

IN THE HIGH COURT OF JUSTICE

Claim No PT-2002-000303

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

CHANCERY DIVISION

PROPERTY TRUSTS AND PROBATE LIST

UNITED KINGDOM OIL PIPELINES LIMITED

First Claimant

WEST LONDON PIPELINE AND STORAGE LIMITED

Second Claimant

-and-

(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT CONSENT AND IN CONNECTION WITH OR AFFILIATED TO THE EXTINCTION REBELLION CAMPAIGN OR THE JUST STOP OIL CAMPAIGN ON LAND AND BUILDINGS AT AND COMPRISING PART OF (A) THE BUNCEFIELD OIL TERMINAL, HEMEL HEMPSTEAD, HERTFORDSHIRE (SHOWN FOR IDENTIFICATION SHADED RED ON THE ATTACHED SITE 1 PLAN) (B) THE KINGSBURY OIL TERMINAL, KINGSBURY, WARWICKSHIRE (SHOWN FOR IDENTIFICATION SHADED RED ON THE ATTACHED SITE 2 PLAN)

First Defendant

PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT CONSENT AND IN CONNECTION WITH OR AFFILIATED TO THE EXTINCTION REBELLION CAMPAIGN OR THE JUST STOP OIL CAMPAIGN INTERFERING WITH THE FIRST CLAIMANT'S RIGHT TO PASS AND REPASS WITH OR WITHOUT VEHICLES, MATERIAL AND EQUIPMENT OVER PRIVATE ACCESS ROADS ADJACENT TO (A) BUNCEFIELD OIL TERMINAL, HEMEL HEMPSTEAD, HERTFORDSHIRE (SHOWN FOR IDENTIFICATION SHADED BLUE ON THE ATTACHED SITE 1 PLAN) (B) THE KINGSBURY OIL TERMINAL, KINGSBURY, WARWICKSHIRE (SHOWN FOR IDENTIFICATION SHADED BLUE ON THE ATTACHED SITE 2 PLAN)

Second Defendant

CLAIMANTS' SKELETON ARGUMENT

FOR THE RETURN DATE HEARING ON 20 APRIL 2022

1. The hearing on 20 April 2022 is the Return Date hearing with respect to the Injunction granted by Mr Peter Knox QC, acting as a Deputy Judge, on 8 April 2022. The time estimate for the hearing is 3 hours. Pre-reading of the Second Witness Statement of John Michael Armstrong dated 14 April 2022 and the Second Witness Statement of Daniel Owen Christopher Talfan Davies dated 14 April 2022 would be of assistance.
2. Following the hearing on 8 April 2022, the Order and the Court Documents have been served on the dates and in the manner described in paragraphs 5 to 22 of the Second Witness Statement of Daniel Owen Christopher Talfan Davies dated 14 April 2022.
3. The Application Notice with the accompanying draft order to be sought on the Return Date was amongst the documents served. The Second Witness Statement of John Michael Armstrong dated 14 April 2022 and the Second Witness Statement of Daniel Owen Christopher Talfan Davies dated 14 April 2022 will also have been served prior to the hearing.
4. The grounds upon which the continued injunction is sought are the same grounds as those set out in the Skeleton Argument for the original hearing¹, a copy of which is attached. It is submitted that all of the updated evidence set out in the Second Witness Statement of John Michael Armstrong dated 14 April 2022 supports the Claimants' case that the ongoing level of risk of imminent harm warrants the continuation of the Injunction.
5. The form of the Order to be sought on the Return Date hearing generally reflects the terms of the original Order, save that a temporal limit of 12 months has now been added, even though this is a purely interlocutory order at this juncture. There are also adjustments to reflect that it is a continuation of the Order until trial (or earlier order) which is now sought. A correction is also made with respect to the various identified email addresses, for the reasons explained in paragraphs 19 and 20 of the Second Witness Statement of Daniel Owen Cristopher Talfan Davies dated 14 April 2022. In

¹ The Skeleton Argument is in its original form but paragraph 2.5 was corrected in the course of the hearing on the 8th April 2022 to reflect the fact that it was the leasehold title was awaiting registration and there was no further freehold title awaiting registration.

addition, Paragraph 16 also now contains a further alternative service provision with respect to future applications in the Claim.

