

IN THE HIGH COURT OF JUSTICE

Claim No. QB-2022-001952

KING'S BENCH DIVISION

BETWEEN:

**(1) ALMACANTAR CENTRE POINT NOMINEE NO.1 LIMITED
(2) ALMACANTAR CENTRE POINT NOMINEE NO.2 LIMITED**

Claimants

– and –

**(1) ALEXANDER FARRELL
(2) [DISCONTINUED]
(3) OWEN REECE (AKA "TRIKKSTAR")
(4) HARRY DAVIES
(5) PERSONS UNKNOWN ENTERING OR REMAINING ON THE EXTERNAL
ROOFS OR STRUCTURES (EXCLUDING BALCONIES) OF CENTRE POINT (AS
DESCRIBED IN PARAGRAPHS 2-4 OF THE PARTICULARS OF CLAIM)
WITHOUT THE CLAIMANTS' PERMISSION
(6) PERSONS UNKNOWN ENTERING OR REMAINING AT CENTRE POINT (AS
DESCRIBED IN PARAGRAPHS 2-4 OF THE PARTICULARS OF CLAIM) WITH THE
INTENTION OF GAINING ACCESS TO THE ROOFS OR EXTERNAL STRUCTURES
(EXCLUDING BALCONIES) AT CENTRE POINT WITHOUT THE CLAIMANTS'
PERMISSION**

Defendants

NOTE OF HEARING

ROYAL COURTS OF JUSTICE, COURT 20, ~10:30 – 12:30, 5 OCTOBER 2022

BL – Brooke Lyne (Counsel for Claimants)

D2 – The Second Defendant (appearing in person, and against whom the Claim is now discontinued)

J – Mrs Justice Yip

BL – Checked which documents J has.

J – Received the skeleton but under an hour ago, no authorities bundle. We will manage. I have got a bundle, skeleton argument, 2nd statement of James Waite (JDW2) but already in bundle. Also now got 3 October 2022 statement of Philip Spencer (PKS1)

BL – handed up hard copy of 4 October 2022 statement of Philip Spencer (PKS2).

J – Best if we deal with position of D2 first. She is not represented and may wish to be reassured.

BL – Skeleton shows no order sought, discontinue against D2. She has confirmed no trespass and no further need to pursue her.

J – I don't want D2 to sit there worried, she has responded promptly, appropriately and helpfully to the application. Claim no longer pursued against her, she may stay and listen if she wishes.

D2 – will stay.

Background

BL – Wish to give broad context, facts of the application then legal framework, submissions on tests to be met and then on service/ancillary matters. There is no new draft order, propose to update after hearing.

J – Skeleton very helpful, discussed some process/documentary challenges. Invites, in future, skeletons to be sent to clerks of judges to ensure they reach in time.

BL – Reminder we also have no sealed claim form/PoC yet

J – Initial point, concern over named D's. D2 it is accepted as mis-identified. Agrees with D2 she does not look terribly like the pictures, but it was a good faith mistake. How about other Ds?

BL – PKS1, annex, p14 – D3 responded less than helpfully you may say, but response gives comfort of notice. No response from D1/D4.

J – Any evidence they've seen it?

BL – No. [Subsequently, Instructing Solicitors made checks of D1/D4 Instagram. No evidence of D1 recent posts. D4 appeared to have edited a post 16 hours ago].

J – No conventional service attempts?

BL – C's own team in good faith investigated, no actual other conventional methods found.

J – Concerned named D's don't know if they had notice/seen enough of the claim. Is there a test do you say?

BL – Not specifically, but case law says insofar as possible D's to be named/ID's hence C's tried. If J is concerned, C's would be happy with PU only would but have tried to comply with case law. If named D's are classed as PU's, breach would still catch them.

J – Satisfied D3 has notice, could have responded as D2 did but did not. Other 2 not so sure, but suspect they have. What about ID? What is the test?

BL – On the ordinary balance of probabilities (civil) the efforts have identified them. Also, this is an interim hearing to establish if there is a serious issue to try.

J – Yes and D3 response may suggest that/imminent risk.

Specific Context

BL – Action in trespass. Claimants’ are freehold proprietors of Centre Point. Injunction drafted specifically to cover external parts because the Claimants have immediate right of possession over those parts. Order sought corresponds with Claimants immediate right to possession. Building described as in PoC and noted JDW1 gives contextual evidence about urban exploring. Helpful overview of the risks of the activities. Won’t repeat all of that. There is also information about incidents and fatalities relating to urban exploring. Serious risks.

J – note a gap between January 2020 and this year?

BL – Yes, Covid may have played a role. 3 incidents this year that have precipitated the application. Moved on to describe as in evidence.

J – April incident. You haven’t identified?

BL – No. Images not clear.

