

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

BETWEEN:

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 HEARING ON 20 APRIL 2023

Introduction

1. The hearing on 20 April 2023 is the Return Date hearing with respect to the Injunction granted by Mr Peter Knox QC, acting as a Deputy Judge, on 21 April 2022 (the “**2022 Order**”). The time estimate for the hearing is 3 hours. Pre-reading of the First Witness Statement of Peter Malcolm Davis, dated 7 April 2022, and the Third Witness Statement of John Michael Armstrong, dated 5 April 2023, would be of assistance.
2. Following the hearing on 20 April 2022, and its sealing on 21 April 2022, the Order was served on the dates and in the manner described in the Certificate of Service, dated 26 May 2022.
3. The Application Notice with the accompanying draft order to be sought on the Return Date has also been served along with the Second Witness Statement of Peter Malcolm Davis and the Third Witness Statement of John Michael Armstrong, both dated 5 April 2023. This is confirmed in the Third Witness Statement of Daniel Owen Christopher Talfan Davies, dated 14 April 2023 [E/53-56].
4. The grounds upon which the continued injunction is sought are the same grounds as those before Peter Knox KC. The question for the Court at the Return Date is, primarily, whether the continued threat of trespass and nuisance is such as to warrant the continuation of the 2022 Order. The Claimants consider that it is for the reasons set out in the Third Witness Statement of John Michael Armstrong. As such, issues which have not changed, such as the human rights of the Defendants, will not be considered in detail.
5. The form of the Order to be sought on the Return Date hearing generally reflects the terms of the 2022 Order.

Background

6. The Application in this matter relates to two sites (the “Sites”):

- a. Site 1: 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 [A/30].

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 [A/31].

A plan for Site 1 can be found at [A/6].

- b. Site 2: 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 [A/30].

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 [A/31-32].

A plan for Site 2 can be found at [A/7].

7. In April 2022, a campaign of direct action was commenced against a wide range of sites related to the energy sector, as set out in paragraph 46 of the Witness Statement John Armstrong dated 7 April 2022 [A/44-46]. This included direct targeting of the Sites. 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 [A/42-43 and 46].

8. By way of example, as set out at paragraph 44 of the Witness Statement of John Armstrong dated 7 April 2022 [A/43-44]:

- a. 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.
- b. On 3 April 2022, around 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.
- c. Later on 3 April 2022, more than 30 individuals camped outside Site 1 overnight. Some stood on fuel trucks with banners whilst others prevented tankers from leaving.
- d. On 4 April 2022, the direct action continued.

9. There had also been direct action affecting Site 2, as set out at paragraph 45 of the Witness Statement of John Armstrong dated 7 April 2022 [A/44]:

- a. On 1 April 2022, the entrances were blocked preventing oil tankers from leaving.
- b. On 3 April 2022, it was reported that 54 arrests were made at Site 2.
- c. 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 that day.
- d. 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).

10. As such, at the hearings before Peter Knox KC, there had been acts of trespass committed on Site 1 and, though there had not been acts of trespass committed on Site 2 at that stage, the Claimants had good reason to believe that there was a real and imminent risk of such

action. It was on this basis that the 2022 Order was granted.

11. 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 [A/38-42, 47 and 48].

Continued threat

12. It is the Claimants' position that there exists a continued threat of trespass and nuisance at the Sites such as to warrant the continuation of the injunction.
13. As set out in the Third Witness Statement of John Armstrong, dated 5 April 2023 [E42-52], this is on the bases of:
 - a. The direct action that was carried out at the Sites before the first injunction was granted by Peter Knox KC on 12 April 2022.
 - b. Since the date of the 2022 Order there have been further incidents of direct action and protest in close proximity to Site 2: paragraphs 11 to 19 of the Third Witness Statement of John Armstrong [E/44-45].
 - c. There has continued to be direct action carried out by organisations such as Extinction Rebellion and Just Stop Oil aimed at the energy sector: paragraphs 23 to 44 of the Third Witness Statement of John Armstrong [E/46-49].
 - d. The continued statements, particularly in relation to Just Stop Oil, that they will be continuing with their campaign of direct action – *“Our supporters will be returning – today – tomorrow – and the next day – and the next day after that – and every day until our demand is met – no new oil and gas in the UK...”*.
14. Although the amount of direct action has decreased in intensity since April 2022, and the Sites themselves have not been directly targeted, this is likely for the reasons set out at paragraph 20 of the Third Witness Statement of John Armstrong [E/45]– i.e. it is the very existence of injunctions such as the 2022 Order which are likely having this effect.