KATHARINE HOLLAND QC

14 April 2022

IN THE HIGH COURT OF JUSTICE

Claim No

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

CHANCERY DIVISION

PROPERTY TRUSTS AND PROBATE LIST

B E T W E E N:

- (1) UNITED KINGDOM OIL PIPELINES LIMITED
(2) WEST LONDON PIPELINE AND STORAGE LIMITED**

Claimants

-and-

- (1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT CONSENT AND IN CONNECTION WITH OR AFFILIATED TO THE EXTINCTION REBELLION CAMPAIGN OR THE JUST STOP OIL CAMPAIGN ON LAND AND BUILDINGS AT AND COMPRISING PART OF (A) THE BUNCEFIELD OIL TERMINAL, HEMEL HEMPSTEAD, HERTFORDSHIRE (SHOWN FOR IDENTIFICATION SHADED RED ON THE ATTACHED SITE 1 PLAN) (B) THE KINGSBURY OIL TERMINAL, KINGSBURY, WARWICKSHIRE (SHOWN FOR IDENTIFICATION SHADED RED ON THE ATTACHED SITE 2 PLAN)**

First Defendant/ Respondent

- (2) PERSONS UNKNOWN WITHOUT CONSENT AND IN CONNECTION WITH OR AFFILIATED TO THE EXTINCTION REBELLION CAMPAIGN OR THE JUST STOP OIL CAMPAIGN INTERFERING WITH THE FIRST CLAIMANT'S RIGHTS TO PASS AND REPASS WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT OVER PRIVATE ACCESS ROADS ADJACENT TO (A) THE BUNCEFIELD OIL TERMINAL, HEMEL HEMPSTEAD, HERTFORDSHIRE (SHOWN FOR IDENTIFICATION SHADED BLUE ON THE ATTACHED SITE 1 PLAN) (B) THE KINGSBURY OIL TERMINAL, KINGSBURY, WARWICKSHIRE (SHOWN FOR IDENTIFICATION SHADED BLUE ON THE ATTACHED SITE 2 PLAN)**

Second Defendant/ Respondent

**SKELETON ARGUMENT ON BEHALF OF THE CLAIMANTS
FOR THE HEARING ON 8 APRIL 2022**

Introduction

- 1.1 The hearing on 8 April 2022 is the hearing of the Claimants' application for urgent injunctive relief to restrain acts of trespass and nuisance on two sites (in which the

Claimants have both freehold and leasehold interests) in connection with the ‘Just Stop Oil’ campaign and/or the ‘Extinction Rebellion’ campaign.

1.2 The current time estimate for the hearing is 2.5 hours (30 minutes hour pre-reading, 1 ½ hours hearing time and 30 minutes judgment time). Pre-reading of the following documents would be of assistance:

- Witness Statement of Peter Malcolm Davies dated 7 April 2022 [B/27]
- Witness Statement of John Armstrong dated 7 April 2022 [B/35]
- Draft Order [B/13].

The Sites

2.1 The Application in this matter relates to two sites, the details of which are set out below.

Site 1

2.2 This is the West London Buncefield oil terminal, located on the edge of Hemel Hempstead. The site is one of the largest oil-products storage depots in the UK, with a capacity of about 65 million litres of fuel. Details are set out in Paragraphs 15 to 18 of the Witness Statement of Peter Malcolm Davis dated 7 April 2022 [B/30].

2.3 In relation to the relevant property interests pertaining to Site 1, the First Claimant is the registered proprietor of three registered freehold titles, the registered proprietor of one leasehold title and also has a leasehold right of way over an access track. The Second Claimant is the registered proprietor of a further freehold title. Details are set out in Paragraphs 24 to 28 of the Witness Statement of Peter Malcolm Davis dated 7 April 2022 [B/31].

2.4 A plan for Site 1 is at Schedule 4 to the draft Order (“the Site 1 Plan”) [B/6].

Site 2

2.5 This is the Kingsbury Oil Terminal, an oil storage depot located on the north-east of village of Kingsbury in Warwickshire, which is of key strategic importance in the UK.

