



Neutral Citation Number: [2024] EWHC 2895 (Ch)

Case No: PT-2024-000893

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

7 Rolls Building
Fetter Lane, London,
EC4A 1NL

Date: 25 November 2024

Before:

Mr Justice Thompsell

Between:

THE UNIVERSITY OF LONDON

Claimant

- and -

(1) ABEL HARVIE-CLARK

(2) TARA MANN

(3) HAYA ADAM

(4) PERSONS UNKNOWN WHO, IN CONNECTION WITH BOYCOTT, DIVESTMENT, AND SANCTIONS PROTESTS BY THE 'SOAS LIBERATED ZONE FOR GAZA' AND/OR 'DEMOCRATISE EDUCATION' MOVEMENTS, ENTER OR REMAIN WITHOUT THE CONSENT OF THE CLAIMANT UPON ANY PART OF THE LAND (DEFINED IN SCHEDULE 1)

(5) PERSONS UNKNOWN WHO, IN CONNECTION WITH BOYCOTT, DIVESTMENT, AND SANCTIONS PROTESTS BY THE 'SOAS LIBERATED ZONE FOR GAZA' AND/OR 'DEMOCRATISE EDUCATION' MOVEMENTS, OBSTRUCT OR OTHERWISE INTERFERE WITH ACCESS TO AND FROM ANY PART OF THE LAND (DEFINED IN SCHEDULE 1)

(6) PERSONS UNKNOWN WHO, IN CONNECTION WITH BOYCOTT, DIVESTMENT, AND SANCTIONS PROTESTS BY THE 'SOAS LIBERATED ZONE FOR GAZA' AND/OR 'DEMOCRATISE EDUCATION' MOVEMENTS, ERECT ANY TENT OR OTHER STRUCTURE, WHETHER PERMANENT OR TEMPORARY, ON ANY PART OF THE LAND (DEFINED IN SCHEDULE 1)

Defendants

Mr Kester Lees KC and Miss Taylor Briggs (instructed by Pinsent Masons LLP) for the Claimants

The First, Second and Third Defendants appeared in person at the hearing

Hearing dates: 29 October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 25 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

Mr Justice Thompsell:

Introduction

1. This case concerns an application made by the Claimant, the University of London, by means of a Claim Form dated 14 October 2024. The application is for an interim precautionary injunction to restrain threatened ongoing acts of trespass on certain land owned by the Claimant and identified on the Claim Form.
2. The Defendants to this claim are three identified persons and three categories of persons unknown. The Defendants were given notice of the claim by means of various forms of alternative service ordered by Adam Johnson J through his order of 16 October 2024.
3. The Claimant is seeking this order because of a history of protest action taking place on its land and because there are threats that this will continue. The protests in question have been taking place firstly under the slogan “Boycott, Divestment and Sanctions” to protest against alleged involvement by the School of Oriental and African Studies (“SOAS”) in making investments, and having other links that are said to support the State of Israel in its military operations in Gaza and secondly under the slogan “Democratise Education” to protest against the treatment of students who have taken up this stance and have faced disciplinary action by SOAS.
4. Whilst these protests are against SOAS, and SOAS is a different legal entity to the Claimant, the protests have in very large part taken place on the Claimant’s land and the Claimant has, in my view, a well-founded belief that further protests may take place on its land.
5. This is the second occasion on which the Claimant has sought an order in relation to this series of protests. In response to original protest action, the Claimant obtained a Possession Order dated 2 August 2024 against the three named Defendants in the present action and another named Defendant as well as Persons Unknown for possession of a certain part of its land. This was in response to the establishment by the protesters of an encampment on this land (the “**Original Encampment**”) and, because the Claimant has witness evidence that, while the Original Encampment was *in situ*, there were various instances of criminal damage and other anti-social behaviour. Some of this account is challenged by the named Defendants but they have not put any evidence before the court to substantiate this challenge. The Possession Order dealt with the land on which the encampment had been situated, and an adjacent plot of land also in the ownership of the Claimant.
6. In response to the Possession Order, the protesters vacated the land that was subject to the Order, but some or all of them relocated and established a second encampment on other land owned by the Claimant that was not the subject of the Possession Order.
7. Following use by the Claimant of enforcement agents, the protesters dispersed from the second encampment but then immediately move to a third encampment on nearby land owned by the local authority, Camden.

8. Since then, the protesters have used their encampment at Camden as a base from which they have conducted further protests on the Claimant's land which the Claimant says are trespasses as no permission was given for them.
9. The Claimant avers that it is not seeking to prevent protests being carried out on its land. It supports the principle of free speech. It has adopted a Code, alongside Visitor Regulations that allow for planned protests to take part on its land. What it objects to is uncontrolled protests that take a form that is intended to, or at least, has had, and is likely to have again, the effect of disrupting the users of the site at which the Claimant's land is located, and which give rise to health and safety and security concerns.