The Grounds for the Application

15. 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.

16. 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.
17. The Claimants do submit, however, in light of the most recent authority that s.12(3) of the Human Rights Act 1998 does not apply in cases such as this. Rather, the threshold is not whether the Claimants are “likely” to succeed but the lower one of whether there is a “serious issue to be tried”: see *Shell v Persons Unknown* [2022] EWHC 1215, [66]–[76] and *Esso v Breen* [2022] EWHC 2664, [40].
18. In any event, it is the Claimants’ position that either test would be satisfied on the facts of this case.
19. Articles 10 and 11 ECHR provide no defence for the reasons set out in *DPP v Cuciurean* [2022] EWHC 736 (Admin), [45] and [76]–[77] – i.e. Articles 10 and 11 ECHR do not provide a right to enter onto private land.

Damages would not be an adequate remedy

20. 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

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

There is a satisfactory cross-undertaking in damages

22. 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 [A/51].

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

23. The Court can be satisfied that sections 12(2) of the Human Rights Act 1998 has been complied with as all of the relevant documents have been served on the Defendants. This is confirmed in the Third Witness Statement of Daniel Owen Christopher Talfan Davies, dated 14 April 2023 [E/53-56].

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

24. In *Canada Goose Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 Civ 303 and *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946, the various legal requirements to be satisfied in these types of direct action cases were discussed and considered. They call for consideration of the following issues:
- a. There must be a sufficiently real and imminent risk of a tort being committed to justify precautionary relief;
 - b. It is impossible to name the persons who are likely to commit the tort unless restrained;
 - c. It is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;
 - d. The terms of the injunction must correspond with the threatened tort and not be so wide that they prohibit lawful conduct;
 - e. The terms of the injunction must be sufficiently clear and precise to enable the persons potentially affected to know what they must not do;
 - f. The injunction should have clear geographical and temporal limits.

25. Those requirements are satisfied for the following reasons.

26. As stated above, acts of trespass occurred in the absence of the injunction and there is a

sufficiently real and imminent risk of further torts being committed if the injunction were to lapse.

27. It is impossible to name the persons who are likely to commit the tort unless restrained.
28. As found by Peter Knox KC, it is possible to give effective notice of the injunction and the method of notice is to be set out in the order.
29. 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. As with the 2022 Order, the draft Order does not seek to go beyond what is currently apprehended.
30. The terms of the injunction are sufficiently clear and precise as to enable persons potentially affected to know what they must not do. It is submitted that the draft Order is specific and comprehensible in identifying the forbidden activities.
31. 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 Claimants propose for the interim injunction to be continued for a further year.
32. The Claimants are aware of three orders granted to energy companies (Valero, Exolum and Esso) over the last 3 months following applications very similar to this one – i.e. renewals of interim injunctions granted in April 2022. In the *Valero*¹ and *Exolum* cases (two separate claims but both made on 20 January 2023), Soole J continued the interim injunctions for a period of just greater than 1 year. In the *Esso* case, Collins Rice J continued the interim injunction for a period of approximately 3-4 months whilst also making directions for trial on the first available date after 12 June 2023.

Conclusion

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

KATHARINE HOLLAND KC

YAASER VANDERMAN

¹ Like the Claimants' claim, the Valero injunction covers part of the Kingsbury Oil Terminal.

Landmark Chambers

17 April 2023