Details are set out in Paragraphs 20 to 21 of the Witness Statement of Peter Malcolm Davis dated 7 April 2022 **[B/30]**.

2.6 In relation to the relevant property interests pertaining to Site 2, the First Claimant is the freehold proprietor of an area of unregistered land, the registered proprietor of one freehold title, the registered proprietor of one leasehold title, is awaiting registration as the freehold proprietor of another freehold title and also has a leasehold right of way over an accessway over adjoining land. Details are set out in Paragraphs 29 to 33 of the Witness Statement of Peter Malcolm Davis dated 7 April 2022 **[B/31-32]**.

2.7 A plan for Site 2 is at Schedule 5 to the draft Order (“the Site 2 Plan”) **[B/7]**.

The Campaigns

3.1 ‘Extinction Rebellion’ and ‘Just Stop Oil’ are the two principal campaign groups that have directly targeted the Sites in the last week. The details of the campaigns are set out in Paragraphs 43 and 47-48 of the Witness Statement of John Armstrong dated 7 April 2022 **[B/42-43 and 46]**.

The Direct Action

4.1 There has been direct action affecting Site 1 in the course of the last week. Details are set out in Paragraph 44 of the Witness Statement of John Armstrong dated 7 April 2022 **[B/43-44]**. In summary:-

4.1.1 On 1 April 2022, ‘Just Stop Oil’ activists climbed on top of an oil tanker at the entrance to Site 1, with other individuals sitting on the road in front of the oil tanker. 27 people were arrested.

4.1.2 On 3 April 2022, 33 individuals were at Site 1 and blocked the entrance to the depot. 14 people were arrested. In addition, supporters of Just Stop Oil cut through a fence to access Oil Road on Site 1 as well as climbing on oil tankers at Oil Road.

- 4.1.3 Later on 3 April 2022, more than 30 individuals camped outside Site 1 overnight. Some stood on fuel trucks with banners whilst other prevented tankers from leaving.
- 4.1.4 On 4 April 2022, the direct action continued.
- 4.2 There has also been direct action affecting Site 2:
- 4.2.1 On 1 April 2022, the entrances were blocked preventing oil tankers from leaving.
- 4.2.2 On 3 April 2022, it was reported that 54 arrests were made at Site 2.
- 4.2.3 On 5 April 2022, 20 activists from Just Stop Oil blocked the entrance to Site 2. Warwickshire Police indicated that it had arrested 8 people had that day.
- 4.2.4 On 7 April 2022, supporters of Just Stop Oil blocked the entrance to Site 2 and claimed that individuals were inside Kingsbury oil terminal (albeit not those parts that comprise part of Site 2).
- 4.3 As such, there have already been acts of trespass committed on Site 1. There have not yet been acts of trespass committed on Site 2 but, for the reasons set out below and in the Witness Statement of John Armstrong dated 7 April 2022, the Claimants have good reason to believe that there is a real and imminent risk of such action.
- 4.4 The direct action at the Sites have been in the context of other incidents affecting other sites owned by other operators, as set out in Paragraph 46 of the Witness Statement John Armstrong dated 7 April 2022 [B/44-46]. It has also been in the context of a body of evidence demonstrating that further imminent direct action is reasonably apprehended and are likely to become more frequent and potentially more serious.

The Effects of the Direct Action

- 5.1 The Witness Statement of John Armstrong dated 7 April 2022 sets out in detail, at Paragraphs 18-42, 51 and 61, the significant risk of damage and/or injury to persons and property, including the trespassers themselves.

The Relevant Legal Principles

The causes of action

- 6.1 The causes of action upon which the Claim is based are trespass and nuisance.
- 6.2 Trespass is constituted by the entry, without permission or consent, upon land.
- 6.3 In relation to nuisance, a private nuisance is constituted by 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*”: Clerk & Lindsell ‘*Law of Torts* (23rd Ed) at para 19-01 [AB/229].

The test for injunctive relief in American Cyanamid

- 7.1 The following usual test in *American Cyanamid* is the starting point in this case, but, as explained below, it is also subject to additional special rules which are applicable to claims against ‘persons unknown’ and claims in situations of direct action:
 - 7.1.1 There must be a serious issue to be tried;
 - 7.1.2 Damages would not be an adequate remedy;
 - 7.1.3 The ‘balance of convenience’ lies in favour of the grant of relief;
 - 7.1.4 There must be a satisfactory undertaking in damages.

