunctions against newcomers are all in substance without notice injunctions": *Wolverhampton* ¶151 [AB60].

(2) "Newcomer" injunctions are a new form of injunction for the enforcement of rights which are not seriously in dispute, as distinct from the familiar kind of interim injunction which is granted for "holding the ring" pending a resolution of disputed rights: *Wolverhampton* ¶163 [AB69].

(3) It follows that there is no meaningful distinction between "final" or "interim" orders: *Wolverhampton* at ¶¶138 [AB60], 139 [AB61], 140–143 [AB61–63], 167 [AB70] and 238 [AB86].

(4) Equity looks to the substance, not the form: *Wolverhampton* at ¶¶139 [AB61], 151 [AB66], 238(iii)(b) [AB86]. What is critical, is that the injunction contains adequate protections, including machinery that will ensure that

   (a) the Court continues to supervise the order, which is done by imposing a requirement of periodic review: *Wolverhampton* ¶¶107 [AB52], 217 [AB81];

   (b) so far as concerns the duration of the injunction, the relief does not "outflank nor outlast the compelling circumstances relied upon" to justify the order: *Wolverhampton* ¶167(iv) [AB70]; and

   (c) anyone potentially affected is notified of the order and can apply to the Court to consider the matter: *Wolverhampton* ¶232 [AB84].

(5) In particular, no order against newcomers is ever truly "final", precisely because anyone potentially affected by the order has liberty to apply — including on any grounds that could have been raised when the order was made: this was the point made in *Wolverhampton* at ¶232 [AB84].

18. In short, the Supreme Court agreed with the Master of the Rolls that "for as long as the court is concerned with the enforcement of an order, the action is not at an end": *Wolverhampton* ¶107 [AB46].

19. Accordingly, it was not improper for Cs to have applied for an extension of the injunction without coupling it with an application for "final" relief.

20. **Urgent / emergency injunctions:** Separate from the question of whether an order is "interim" or "final" is the question of whether it is "urgent" in the sense that the emergency is (said to be) so acute that an application is made to the Court without full preparation having taken place. The Court is familiar with emergency applications of this kind. In such cases, the Court might conceivably make an order for a short period even though (for example) the evidence is not yet collected properly: but only (if at all) for long enough to enable a claimant to come back with perfected evidence to satisfy the Court of the *Wolverhampton* requirements including, as the threshold question, "compelling need". In that situation, the Court might well find it helpful to apply a variant of the *American Cyanamid* test by asking itself whether it is safer to hold the ring by making the order, than by not making it. But the "ring being held" in that situation is not pending a trial or other "final" order: it is pending a *sui generis* hearing in which the threshold question is whether the claimant has shown a "compelling need" for the relief claimed.

21. That is consistent with the approach favoured by Farbey J in *Exolum Pipeline System Ltd v. PU* [2024] EWHC 1015 (KB), especially at ¶¶24–27 [AB184–185], where she held that the *American Cyanamid* principles add nothing to the test of compelling need: the test of compelling need embraces those principles and, if anything, is a higher threshold.

22. **Notice**: Also separate from the question of whether an order is "interim" or "final" is the question of whether a Claimant has adequately advertised / given notice of its intended application for a "newcomer" injunction. Collins Rice J has drawn attention to ¶10 of Ritchie J's *ex tempore* judgment [AB90]. The judge's concern may have been that this passage could be interpreted as suggesting that Cs must apply for "final" as distinct from further "interim" relief. However, Cs would respectfully suggest that this was not in fact the target of Ritchie J's reasoning. In ¶10 of his judgment [AB90], Ritchie J said that "… final injunctions can be granted but that power does not override the necessary notifications to persons unknown to bring a final hearing before the Court". Thus, Ritchie J was not suggesting that an application to continue an injunction against "persons unknown" must be coupled with an application for "final" relief: that, indeed, would be to resurrect what the Supreme Court had treated as a matter of mere form. Rather, he was making the point of substance that Cs had not attempted to give notice ("the necessary notifications") of their intended application, not whether it was in some way "final".

23. That interpretation of Ritchie J's judgment is consistent with the guidance in the Supreme Court about giving "informal notice" where this would not defeat one of the aims of the injunction: *Wolverhampton* ¶143(ii) [AB62], ¶174 [AB72], ¶¶226–229 [AB83–84].

