

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)**

BETWEEN

(1) ESSAR OIL (UK) LTD
(2) STANLOW TERMINALS LTD
(3) INFRANORTH LIMITED

Claimants

And

PERSONS UNKNOWN ...

Defendants

NOTE OF JUDGMENT OF HHJ MONTY KC sitting as a Judge of the High Court

Thursday 11 May 2023

1. This is an application made by the Claimants against Persons Unknown connected with the Extinction Rebellion and Just Stop Oil campaigns for the continuation for a further 12 months of injunctive relief which was granted by Mr Justice Adam Johnson on 11 May 2022. That Order, in turn, followed from the original application for injunctive relief granted by Mrs Justice Bacon on 21 April 2022.
2. The 11 May 2022 Order granted injunctive relief until close of business today, and the Claimants by their substantive application before me seek to extend that for a further 12 months on broadly similar terms to the 11 May Order.
3. There are three subsidiary applications: first, to abridge time in respect of the service of the papers for today's injunction hearing; secondly, an application for relief from sanctions; and thirdly, an informal application to abridge time for that relief from sanctions application.
4. For the reasons I am about to summarise, I intend to grant all of the applications, including for substantive injunctive relief. I am going to set out the reasons for my decision relatively briefly. If it becomes necessary to obtain a transcript of this judgment, I will endeavour to fill out points I only intend to summarise now. I am going to direct, as indicated to Mr Walker, that a note of hearing and judgment is taken, or a transcript approved. If a transcript is ordered I will endeavour to approve it as soon as I receive the draft from the transcribers.
5. I need first to deal with the relief from sanctions application and the application to abridge time in respect of the relief from sanctions application.
6. This has come about because, in the Order of Mrs Justice Bacon dated 21 April 2022, there was no reference to service of the Particulars of Claim. That Order dealt at paragraph 14 with service by a number of methods which are cumulative, which includes service by email, publication on the First Claimant's website and putting up notices at the three sites.

7. As it happens, the Particulars of Claim were not formally served because there was no direction that they should be served in this way, but they were “served” by the methods set out in the Order as stated in the Second Witness Statement of Mr Holland. This was not spotted when the return hearing took place before Mr Justice Adam Johnson and was not spotted until this substantive application was being prepared.
8. The formal position is as follows. Service of the Particulars of Claim must be within 14 days of service of the Claim Form (CPR 7.4(1)(b)), therefore an application for relief from sanctions under CPR 3.9 is required. Although there is no formal application to abridge time for this application (which was only made on 5 May 2023), the application has been made informally as Mr Walker is entitled to do.
9. In considering whether I should grant relief from sanctions I must apply CPR 3.9 and the three-stage test in *Denton v White* [2014] EWCA Civ 906. This was, firstly, a serious and significant breach. Secondly it was inadvertently not included in the Order, and that is not a good reason for the breach. But when one turns to the third stage, and one takes into account all the circumstances of the case as well as the two criteria set out in CPR 3.9 and the overriding objective, it is clear that the Particulars of Claim had been provided (not formally served) in accordance with all methods of service. There is no doubt that I should grant relief from sanctions, and I do so in respect of the Particulars of Claim.
10. The next application I have to deal with is the application to abridge time for the injunction. The position is that the application, which was made on 5 May 2023, had to be served in accordance with the provisions of the previous Order and comply with the 3 days’ notice requirement that the rules set out. However, although service was effected by email to which there was no response, and by publication on the First Claimant’s website, the other requirement was that the documents should be placed in boxes at the three sites operated by the Claimants. That did not happen until effectively 9 May in respect of two of the sites and 11 May on the third site. They were put in those boxes the day before but the provisions of the May Order provide that effective service is 1 day thereafter, so the 3 clear days requirement has not been observed.
11. Under CPR 23.7(4), if an Application Notice is served but the period of notice is shorter than that required by a rule or practice direction, the Court may direct that the application has been served.
12. First, as Mr Walker says, the documents were served by email and on the website more than 3 days ago, in fact 6 days ago. Secondly, the service in the boxes on the sites, in practical terms, adds nothing as there is no evidence of anyone attending the sites. Thirdly, the Defendants are persons unknown so there are no named individuals that would be prejudiced by late service. And fourthly, there are no ongoing protests on any of the three sites as indicated in Mr Walker’s submissions. I am therefore going to grant the application and make an order under CPR 23.7(4) that good service has been given.
13. There is also protection for persons affected to make an application if they wish, once the Order is served in accordance with the directions in the substantive Order.
14. I now turn to the main application itself. This is now fairly well-trodden ground because the facts which persuaded Mrs Justice Bacon on 21 April 2022 and Mr Justice Adam Johnson on 11 May 2022 to grant, and then continue, the interim injunction are very much the same as they are now. I can take most of those from the notes of the judgment of those Judges on those occasions.
15. Mrs Justice Bacon’s Order was an interim order restraining the Defendants from undertaking certain prescribed acts on the land in question which are operated as oil facilities at Stanlow, Tranmere and Northampton. The Defendants are persons unknown but are associated with the Extinction Rebellion and Just Stop Oil groups who at various times have been involved with protesting against companies dealing with the extraction and production of fossil fuels.