The effect of Articles 10 and 11 of the European Convention on Human Rights

- 8.1 Articles 10 is concerned with freedom of expression and Article 11 is concerned with the right to freedom of peaceful assembly and freedom of association with others.
- 8.2 Both Articles confer qualified rights, rather than absolute rights. In the context of claims in trespass and nuisance of this nature relating to privately owned land and private property interests, the following examples from recent authorities show that these Articles do not constitute a defence:

8.2.1 In *Secretary of State for Transport v Persons Unknown* [2018] EWHC 1404 (Ch) at [58], Mr Justice Barling said in relation to the HS2 protests [AB/67]:

“I make these findings having carried out the balancing exercise which is appropriate given that Articles 10 and 11 are engaged here. The defendants are undoubtedly exercising their freedoms of expression and assembly in protesting as they have done (and will in all likelihood continue to do) about the activities carried out on this site. However, in my view the balance very clearly weighs in favour of granting relief because the defendants’ right to protest and to express their protest both by assembling and by vociferating the views that they hold, can be exercised without trespassing on the land and without obstructing the rights of the claimants to come in and out of the land from and on to the public highway. What the defendants seek to do by carrying out these activities goes beyond the exercise of the undoubted freedoms of expression and assembly. What they wish to do, as well as protesting, is to slow down, or stop, or otherwise impede the work being carried out.”

8.2.2 Mr David Holland QC (sitting as a deputy Judge) took a similar approach when the injunction was renewed ([2019] EWHC 1437 (Ch) at [127] [AB/105], as did Mrs Justice Falk in *UK Oil & Gas v Persons Unknown* [2021] EWHC 599 at [54] [AB/175], which concerned a variation and continuation of an interim injunction granted in 2018 relating to the oil and gas industry.

8.2.3 Very recently, in *DPP v Cuciurean* [2022] EWHC 736 (Admin) [AB/209], the Divisional Court found at [45] and [76]-[77] that:

“We conclude that there is 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. The Strasbourg Court has not made any statement to that effect. Instead it has consistently said that articles 10 and 11 do not “bestow any freedom of forum” in the specific context of interference with property rights (see *Appleby* at [47] and [53]). There is no right of entry to private property or to any publicly owned property. The furthest that the Strasbourg Court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights, then it would not exclude the possibility of a State being obliged to protect them by regulating property rights.

...

Thirdly, a protest which is carried out for the purposes of disrupting or obstructing the lawful activities of other parties, does not lie at the core of articles 10 and 11, even if carried out on a highway or other publicly

accessible land. Furthermore, it is established that serious disruption may amount to reprehensible conduct, so that articles 10 and 11 are not violated...

Fourthly, articles 10 and 11 do not bestow any “freedom of forum” to justify trespass on private land or publicly owned land which is not accessible by the public...”

The effect of section 12 Human Rights Act 1998

9.1 Consideration must also be given to section 12 of the Human Rights Act 1998 [AB/5]. This provides:

- “(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
- (2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied:
 - (a) that the applicant has taken all practicable steps to notify the respondent; or
 - (b) that there are compelling reasons why the respondent should not be notified.
- (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
- (4) ...”

The effect of the principles relating to injunctions against ‘persons unknown’

10.1 In *Boyd v Ineos Upstream* [2019] EWCA Civ 515 [AB/69], *Canada Goose Retail Ltd v Persons Unknown* [2020] EWCA Civ 303 [AB/110] and *Barking & Dagenham LBC v Persons Unknown* [2021] EWCA Civ 13 [AB/178], the various legal requirements to be satisfied in these types of direct action cases have been discussed and considered. For present purposes, the requirements can be summarised as follows:

- (1) There must be a sufficiently real and imminent risk of a tort being committed to justify *quai timet* relief;

- (2) It is impossible to name the persons who are likely to commit the tort unless restrained;
- (3) It is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;
- (4) The terms of the injunction must correspond with the threatened tort and not be so wide that they prohibit lawful conduct;
- (5) The terms of the injunction must be sufficiently clear and precise to enable the persons potentially affected to know what they must not do;
- (6) The injunction should have clear geographical and temporal limits.