Representation and Evidence

10. At this hearing the Claimant was represented by Mr Kester Lees KC and Miss Taylor Briggs of counsel.
11. The three named Defendants each appeared representing themselves.
12. Before this hearing I had the opportunity to review a Skeleton Argument, Hearing Bundle, and Bundle of Authorities prepared by the Claimant. I did not receive any Skeleton Argument or evidence on behalf of the Defendants or any of them.
13. The Hearing Bundle included a witness statement of Mr Alistair Jarvis, who is the Pro-Vice-Chancellor (Partnerships and Governance) of the Claimant University and (with his express permission) another witness statement by him which was used in connection with the earlier hearing. I was also provided with witness statements from Mr Connor Merrifield, a solicitor representing the Claimant, which exhibits updated evidence of the protests and evidence of service being properly made.
14. As well as seeing evidence in the form of witness statements to this effect, I have seen photographs, screenshots and videos which provide an idea of the sense of scale of the protests and of the determination of the protest organisers that the protests should continue.

The Order sought

15. The claim this time around is for an interim precautionary injunction forbidding the Defendants from undertaking any or all of the following activities:
 - a. entering onto any part of the Land for the purpose of protesting thereon without first complying with the terms of the Code and the Visitor Regulations, specifically:
 - i) by notifying one of the Appointed Officers immediately if they consider that the Code applies to the planned protest and, thereafter, complying with the procedure laid down therein, and
 - ii) by notifying the Claimant's Head of Hospitality and Conferencing Services at least 72 hours in advance of the planned demonstration in accordance with Regulation 15.2, and

- iii) by complying with any conditions imposed on any such demonstration by the Claimant pursuant to Regulation 15.2, and
 - iv) only upon receipt of written confirmation from one of the Appointed Officers that permission for the protest is granted.
- b. obstructing or otherwise interfering with access to or from the Land,
- c. erecting any tent or other structure, whether permanent or temporary, on any part of the Land,
- d. causing, assisting or encouraging any other person to do any act prohibited by sub-paragraphs (a) to (c) above, and
- e. continuing any act prohibited by sub-paragraphs (a) to (c) above.”
16. The Application is, in part, brought against persons unknown. The Court’s jurisdiction to grant injunctions binding on persons unknown (so-called “newcomer” injunctions) has been recently considered, and clarified, by the Supreme Court in *Wolverhampton CC v London Gypsies and Travellers and others* [2024] 2 WLR 45. The Supreme Court recognised (at [167]) that there is ‘no immovable obstacle’, whether in terms of jurisdiction or principle, in the way of granting injunctions against “newcomers” on an essentially without notice basis, whether for the purposes of an interim or final injunction.
17. Care is needed in applying principles in this case that in a protest case such as the one before me since, as was noted at [235], the case was considering gypsy and traveller cases, rather than protest cases. However, it is clear that the Supreme Court considered that protest cases may, depending on the circumstances, justify the grant of an injunction against persons unknown, including newcomers and that:
- “any of these persons who have notice of the order will be bound by it, just as effectively as the injunction in the proceedings the subject of this appeal has banned newcomer Gypsies and Travellers”.
18. In *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB), Ritchie J, dealing with an application for a final injunction to be granted by way of summary judgment, explained that, following *Wolverhampton*, the guidance previously promulgated by the Court of Appeal in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (at [82]) remains good law, albeit that some further guiding principles have been added. At [58] of *Valero Energy*, Ritchie J helpfully distilled the guidance promulgated in these cases into a mixture of substantive and procedural requirements (as to which, see below). In *Multiplex Construction Europe Limited v Persons Unknown* [2024] EWHC 239 (KB) Ritchie J considered similar grounds in relation to the grounds for granting a final prohibitory injunction.

19. As is clear from the cases that I have mentioned and from the further judgment of Ritchie J in *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB), (see at [35]) precautionary injunctions against persons unknown, relating to private land owned or possessed by a claimant, are:

“different beasts from old fashioned injunctions against known defendants which need to be taken to trial. They do not “hold the ring pending trial”. They are an end in themselves for the short or the medium term and may never lead to service of defences from the PUs, whether or not the PUs become crystallised as Defendants.”

20. Hence, Ritchie J described (at [40]) a number of principles (enumerated below) as:

“the requirements for granting and, where necessary, continuing an interim injunction”.