16. The Claimants' application originally made last year was supported by a statement of the Chief Operating Officer of the First Claimant, Mr Barden. This was supported by a statement from the Claimants' solicitor, Mr Holland, which includes supporting documents and information in respect of service of the documents, including further evidence of continuing direct action.
17. Like Mr Justice Adam Johnson, I am satisfied that the Claimants have title to the sites. I will deal with those formalities shortly to discuss the factual position which has been updated by the Second Witness Statement of Mr Barden.
18. Mr Barden says that other operators in the oil industry, and National Highways, have sought injunctions and extensions to injunctions which have been granted in similar circumstances and against persons unknown. In my view, the evidence supports a continued threat to the oil industry being a target for protestor action.
19. Whilst Mr Barden states the Claimants have not had any direct action at any of the three sites, other oil operators have seen protests at their premises and he refers to a number of breaches of injunction orders. I am not going to read them all out but they are those set out in paragraph 24 of Mr Barden's Second Witness Statement. He then goes on to deal with continued threat to the oil industry and refineries in England and Wales. He sets out a number of incidents in paragraph 26 of his statement. Mr Walker has rightly drawn attention to at least one further incident that is not in that list but is in the documents exhibited to Mr Barden's statement. It is clear in my view that protests are continuing. Indeed, at paragraph 28 of Mr Barden's statement he summarises continued protestor activities right through to the incident that took place in April this year at the World Snooker Championships. Again, the exhibit to Mr Barden's Second Witness Statement brings things up to date with newspaper articles and Twitter posts which provide an overview of the continued threat. It is clear there is a continued threat to the industry in general.
20. This is of course an application for a *quia timet* injunction on the basis there is, at present, no actual activity on behalf of the protestors at the three sites. As ordered in the previous applications I am satisfied there remains a particular risk and threat to the three sites.
21. The three sites are those at Stanlow, Tranmere and Northampton.
22. The Stanlow site is a site of about 1900 acres. It is a key strategic national and regional asset and produces over 16% of the total output of road transport fuels in the UK annually. There are approximately 300-400 tankers visiting and 1000 people attending the site each day. Stanlow is owned by the First Claimant. Mr Barden explains in his first statement how that site is accessed.
23. The Tranmere terminal is used for the import of crude oil and diesel which is sent on to Stanlow and is run by the Second Claimant.
24. The Northampton Terminal is used for storing fuel products and I am satisfied, as was Mr Justice Adam Johnson, as to the Claimants' title to the three sites.
25. In *Shell v Persons Unknown* [2022], the two organisations, Just Stop Oil and Extinction Rebellion, were described as protest groups. There is a history of direct action at oil refineries and terminals, as summarised in Mr Barden's First Witness Statement. The second statement updated what he said in the first statement.
26. A number of sites, although not any of the three sites, have been targeted for direct action.
27. I am satisfied by the evidence of Mr Barden and the submissions of Mr Walker that the activities carried out by the Claimants at the three sites means they fall in the category of sites targeted by direct action. Mr Barden dealt with this in his first statement. He also discussed the increased

security measures put in place at the sites. As Mr Barden explained in his first statement, given the nature of the sites and activities, they are at heightened risk.