The Grounds for the Application

11.1 Having regard to all the various principles set out above and for the reasons set out below, it is submitted that the relevant requirements are satisfied for the grant of the injunctive relief in the terms of the draft Order.

There is a serious issue to be tried and, for the purposes of section 12(3) (if it applies), the Claimants are likely to succeed at trial.

11.2 It is submitted that this is a clear case where strong evidence indicates that acts of trespass have already occurred and, if the injunction is not granted, there is a sufficiently real and imminent risk of acts of trespass and nuisance continuing to occur, such that the Claimants are therefore likely to succeed at trial.

11.3 In relation to Articles 10 and 11, these would provide no defence because, applying the words of Mr Justice Barling in *Secretary of State for Transport v Persons Unknown* [2018] EWHC 1404 (Ch) at [58] [AB/67], “ *the balance very clearly weighs in favour of granting relief because the defendants’ right to protest and to express their protest both by assembling and by vociferating the views that they hold, can be exercised without trespassing on the land and without obstructing the rights of the claimants to come in and out of the land from and on to the public highway*”.

Damages would not be an adequate remedy

11.4 Given the health and safety context described in detail throughout the Witness Statements of John Armstrong dated 7 April 2022, it is abundantly clear on the facts of this case that damages would not be an adequate remedy. Moreover, there is no evidence that the Defendants would ever be in a position to satisfy an award of damages.

The balance of convenience lies in favour of the grant of relief

11.5 The balance of convenience clearly lies in favour of the grant of relief.

There is a satisfactory cross-undertaking in damages

11.6 Evidence with respect to the undertaking in damages is to be found in Paragraph 77 of the Witness Statement of John Armstrong dated 7 April 2022 [B/51].

The requirements of section 12(2) of the Human Rights Act 1998 are satisfied

11.7 The Court can be satisfied that sections 12(2)(a)-(b) of the Human Rights Act 1998 have been complied with. The Claimants have sent emails to email addresses for Just Stop Oil and Extinction Rebellion and there are other very strong reasons why formal notification would not have been appropriate: see Paragraphs 63-67 of the Witness Statement of John Armstrong dated 7 April 2022 [B/48-49].

The test for pre-emptive relief against persons unknown is satisfied

11.8 As stated above, acts of trespass have already occurred and there is a sufficiently real and imminent risk of further torts being committed: see also Paragraphs 58-62 of the Witness Statement of John Armstrong dated 7 April 2022 [B/47-48].

11.9 It is impossible to name the persons who are likely to commit the tort unless restrained.

11.10 It is possible to give effective notice of the injunction and the method of notice is to be set out in the order: see the provisions on service in the draft Order [B/16] and Paragraphs 69-75 of the Witness Statement of John Armstrong dated 7 April 2022 [B/49-50].

11.11 The terms of the injunction correspond with the threatened torts and are not so wide as to prohibit lawful conduct. There have already been acts of trespass and nuisance and it would appear that these are the threatened activities. The proposed Order does not seek to go beyond what is currently apprehended.

- 11.12 The terms of the injunction are sufficiently clear and precise as to enable persons potentially effected to know what they must not do. It is submitted that the draft Order is specific and comprehensible in identifying the forbidden activities.
- 11.13 The injunction has clear geographical and temporal limits. It is submitted that the plans and the descriptions of the properties in question are sufficiently clear. In relation to the temporal limit, the period in which the proposed Order will be in force will be just until the return date at this stage.

Service

- 13.1 An application is made for service by alternative methods, pursuant to CPR 6.15 and 6.27. The methods by which it proposed to serve the Order and the Court documents are fully set out in the draft Order.
- 13.2 The evidence in support of this application is to be found in Paragraphs 69-75 of the Witness Statement of John Armstrong dated 7 April 2022 [B/49-50].

Conclusion

- 14.1 The Court is therefore respectfully requested to grant an order in the terms of the draft Order.

KATHARINE HOLLAND QC

YAASER VANDERMAN

Landmark Chambers

7 April 2022