Neutral Citation Number: [2024] EWHC 1061 (KB)

Case No: KB-2024-001199

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 May 2024

Before:

RORY DUNLOP KC
(Sitting as a Deputy High Court Judge)

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Between:

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD	**Claimant**
- and -	
(1) CHARLES SNELL	**Defendants**
(2) DAVID SNELL	
(3) STEPHEN MAY	
(4) ABDELLAH TAYEB (AKA CASTRO)	
(5) MICHAEL WUJECK	
(6) PERSONS UNKNOWN	

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Francis Hoar (instructed by the **Claimant**) for the **Claimant**
The First and Fifth Defendants in person

Hearing dates: 1 May 2024

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Approved Judgment

This judgment was handed down remotely at 3pm on 3 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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RORY DUNLOP KC

Rory Dunlop KC:

1. This is an application by the Claimant local authority and freeholder, the Council of the London Borough of Enfield for an interim injunction. The application was made without notice. There was what the Claimant has called 'informal notice' – i.e. an attempt on 25 April 2024 to place relevant documents in locations where they would be seen by the Defendants.

2. Francis Hoar of counsel appeared on behalf of the Claimant. The First and Fifth Defendants appeared in person. I am grateful to both sides for their assistance.

3. I announced at the hearing that I was going to adjourn the application part heard to a date between 14 and 17 May 2024. I also said I would reserve judgment. This is that reserved judgment.

Factual Background

4. This application relates to a location along the edge of the River Lee owned by the Claimant ("the Location").

5. The Claimant is involved in a regeneration project in a broader area including the Location. The regeneration project has been termed Meridian Water. The Claimant has provided a witness statement from Karen Maguire, who is the Claimant's lead officer for trespass and encampments, including those that affect the Meridian Water project. She says that the gross development value of Meridian Water is £6 billion and it will see 10,000 new homes and thousands of jobs.

6. It appears that the Claimant has entered into a contract with Taylor Woodrow, a construction company, to clear land and vegetation in preparation for the Meridian Water project. At some point, after some clearing had taken place, the Claimant discovered that the Defendants were living in area where Taylor Woodrow were due to be working. Ms Maguire says she became aware of the trespass approximately a year ago.

7. The First and Second Defendants are a father and son who have been living on a long narrow boat, which is moored in a location owned by the Claimant. Ms Maguire says they have likely lived at that site for 2-3 years. She says they have challenging health issues. She says that she has been engaging with them and trying to persuade them to move further up the River Lee but they have not yet agreed to do so. At the hearing Mr Hoar appeared to accept that the First Defendant was disabled.

8. The Third Defendant is also living in a narrow long boat. Ms Maguire says he has likely been at the site for approximately 2-3 years.

9. The Fourth Defendant is, I infer although this is not made entirely clear, living in a boat. Ms Maguire says that he has moved from further upstream. She says he is compliant with requests to move but has not yet agreed to move. He owns dogs.

10. The Fifth Defendant, Mr Wujek, is living in what Ms Maguire describes as a 'shack like structure' at the relevant location. Mr Wujek explained that it was a shed. Ms Maguire says she believes he has been on site for approximately 6 months. Mr Wujek told me that

he has three adult dogs. He told me that they have recently had puppies but he does not plan to keep the puppies. He told me that the dogs are essential to his mental health. He told me he suffered from depression and bipolar disorder. Ms Maguire says she has engaged with Mr Wujek to help him seek accommodation that will accept dogs but this has proved 'challenging'. Mr Wujek told me that Ms Maguire had not been in contact with him since January this year.

11. In addition there are 2 boats which do not belong to anyone, as the owner is deceased, and others whom Ms Maguire does not know who access the location.

12. On 11 January 2024, Ms Maguire asked for letters and notices to be served on the named Defendants. It appears that on or before 2 February 2024 the Canal & River Trust ("CRT") placed a mooring suspension notice at the Location. She advised applying for a possession order and injunction to remove the boats. I have seen no evidence that Mr Wujek was provided with any equivalent notice in relation to his shed.

13. On 7 March 2024 Taylor Woodrow served notice on the Claimant of a 'compensation event', namely 'client does not allow access to and use of Site'. The detail given was 'There are illegal boaters present along the west bank of the River Lea Navigation Canal'. They said that the contractor needed access to this area in order to carry out vegetation clearance and surveys. They say as part mitigation, they have proposed to fence off the area and progress the available areas. The notice did not quantify the extent of the compensation expected. It referred to illegal boaters but not specifically to Mr Wujek's shed.

<u>These proceedings</u>

14. The Claimant filed a Part 8 claim form dated 18 April 2024 and an application notice dated 18 April 2024. Each was sealed on 21 April 2024.