28. Any disruption at the sites would have a real genuine impact on the supply of oil, and particularly if tankers were not able to access the sites. There is a real concern that if there was trespass at the sites, an unplanned shutdown would have to occur which could result in apparatus failure and unintended adverse consequences.
29. Similarly, at the sites there would be a potential risk arising from mobile phone users by the protestors because there is a risk of igniting vapours, for example hydrogen fluoride and hydrogen sulphide, which are potentially released by tankers visiting the sites. Any temporary closure would adversely affect transport and inevitably cause a shortage of fuel. Even a one-day closure could result in outages across the north of England, and a multi-million pound loss were the sites to close.
30. As on the two previous occasions, I am satisfied that the risk is sufficient to grant a precautionary injunction, particularly given the threat is ongoing, as I have seen in Mr Barden's second statement.
31. As can be seen in the *Transport for London v. Lee* [2023] EWHC 402 case, there were more than 22 protests between November 2022 and February 2023.
32. The approach to the law is very much as was it was in front of Mr Justice Adam Johnson but perhaps a little clearer in the last 12 months. I accept what Mr Walker has said in his Skeleton Argument at paragraph 53 and onwards. *Shell v Persons Unknown* [2022] EWHC 1215 distils the law into 12 points, incorporating the law from *Canada Goose UK Retail Limited v Persons Unknown* [2020] 1 WLR 2802 and *Barking and Dagenham LBC v Persons Unknown* [2023] QB 295.
33. I will look at each of those briefly in turn. Before I do so, I should mention the applicable causes of action are trespass and nuisance, defined in Clerk & Lindsell on Torts 23rd Edition paragraph 19-01 as "... an act or omission which is an interference with disturbance or annoyance to a person in the exercise or enjoyment of ... his ownership or occupation of land or some easement, profit or other right used or enjoyed in connection with the land ...". There is also a private nuisance by interference with access to / from private land from / to the highway.
 - (1) The first issue is whether there is a serious question to be tried which is well known from the *Cyanamid* test. There is clearly a serious question to be tried.
 - (2) The second is that damages would not be an adequate remedy for the Claimants. I am satisfied that damages would not be an adequate remedy because of the risk to safety by trespass or blockades, the risk of traffic disruption, and the financial effect of a shutdown. There is no evidence that the Defendants could pay any damages and there is also a cross undertaking as to damages. The Claimants can clearly meet this.
 - (3) The third is the balance of convenience. As Mr Walker points out, it is not necessary to address this although the balance is firmly in favour of preventing trespass and nuisance.
 - (4) The fourth limb is whether there is a sufficiently real and imminent risk of damage so as to justify a precautionary/pre-emptive injunction. As Mr Justice Adam Johnson was satisfied, so am I. Imminent means not premature – Russell LJ in *Hooper v. Rogers* [1975] Ch 43. As set out in Mr Barden's statement I accept the risk is a real one. Breaches and injunctions granted in other cases, trespasses at other sites and protests continuing in 2023 show there is a real and continuing risk. Although there seemed at one point to have been

a cessation in protest events, that soon ended. There were disruptions and protests at the House of Lords, at Eversheds' offices, at Barclays and at the headquarters of Shell. All of this is dealt with in Mr Barden's Second Witness Statement. I also accept, as Mr Walker submits, that the Claimants, given the nature of the business, remain targets for protestors and that there is a real and imminent risk of damage for the reasons I have summarised.