24. On the question of notice, Ms Pinkerton fairly accepts that no express notice of the application made on 20/12/2024 was provided (although the website to which Defendants would have been directed was in fact updated with the relevant documentation) and, also, that notice could and should have been provided more expressly: ¶2.8 [202]. That is consistent with the guidance in *Wolverhampton* at ¶¶226–229 [AB83–84] (and by ¶22 [AB93] in Ritchie J's *ex tempore* judgment in the present case).

25. Ms Pinkerton intended to cure this omission in relation to the hearing listed for 5/2/2025. However, unfortunately by a further mistake, the measures taken did not include putting up fresh notices around the Site, which would have called express attention to the impending hearing: the notices which were present at the site point the reader to the website, which had been updated, but were not updated to make clear on their face what had changed procedurally since January 2024. This omission is what led Ritchie J to adjourn the hearing on 5/2/2025, to 27/2/2025. The omission has now been corrected: Rachael Bott WS, ¶4.1 [256–257].

26. Further incident: events have vindicated Ritchie J's requirements as to "informal notice" and shown the importance of ensuring that the notices posted on Site contain on their face a correct description of the current situation: on 10/2/2025, there was a further "serious breach" of site security, as reported by Mr Wilshire in his statement of 12/2/2025 [¶¶17–21, 216–217]. It is hard to resist the inference that the would-be "urban explorers" had, indeed, made a close study of the Court's order from 2024, possibly on their "scoping" outing in October 2024 (see ¶9 above) — and timed their attempted adventures to take place after the date when they anticipated the injunction would end.

27. Thus, the *Wolverhampton* requirement of "informal notice" by advertisement will have been met by the time of the hearing on 27/2/2025.

(3) How it is proposed the matter be brought to a litigation conclusion.

28. As indicated by the foregoing submissions, in this novel jurisdiction there is no such thing as a "litigation conclusion" until circumstances indicate that it is no longer necessary (or that it is otherwise inappropriate) for the injunction to continue.

29. However, in case the foregoing submissions are wrong, Cs would invite the Court to grant relief in "final" form, pursuant to their application for summary judgment (which they made on a precautionary basis, by leave of Ritchie J, in case this is needed)

Other matters.

30. In a further statement filed in support of the application for summary judgment, Mr

Wilshire asks for the Court to make an order long enough to last until the end of 2026 without a need for review in the meantime. This is linked to the expectation that by the end of 2026 the most tempting features of the Site will have been removed: ¶¶11–14 [215–216]. Mr Wilshire confirms that Cs will keep the order under review and, if they consider it safe to do so, will apply to discontinue the injunction in advance of that deadline.

31. The substantive legal requirement is that a "newcomer" injunction must not outlast its need: *Wolverhampton* ¶167(iv) [AB70]. The requirement of a review is to:

> "give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been: whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for continuance; and whether and on what a basis a further order ought to be made."

(*Wolverhampton* ¶225 [AB83]). In traveller cases, the Supreme Court endorsed a period of 12 months, partly for reasons to do with the dynamic situation in such cases (including local authorities' obligations in relation to travellers).

32. It is fair to say that twelve-monthly reviews have become practically conventional, including in cases far removed from traveller cases: eg, airports, power stations, oil terminals etc. Nevertheless, compared with the situation of travellers for which the Supreme Court endorsed a review every 12 months, the situation is far less dynamic in its material respects in relation to construction sites such as this: in relation to the aspects which matter, Mr Wilshire's evidence explains that there is already a clear time frame, meaning that nothing relevant is likely to change until the end of 2026.

33. Under such circumstances, and bearing in mind the substantial costs needed to mobilise for a review / renewal hearing, it would be a proper exercise of the Court's discretion to make an order which avoids the need to come back to Court before the end of 2026 (except, as indicated by Mr Wilshire, where Cs themselves consider that it would be safe to discontinue the injunction before then). This might equally be done (a) by making an indefinite order, subject to review in January 2027; or (b) by making an order to expire in early January 2027 unless an application for renewal is made in December 2026.

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TIMOTHY MORSHEAD, KC
25th February 2025