15. The application notice sought an order abridging time for service of the Part 8 claim form. It said that ordinarily there needed to be 21 days between service of the Claim Form and the hearing, pursuant to CPR 8APD20.8.

16. In the section of the application notice asking about who should be served with the application it was said '*N/A (application without notice although the Claimant will attempt to serve the draft notice and evidence in support on the identified Defendants and to inform them of the date of the hearing)*.'

17. The application and Part 8 claim form were accompanied by a signed witness statement from Karen Maguire, dated 18 April 2024. It contained a statement of truth. As the Claimant was intending (and did) make an application without notice, it was particularly important that the Claimant and Ms Maguire gave the court a true, fair and complete account of the relevant evidence.

18. In paragraph 3 of her witness statement, Ms Maguire said this: '*The Application Notice also seeks the abridgement of time for service. This part of the application is necessary because of a fear that if this application is not proceeded with immediately there will be at least 21 days before the Claimant is able to obtain the relief they seek against the Defendants' and in that time the Council will face financial penalties of around £142,000 per week and there is a risk of significant damage could be sustained to the locations*.' I

asked Mr Hoar to clarify what 'in that time' referred to and he said it was the 21 days from the issuing of the application, i.e. 21 April 2024. Paragraph 32 of her statement purported to break down that figure of £142,000, with various figures including staff £84,000.

19. I have provided with a witness statement from Aron Graves, a process server, in which he states that, on 25 April 2024, he served documents on the named Defendants by leaving those documents at their boat or shack. The documents consisted of a Notice of Hearing; sealed Claim Form issued on 21st April 2024; Application Notice dated 18th April 2024; Witness Statement of Karen Maguire dated 18th April 2024 with exhibit "KM1" and Draft Injunction Order; ("the Documents").

20. Shortly before the hearing I was provided with a letter dated 30 April 2024 from the Community Law Partnership ("CLP"). They referred to David Snell as their client but they also made clear that they had not yet served a notice of acting as they were still in the process of obtaining funding from the Legal Aid Agency, having only had their first appointment with Mr Snell on 30 April 2024. In that letter they stated that their client had not received the full bundle associated with the application, only 10 pages which had been provided to him by another boater.

21. CLP submitted that their client had not been given sufficient notice of the proceedings to enable him to be properly heard. CLP cited *Canada Goose v Persons Unknown* [2020] 1 WLR 2802 and *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] 1 WLT 1471 (SC). They also made submissions in relation to their client's attempts to obtain housing. They submitted that their client had a priority need and the Claimant was under a duty to house him. They submitted that the alternative mooring sites that had been offered to their client were not suitable.

The hearing

22. The hearing began with submissions from Mr Hoar for the Claimant. He developed the submissions in his skeleton argument as to why I should grant an interim injunction in the form sought. He accepted, in response to my question, that he was not aware of a similar injunction being granted without notice. He submitted that as a result of the contractual provisions that permit contractors, '*there are penalties of £142,000 per week against the council for as long as it is impossible to undertake work'.* He compared this to the approximate average cost of school place which he told me was £7,000. He, in effect, submitted that the Defendants were costing the equivalent of 20 school places each week. I asked some questions about this alleged weekly cost. I discuss below the later responses he gave me. He asked that, if the court was minded to adjourn, there should be a longer listing of ½ a day and it should be heard in the week beginning

23. Mr Snell said he had never had any help from Karen Maquire. He had been in touch with Minister of Housing and had been looking for housing at all time for himself and his son. That was why he was why moored. He said he didn't want to live like this but he had to. He said he had only found out about this on Friday. He asked for the hearing to be adjourned. He said CLP told him that the legal aid founding could be sorted out next week. He asked for the hearing not to take place on 13 May because of an appointment that day but said he was available the rest of that week.

24. Mr Wujek said that he had a lot of mental health issues and his dogs give him a life. He said he was last contacted about alternative accommodation in January. He said he had not heard anything from Karen Maguire since then. He said he suffered from depression and bipolar disorder and his dogs keep him alive. He said the Claimant knew about his 2.5 years ago. He said the last time he spoke to Ms Maguire was 25 January 2024. She said she will come and see me. He said the work where they were has not stopped. They built a fence. It is all accessible to these people. He said he had three adult dogs. One was a mixture of bulldog and Rotweiller and the others were brothers – mixes of Bandog and American bulldog. He said they were not illegal. He said one of his dogs had puppies 6 weeks ago but he meant to give them away.

25. Mr Snell said they had not done anything wrong. He hadn't broken the law. Before they came to the Location they weren't on the graph.

