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

CLAIMANTS' SKELETON ARGUMENT

Application to extend injunction against persons unknown.

Hearing on 5/2/2025

Suggested pre-reading (about 2 hours of judicial time)

- 19/1/2024 Order of Ritchie J [251–255]
- Transcript of Ritchie J's *ex tempore* judgment of 19/1/2024 [AB88–93]
- 20/12/2024 Application Notice [3–7]
- 20/12/2024 Jamie Godden WS [63–69]
- 20/12/2024 Emma Pinkerton WS#1 [16–20]
- 17/1/2025 Order of Collins Rice J [194–196]
- 20/1/2025 Emma Pinkerton WS#2 [x–x]

- Re-Amended Particulars of Claim [11–15]

The application.

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.
>
> 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. 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.

4. 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. Most recently, Ritchie J granted 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.

5. When proceedings commenced in 2020, the application was supported by the evidence of Mr Wilshire in a witness statement dated 27/7/2020 [256–268]. 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 [369–374], Wortley #1 of 23/2/2022 [404–

409] and Wortley #2 of 21/12/2023 [441–446] esp ¶23 (practical completion then expected on 30/1/2027).

6. Mr Godden's statement of 20/12/2024 provides an updated account. He explains that the works are proceeding in phases, the first two of which are now complete [64, ¶10]. The latest phase involves the construction of a 50-storey residential tower for a contract sum of circa £173 million [64, ¶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 [64, ¶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 [x]) 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." [65, ¶14].

7. Mr Godden proceeds to explain 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 [65, ¶¶15–28].

8. 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 [67, ¶¶29–33].

9. 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 t a higher risk as a result of the presence of the crane and high level platform, and associated common tower, which are anticipated to be removed in or around April 2026 [68, ¶36].

10. The exact details as described by Mr Godden and in the earlier evidence are of course unique to the circumstances — 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."

11. 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.

12. 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 "notification" 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. Accordingly, although some orders continue to speak of "alternative service", it is now more normal (and more correct) to provide for "notification".

13. 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.

14. For completeness: there has been a slight change to the title / registration situation, explained by Cs' solicitor, Emma Pinkerton, in her 1st WS at ¶¶3.1–3.5 [17–18]. Ms Pinkerton has spotted that C3's title as registered at HM Land Registry has been split into two and that the part within the Site now has its own title number.

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

15. Cs' solicitor, Emma Pinkerton, has provided a 2nd WS [197–200] in light of Collins Rice J's order of 17/1/2025.

16. Ms Pinkerton explains 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 short and so far as immediately relevant:

    (1) "Newcomer" injunctions against "persons unknown" 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].

    (2) 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].

    (3) 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) anyone potentially affected is notified and can apply to the Court to consider the matter: *Wolverhampton* ¶232 [AB84], and also that

        (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 also that

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

(4) 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. 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.

19. **Notice**: Collins Rice J has drawn attention to ¶10 of Ritchie J's *ex tempore* judgment [AB90]. The judge's concern appears to be that this passage might be interpreted as suggesting that Cs must apply for "final" as distinct from further "interim" relief. However, Cs would respectfully point out 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.

20. On the question of notice, Ms Pinkerton fairly accepts that no notice of the application made on 20/12/2024 was provided and, also, that notice could and should have been provided: ¶2.8 [199]. That is consistent with the guidance in *Wolverhampton* at ¶¶226–229 [83–84] (and by ¶22 [AB93] in Ritchie J's *ex tempore* judgment in the present case).

21. Ms Pinkerton's statement indicates that this omission will have been corrected in relation to the hearing listed for 5/2/2025.

22. Thus, in point of substance, the *Wolverhampton* requirements will have been met by the time of the hearing on 5/2/2025.

23. Further, in view of the initial omission and of Collins Rice J's order of 17/1/2025, what Cs propose, in order to present the fullest possible opportunity to persons who might be affected by the order to be aware of the hearing, is that the matter return to Court after further notice, as soon as practicable. Naturally Cs would prefer not to incur the costs of this further exercise. The Court may well consider that the notification which will by now have been provided of the hearing on 5/2/2025 renders a further hearing unnecessary and indeed wasteful — bearing in mind, of course, the fulsome liberty to apply conferred on anyone who desires to re-open the matter. If so, then Cs would invite the Court on 5/2/2025 to grant the relief sought, without need of a further hearing before the next "review".

24. Alternatively: However, in case the foregoing submissions are wrong, Cs would invite the Court to extend the injunction for long enough to enable them to apply for formally "final" relief in the form of a summary judgment application.

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

25. 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.

26. However, as indicated above: in case the foregoing submissions are wrong, Cs would invite the Court to extend the injunction for long enough to enable them to apply for formally "final" relief in the form of a summary judgment application.

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TIMOTHY MORSHEAD, KC
3rd February 2025