21. Given the findings of the Supreme Court in *Wolverhampton* as to the special nature of precautionary injunctions of this type, and the lack of any principled distinction between interim injunctions and final injunctions (as, in effect, both are being made without notice as regards to newcomers), the matters for the court to consider before granting final precautionary injunctions and before granting interim injunctions are for the most part the same or similar.
22. The principles identified by Ritchie J fall into two categories, substantive requirements and procedural requirements and I consider these below.

Substantive Requirements

23. The first requirement is that the Claimant must have cause of action. In this case the cause of action is trespass. The protesters do not have any right to occupy the land. The Claimant allows occupation, including for the purposes of protest, but only subject to its Code and Visitor Regulations. The Defendants challenge this as they had regarded the property as being public land, but this is simply not correct. They also challenge on the basis that the Claimant is singling them out, as it has allowed other demonstrations and the setting up of other temporary structures on the land. If and when this matter goes for final determination, they can provide evidence on this point, and this may be relevant to the balance of convenience as discussed below and perhaps also to the question of breaches to the rights of free speech and of freedom of assembly. However, the court can only go on the evidence before it and on the evidence before it these points are not made out.
24. The second requirement noted by Ritchie J in *Valero Energy* was full and frank disclosure. This remains important, even though in this case the Defendants have been given notice of the proceedings, and an opportunity to make contrary case, because the proposed Order will be binding on persons unknown, and they have not had that opportunity. I am satisfied, however, that the Claimant has satisfied this requirement in that it has put forward potential defences that might be available to a Defendant, and these are discussed below.

25. The fourth point noted by Ritchie J, but one which I think considers logically comes before the third, and so I will deal with it first, was that there should be sufficient evidence to prove the claim.
26. The Claimant submits that there is sufficient evidence to prove that there is a serious issue to be tried and also that the Claimant has a realistic prospect of success. I consider that the Claimant is correct. The serious issue arises because the Defendants have established three different encampments in the same general area, relocating twice. If they face eviction as regards their third encampment by Camden, it is highly likely that they would relocate to other land owned by the Claimant close to SOAS. Further, the Claimant has put forward evidence that there have been numerous incidents of disruptive trespassory protests on the Claimant's land and there is no sign of these slowing down or stopping. The Defendants challenge accusations that their prior occupation or any demonstrations have caused disruption but have not produced any witness statement or evidence to challenge the Claimant's evidence. Finally, I have regard to the Defendants' statements on social media which I take to be strongly indicative of their intention to continue their protest activity until SOAS meets their demands and/or the resolution of the conflict in Gaza. In my view, there is ample evidence to justify finding that the Claimant is justified in its fear of future unlawful trespass on its land. Also, anyone who has seen videos of the protest can be in no doubt of the determination of the leaders of these protests.
27. The third point noted by Ritchie J was that there should be no realistic defence. No defence is likely to succeed based on property rights. The Claimant's title to the relevant land is clear, and there can be no suggestion that the Claimant is not entitled to control occupation of the Land in accordance with its Visitor Regulations and Code.
28. I should however, consider the potential for defences on Human Rights grounds. Similar issues arose and were considered and dismissed by Johnson J, in two possession cases *University of Birmingham* [2024] EWHC 1770 (KB) and *University of Nottingham* [2024] EWHC 1771 (KB) and I consider that the facts and analysis are not materially different in this case.
29. Peaceful protest falls within the scope of the rights of freedom of speech and freedom of assembly, which are guaranteed by Articles 10(1) and 11(1) of the European Convention on Human Rights respectively.
30. However, as the Claimant points out, these rights are not absolute; they are qualified. By virtue of Arts 10(2) and 11(2), interferences with rights to freedom of speech and assembly can be justified if they are prescribed by law and necessary in a democratic society in the proportionate pursuit of prescribed legitimate aims (including the protection of the rights and freedoms of others). In this regard, the Claimant points out that it also has a right to peaceful enjoyment of its private property as a Convention right, enshrined in Art 1 of the First Protocol ("A1P1").