26. Mr Wujeck said he never wanted to obstruct any of the building work. He said he used to have a boat. He didn't have much work. The only way was to stay in that. He said nobody came and saw them. He said that nobody checked their accommodation. He said he didn't believe the Claimant was paying £142,000 – the fence stopped him and the contractors were able to work around him. He said he could not leave his dogs and might be forced to live in Poland. He said he couldn't obtain any legal aid as it was too short notice. He said he would consider instructing CLP.

27. In reply, Mr Hoar told me, on instructions, that the Claimant has managed to avoid the penalty charges being incurred so far. He asserted that they had done as much as they can. They had been successful so far in asking the contractor not to impose penalties to date.

Legal Framework

28. Rule 23.4 of the Civil Procedure Rules ("CPR") provides:

> "*A copy of the application notice must be served on each respondent unless a rule, practice direction or court order permits otherwise*."

29. CPR Rule 6 sets out the permissible methods of service.

30. Civil Procedure Rules 25.3 provides:

> "***How to apply for an interim remedy***
>
> *25.3*
>
> *(1) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.*
>
> *(2) An application for an interim remedy must be supported by evidence, unless the court orders otherwise.*
>
> *(3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given."*

Discussion

31. The application notice and the draft order I was provided with sought an order abridging time for service of the Part 8 claim form. Paragraph 1 of the application notice referred to §20(8) of Practice Direction 8A of the CPR. §20(8) provided that for certain kinds of applications for injunction (to prevent environmental harm or unlicensed activities) the claim form must be filed not less than 21 days before the hearing. Practice Direction 8A no longer exists. §20 of Practice Direction 8A was replaced by §21 of Practice Direction 49E, which makes similar provision for there to be at least 21 days between the service of notice and the hearing.

32. When I pointed this out to Mr Hoar at the hearing, he submitted that his client's Application Notice was wrong to refer to the Practice Direction on applications for injunctions to prevent environmental harm or unlicensed activities. He submitted that §21 of Practice Direction 49E did not apply as the application for an injunction was not made under any of the provisions listed at §21.1.

33. I accept that submission. However, in my judgment, the underlying purpose of §21.8 of PD 49E is relevant – i.e. that injunctions should not be made unless those who would affected by the injunction have had sufficient notice to give them a fair chance to be heard (see *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6; [2019] 1 WLR 1471 at [17]).

34. In their letter of 30 April 2024, CLP argue that their client, the First Defendant, has not had proper service. He has only received 10 pages of the bundle and even that was from a different boater. The result of this was that, until the hearing began, he had not seen the evidence being relied on by the Claimant and did not know their case. He instructed CLP on 30 April 2024, the day before the hearing, but CLP did not have time to obtain legal aid funding to appear at the hearing. CLP argued that the failure to properly serve the necessary materials on the First Defendant should be fatal to the application.

35. Mr Hoar's answer to this appeared to be that the application was made without notice so it did not need to be served. That would only be a good answer if there was a good justification for making the application without notice. In my judgment, for the following reasons, there was no such justification and it would not be appropriate for me to rule on the application at this stage.

36. First, the Claimant has known that the Defendants were present at the Location for a very long time. There are emails relating to the Defendants from the start of this year. Ms Maguire says in paragraph 11 of her statement that the trespass came to her attention about a year ago. From what Mr Wujek said in court, the Claimant may have known of his presence even longer.

37. Secondly, the Claimant must have known for a considerable period of time of the risk of contractual penalties if the Defendants impeded Taylor Wood's work. Mr Hoar submitted that the Claimant was entitled to try to persuade the Defendants to leave before resorting to litigation. That must be right, of course, but it does not justify the course of action the Claimant took – i.e. making some attempts to engage with the Defendants before suddenly and without warning making an application without notice. The compensation event

notification from Taylor Woodrow was dated 5 March 2024. I heard no satisfactory explanation for why, on the one hand, it was acceptable for the Claimant to take a month and a half from that notification to make this application but yet, on the other hand, the matter was so urgent that notice could not be given and it had to be heard by this court only just over a week after the application was filed.

38. Thirdly, the supposed justification for the urgency and for making an application without notice was not supported by any reliable evidence. In her witness statement Ms Maguire asserted that '*there will be at least 21 days before the Claimant is able to obtain the relief they seek against the Defendants' and in that time the Council will face financial penalties of around £142,000 per week.'*

39. I queried that assertion because the only evidence from Taylor Wood was a communication dated 5 March 2024 which (a) referred to a 'compensation event' without quantifying the extent of compensation and (b) indicated that the problem could be mitigated by fencing off the area. The photographs I have been provided with appear to show such fencing. It seemed highly surprising to me that, with the relatively small areas occupied by the Defendants fenced off, the Claimant could be losing £142,000 a week including £84,000 in staff costs. I asked Mr Hoar whether the Claimant had accepted that it was liable to Taylor Wood for £142,000 a week and from what date they accepted that liability.