- (5) The fifth limb is: the prohibited acts correspond to the threatened tort and only include lawful conduct if there is no other proportionate means of protecting the claimant's rights. As Mr Walker submits, the draft Order only prohibits unlawful acts; it only prohibits acts of trespass and nuisance, so I am satisfied of this limb.
- (6) The sixth limb is whether the terms of the injunction are sufficiently clear and precise. They are in my view. They are in terms very similar to if not identical to those already approved by Mrs Justice Bacon and Mr Justice Adam Johnson. As Mr Walker points out, they do not refer to trespass or nuisance – see *Canada Goose*.
- (7) The seventh is whether the injunction has clear geographical and temporal limits. It does. The proposed Order includes plans, the same plan which were the subject matter of the previous Orders. The plans are clear. The injunction has a proposed duration of 12 months. I mention here that the relief sought is on an interim basis. No final relief is sought by the Claimants as of yet. I agree with Mr Walker's approach. In light of the ongoing appeal in *Barking and Dagenham LBC v Persons Unknown* [2023] QB 295, where the Master of the Rolls expressed the view that there is no real distinction between interim and final relief in cases against persons unknown, the better approach is this should be interim relief for an interim period. The Order gives the Defendants or persons affected by it the right to reply. I also agree that a period of 1 year for the injunction that is sought is a sensible period as was case in *Shell v Persons Unknown*. The pattern of protest is unpredictable and a shorter period would mean more hearings would have to take place, and the Court would be in no better position. There is also a variation provision in the draft Order.
- (8) The eight limb relates to the defendants being capable of being identified. There have been no breaches of the Orders made in April or May last year. No Defendants can be added by name. There are methods of alternative service which Mr Walker submits and I accept are bound to bring the Order to the attention of any protestors as there would be notices at the entrances to the various sites. The emails will be sent to the two organisations' email addresses as before, and the papers will be available on the Claimants' website.
- (9) The ninth limb is the Defendants being identified in the Claim Form by reference to their conduct. The Claimants have identified the Defendants by way of three causes of action, as shown in the heading to these proceedings. This style of naming was adopted in *Ineos Upstream Ltd v. Persons Unknown* and approved by the Court of Appeal in the *Canada Goose* case, so I am satisfied that that limb is also satisfied in the present case.
- (10) The tenth limb relates to interference with Articles 10(2) and 11(2) of the European Convention on Human Rights. These are qualified rights. They do not permit trespass. Nor interference with the right to exit or enter, from or to, a highway – see *Secretary of State for Transport v. Persons Unknown* [2018] EWHC 1404 at [58], nor is deliberately obstructing traffic permitted – see *DPP v Cuciurean* [2022] QB 888 at paragraphs [36] and [45]. Interference with rights of way in breach of the current injunction would amount to trespass. It is important to note that the Claimants do not seek to prevent freedom of expression and assembly.

- (11) The eleventh limb relates to notifying the Defendants – see Section 12(1) and (2) of the Human Rights Act 1998. As outlined, the Order made by Mr Justice Adam Johnson ordered service by the cumulative methods and those have been complied with. By my order at the outset of this judgment, I have abridged time for the hearing, so I am satisfied that the eleventh limb is ticked.
- (12) The twelfth limb is that the Order does not restrain publication: s.12(3) HRA. This reflects the nature of what has been sought in other cases. As in *Shell v Persons Unknown*, the position is that s.12(3) is not engaged because preventing torts does not restrain publication – see *Shell v Persons Unknown* at [64] – [65]. In my view that is right. In any event, as Mr Walker points out, Mr Justice Adam Johnson and Mrs Justice Bacon were satisfied this was met as it is likely the Claimants would succeed at trial. I also hold that that is the case. It must be right at trial that protestors are not entitled to commit trespass or blockade rights of way, particularly given the financial consequences.
34. For all of those reasons, I am satisfied that I should make the Order in the terms sought. The injunction is effective immediately. There are one or two minor drafting points on the Order. We will deal with those in a moment.
35. I have already mentioned this being interim rather than final relief. So far as service is concerned, service will be as provided in the draft Order which mirrors the Order of Mr Justice Adam Johnson which are cumulative methods of service. There is only one minor change – the size of the notices will be A3 and not A2.
36. I am also going to accept the cross-undertaking in damages proffered by the Claimants.