31. An important point in this analysis is that, Arts 10 and 11 do not bestow any “freedom of forum” on the Defendants. The Claimant has drawn my attention to *Appleby v UK* [2003] 37 EHRR 38 (and see also *DPP v Cuciurean* [2022] 3 WLR 446, in which the Divisional Court drew ‘much assistance’ from *Appleby*). The rights to free speech and to freedom of association do not generally include any right to trespass on private property: *Boyd v Ineos Upstream Ltd* [2019] 4 WLR 100 at [36]. At [45], the Divisional Court in *Cuciurean* held that there was:
- “no basis’ in the Strasbourg jurisprudence to support the respondent’s proposition that the freedom of expression, linked to the freedom of assembly and association, ‘includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded.’”
32. The Claimant acknowledges that in ‘*rather unusual or even extreme circumstances*’, it might be possible to show that the protection of a landowner’s property rights has the effect of preventing any effective exercise of the freedoms of expression and assembly. An example of this (given by the Strasbourg Court itself in *Appleby*) would be a corporate town where the entire municipality is controlled by a private body.
33. The named Defendants in oral argument made a case that this exception might apply. They pointed out that the University land to which the draft interim injunction would apply was fairly extensive and included the exterior space that was close to SOAS, the main target of their demonstrations.
34. The Claimant made the contrary argument that nevertheless there was no prevention to effective exercise of the freedoms of expression and assembly because:
- i) the injunction did not rule out protests continuing on the land, it merely requires the protestors to submit to its Visitor Regulations and Code, both of which exist for proper purposes so as to protect the interests of all legitimate users of the land;
 - ii) the Defendants would not be prevented by the injunction from protesting within any of the buildings on the land (other than an unoccupied former student residence in the ownership of the Claimant) including on any of the buildings leased to SOAS;
 - iii) other forms of protests such as via social media would remain possible.
35. The named Defendants did not accept this. In particular, they were suspicious of the willingness of the Claimant to grant permission for protests under terms that they might find acceptable. They considered the possibility of protesting on land or buildings belonging or leased to SOAS as remote, as a number of students had faced disciplinary action for doing so.

36. Whilst this matter can be reviewed again with evidence when and if this matter goes to determination for a final injunction, on the basis of the evidence before me at this stage I consider I should accept the Claimant's submissions and evidence on this point. At present it appears to me that, just as was so in the *University of Birmingham* case, there remain many other ways in which the Defendants could exercise their Convention rights without usurping to themselves land that belongs to the University. Not only can they use social media, or demonstrate elsewhere, but the Claimant's proposed order keeps alive the possibility of orderly protest on the Claimant's land provided that this is done in accordance with its Visitor Regulations and Code. The court would need to see real evidence of the Visitor Regulations and Code being abused if it was not to place any real weight on this last point.
37. Therefore I accept the Claimant's submission that, any assertion that the grant of injunctive relief in the terms sought would constitute a breach of the Defendant's rights under either Art 10 or 11 would be bound to fail.
38. The final substantive issue is to show that damages would not be an adequate remedy. This, I consider it is clear. the potential effect of further occupation of their land is likely to be damaging to the Claimant's reputation and operation as a University in ways that will not readily be compensated in damages as well as increasing costs in relation to security and cleaning up any mess and fixing any damage that might occur in any future occupation by the protesters (and for which there is evidence that this has occurred in the past). In any case the Claimant is extremely unlikely to be able to obtain damages from the Defendants.
39. A linked issue not mentioned by Ritchie J but to which the courts also have regard is the question of whether there is any other remedy that the Claimant could pursue so that the injunction is not necessary. Whilst there is the possibility of the Claimant using private means (as it did do in relation to the second occupation), I do not see this as being a more appropriate remedy than that now sought by the Claimant. Private security guards operating without the backing of a court are likely to face considerable resistance and the results of any reliance on this are likely to be ugly.

Procedural requirements

40. Turning to the procedural requirements, the first is that the persons unknown who may be affected by the injunction must be '*clearly and plainly identified*'. I consider that the persons who will be subject to this injunction are clearly and plainly identified by reference to the tortious conduct to be prohibited and the clearly defined geographical boundaries. This method of identifying them follows what was done in other cases including *HS2* and the *University of Birmingham* case and is entirely appropriate.
41. The second procedural requirement is that the terms of the prohibitions should be set out in clear words and not framed in legal technical terms. I consider that this is the case with the proposed order. I have, however, in settling the Order made some small amendments to the wording suggested by the Claimant to address legitimate concerns raised by the named Defendants as to what sort of acts might amount to "protest", in particular to make it clear that individual action such as wearing a T-shirt or a badge with a slogan, would not count as protest; that protest meant concerted or public

protest (rather than, for example, a private conversation); and that what was being prohibited was protest on the land, not crossing the land with a view to protesting elsewhere (such as within the SOAS buildings).