40. Mr Hoar took instructions and told me in reply that, in fact, the Claimant had not yet incurred any financial penalties – the mitigation of the fencing had so far been effective. He asserted, on instructions, that the contractors had done all they could in terms of mitigation and penalties would start to be incurred. He accepted that Ms Maguire's statement could have been clearer and he attempted to rephrase it as if it had said that the Council 'may' financial penalties in the 21 days after issue, rather than what she actually said: 'will'.

41. I am very troubled by this. If I had not asked Mr Hoar the questions I did, and if he had not taken instructions and provided the answers, I would have been misled by Ms Maguire's statement (and by Mr Hoar's submissions in reliance on that statement) into believing that the Claimant had, since the issue of proceedings approximately two weeks ago, been paying around £142,000 a week in financial penalties as a result of the Defendants' presence at the Location. To make such a misleading statement in the context of a without notice application is very serious. In the order I approve, I have directed for Ms Maguire to provide an explanation of how she came to draft paragraph 3 of her witness statement in the way she did and why she and the Claimant failed to correct it at any point until I asked questions about it. In these circumstances, I am not prepared to accept the assertions Mr Hoar made, on instructions, about the current position. It will be a matter for the judge hearing the adjourned hearing how they deal with any further evidence from Ms Maguire or the Claimant.

42. Mr Hoar accepted that the health and safety matters relied on by the Claimant would not, in themselves, justify the urgency with which the hearing has been brought on.

43. I do not think that the Claimant is saved by the attempts, on 25 April 2024, to provide what the Claimant has called 'informal service'. It is far from clear that this service was effective. Further, the Claimant did not have permission to provide service in this way on the 6th Defendant, i.e. Persons Unknown. Moreover, it was too little too late to ensure a

fair hearing – the First Defendant only received part of the bundle and even that was only one working day before the hearing. Although he acted promptly to instruct CLP, they could not get legal aid funding in time given the short deadlines. I do not know whether the Third or Fourth Defendants have received service.

44. In my judgment, justice was best served by adjourning the hearing to a date between 14 and 17 March 2024 (inclusive). I hope that, by that time, CLP will have the legal aid funding to appear for some or all Defendants. I hope that will ensure that the Defendants have a fair hearing of anything they may want to say in opposition to the application. I will set directions for there to be further evidence filed and served in preparation for that hearing. It will be a matter for the judge at the adjourned hearing what weight they can give to any evidence coming from the Claimant in light of the misleading assertions in §3 of Ms Maguire's statement.

45. The adjourned hearing will not be before me. Speaking only for myself, I would have liked to know what, in practice, will happen to the Defendants if the injunction were granted. I wanted to know, for example, whether Mr Wujek's shed would be destroyed and whether he would be able to find housing with his dogs. At some points in Mr Hoar's submissions, he appeared to suggest that it was not appropriate for this court to enquire into such matters – the Defendant could be trusted to comply with its statutory housing duties and that was an end to it. He said that if Mr Wujek was expecting housing that would include all his dogs he would be disappointed and there was a statutory duty to house him but not his dogs.

46. If I had been determining the application, I would not have accepted the submission that it was irrelevant to enquire into the practical consequences of granting the order. In general, at the interim injunction stage, it is not appropriate to form a final view on merits. Instead, it is necessary to weigh the prejudices to the parties if the injunction is granted and if it is not granted. If the result of granting the injunction were, say, that the shed which has been Mr Wujek's home were destroyed and his dogs were put down or taken away from him, that would be a prejudice to him which he may think could not be compensated at a final hearing. I am by no means saying that this factor would outweigh the prejudice to the Claimant in not granting the injunction. I am only saying, from my own perspective, that I think the court may be assisted by more information on the steps the Claimant will take to enforce any injunction and the impact on the Defendants. Another judge may disagree.

47. I have directed that the further evidence from the Claimant be filed by 7th May, not 9th May as the Claimant proposed, as I want to give the Defendants time to respond to the new evidence if they wish. I also think, in the circumstances, that it is necessary for the court to have the actual correspondence between the Claimant and Taylor Wood relating to financial compensation. If any of this correspondence is confidential, the Claimant can make whatever application they deem necessary to protect that confidence. I do think the court will be assisted by seeing that correspondence. The court may not need to see the whole contract if the correspondence makes the position sufficiently clear.

48. The Claimant asked for costs to be reserved. That seems to me appropriate in the circumstances.
49.