42. Thirdly, the prohibitions must match the pleaded claim. This requirement is met. The pleaded claim is for a final injunction and the prohibitions in the interim injunction are in similar terms to those proposed for the final injunction. Here it is appropriate that I consider the approach discussed in *DPP v Zeigler* [2022] EWHC 736 (Admin) [2021] 2 WLR 179 at [17] and at [55] to [61] and [73] to [78].
43. The fourth matter described as a procedural requirement in *HS2* was that there should be defined geographic boundaries. I am not sure that this is a separate requirement – it seems to me it was already dealt with under the first procedural requirement, but in any case, the point is clearly met under the terms of the order.
44. The fifth matter is temporal boundaries variations or extensions. The duration of any final injunction should be such as is reasonably necessary to protect the Claimant’s legal rights in the light of the evidence of past tortious activity and the future feared tortious activity. The Claimant seeks an injunction until determination of its case for a final injunction, and has asked for directions to allow the hearing of that case. This, in my view is appropriate, but to avoid the possibility of delay in the hearing of that case I considered that the order should include a long stop date of one year, unless the order is subsequently extended by the court. This is appropriate as it would cover the rest of this academic year, as well as the start of the next academic year.
45. The sixth matter is service. I have been satisfied that service of the claim has been undertaken in accordance with the order of Adam Johnson J and there can be no complaint about this. The proposal is for service of the order to be undertaken in broadly the same way and this seems to me also to be broadly appropriate circumstances, although in settling the final form of the order I have included some additional stipulations.
46. The seventh matter is that the order should make provision for affected persons to be able to apply to set aside or vary the injunction on notice. The draft order makes appropriate provision for this, so I see no objection based on this point.
47. The eight procedural point to consider is review. This would be a concern if it was proposed that the order would be kept in place for a period longer than a year, but I agree with the Claimant that this is not necessary under the terms of the proposed order, which will last only 12 months unless extended by the court. The requirement for the court to approve any such extension meets any requirement for review.

Balance of convenience

48. The final point for the court to consider when deciding to approve an order such as is proposed here is the balance of convenience before allowing an injunction. Here it is appropriate that I consider the approach discussed in *DPP v Zeigler* [2022] EWHC 736 (Admin) [2021] 2 WLR 179 at [17] and at [55] to [61] and [73] to [78].

49. In considering this balance I take account of the point that as far as I can see (but I make no determination on the matter, as this may be a matter for further evidence when it comes to determining whether a final order should be granted) the protests to date have been largely peaceful and orderly. There has been violence where there have been clashes with security personnel looking to evict. There has been some illegality in the form of deliberate criminal damage in the form of daubing slogans on the walls of a building and pavements (aggravated by interfering with the clean-up) but this has largely been minimal. The named Defendants make the point that much of the conduct complained of by the Claimant took place within SOAS, rather than on the Claimant's land. This may be so, but nevertheless it is appropriate for the court to consider such conduct as it cannot assume that next time round similar conduct may not take place on the Claimant's land.
50. Also whilst the rights and wrongs of the matters over which the protestors are protesting is a much bigger topic than the one before the court, and it would not be right for the court to express any opinion on them, I think I can observe that the motivations of the protestors spring from a deeply-held sense of injustice and it is a good thing that young people do take notice and seek to call out what they see as injustice. As noted in *City of London Corp v Samede* [2012] PTSR 1627 at [41] the court can take into account the general character of the view that Convention is being invoked to protect.
51. However even taking full account of these points, in my view the balance of convenience is clear in this case. If the injunction is not granted then there is a real risk that the Claimant will face a realistic threat that there will be further unauthorised and unplanned invasions of its land, giving rise to cost, reputational damage, and damage to the educational needs of students of the University.
52. Conversely, if the injunction is granted then the loss of the Defendants is small. They will still be able to protest. It is true that the requirements within the Code and Visitor Regulations may mean that protests will need to be planned in advance, constraining the ability to react quickly to events by means of a protest on the Claimant's land, but they will still have other ways of protesting. Further, if they are able to show any cost, the Claimant has offered the usual indemnity. Also, and importantly, if circumstances change, for example, if it proved that the Claimant was being wholly unreasonable in the way that it dealt with applications to protest on the land that properly in accordance with Visitor Regulations and Code, any of the Defendants would have the ability to come back to the court to seek changes to the order.
53. I therefore consider that the court should grant the interim precautionary injunction in the terms sought, with the minor amendments discussed during the hearing and including directions as to further steps to take forward the application for a final precautionary injunction as discussed at the hearing.

54. As regards costs, the Claimant has suggested that costs be reserved. This seems to me to be appropriate. As I explained to the Defendants this means that the matter of costs will be heard when this matter goes to final. It is not for me to fetter the discretion of the judge hearing the matter at that stage, but I will observe that the named Defendants were not represented and did not have legal training and learnt only of the full case that they were facing around a week before the hearing, and it may be that the judge determining costs at the final hearing will take account of this, in the context of the further actions of the parties as the case progresses.