J – Just to state generally – no one has a right to climb the exterior of a landowner’s building without permission – so as a matter of law that is trespass and landowner is entitled to stop people doing that.

BL – Yes, it is that simple. And similar injunctions are cited for completeness.

Identification

J – Let’s go through identification now – how it was done

BL – Bundle p135 [JDW1] describes the security team process (para 18 JDW1), recaps previous points re recent D Instagram timings/posts. Pointed to authorities and *Canada Goose* (Court of Appeal at [82])

J – This cases deals with service too?

BL – Yes, social media generally – put D in position to ascertain if they are caught by the injunctions, etc.

Tests

J – Take me to the relevant tests

BL – Recent *HS2* case at [72] onwards is a helpful summary. Also, *Barking & Dagenham* in the Court of Appeal (no real distinction between interim and final injunctions). And as in skeleton, general tests (*American Cyanamid*), serious issue, adequacy of damages, balance of justice, lower proof required if evidence of existing tort (as here).

J – Compliment to the Skeleton – if I wanted a summary of the law I would go to it. Do not think the legal principles are controversial as they apply to this application. The only thing slightly unusual is the position with the named defendants. You have summarised the law in a helpful way. No need to labour the point on that.

BL – My primary submission. Serious past incidents and serious consequences. Cannot understate the risks of things going wrong.

J – Agree, a landowner is entitled to an injunction to restrain trespass. No ongoing trespass in this case, but question for the court is, is there a real and imminent risk of harm and a serious issue to be tried, looking at the balance of convenience to award one? Satisfied in this case of harm to participants, bystanders and/or damage plus no right to climb. Balance appears to tip to injunction.

Order

J – Before we look at order I still have not decided what to do about the named defendants. Give D2 an opportunity to speak on this (if she wishes).

D2 – I would like to say something on the service of the documents. D2 explained that Instagram behaves differently depending on the follower relationship of someone who sends a message (and also for business accounts). If people don't follow each other, you can't verify receipt. Messages can go into a hidden inbox which people may not read. Also, a link is suspicious.

J – Agreed, I would not click either, but struggle to think of a better way.

BL – Agreed, in future we would propose no link, a screenshot and an email address. C trying to do best with limited info. Also, this method was just for named Ds. Other methods of service for unknown defendants. All D's have notice before they engage in prohibited conduct at Centre Point.

BL/J/D2 – Discussion of how to handle discontinuance against D2's, agreed a separate order and for D2 to appear as '[Discontinued]' where necessary on papers. D2 did not seek to advance any costs claim.

J – Turning to Order against others, pointed out D5/D6 inconsistent ("external" should be before "structures" in both not "roof" in one).

BL – Agreed.

J – Set a return date in 2 weeks, 19 October, 1030am before her. 1hr should be enough; if contested may need to adjourn.

J – Property is described by reference to PoC.

BL – Done in other injunctions, also we will have notices posted at the site, copies at reception, URL for download, solicitors can provide.

BL/J – Considered the terms of the order by paragraph. Key points:

- Refer to new evidence since original draft
- 'Intention' – in full and frank disclosure, C's agree hard to prove/enforce. But acknowledged some people have admitted intent before, plus it may assist with e.g. security intercepting someone and talking to them or escorting them off and then returning (intent may be easier to show). Acknowledged it will be difficult for C to prove, but in this case J agreed it was appropriate to remain on facts of this case and it may also serve as a deterrent.
- 3 years is appropriate – 6 months in some cases (e.g. construction cranes with a fixed time plan of being there/a risk) up to 10 years (Shard). As an interim injunction, must have temporal limits. J acknowledged gaps in trespass and that e.g. 6 months may be too short and almost invite a plan to trespass a soon after.
- Service – concerns remain for J. J finds this very difficult, it needs more judicial consideration. It is not fair to assume someone sees a message just by it being sent and more than that you're asking me to order "will be effective immediately" for an order with serious/penal consequences. J decided to leave C to serve as normal, can try other methods to bring to attention too, but this to be discussed at the return date. If C's can't evidence good service/notice, can't enforce injunction. If they can, that's

different. Let's consider this in later. J will keep in the order that C's shall send via Instagram though, as well.

- J – Please attach the draft notice you propose to display too
- BL – Costs reserved. J confirmed.
- J – Notice of return date to be in bold at the bottom

BL – How to handle D2 in future? We suggest redact from existing docs which will be shared online, etc.

J – Agree. This is NOT an order for anonymity (if anyone applied for the papers, they could properly get them) but she was included in error so it is reasonable to redact from widely distributed papers.

BL – Raised the point about lack of sealed claim form/PoC.

J – Directed dealings via clerk and will look into the filing issues to date. Court provided 3 emails to send the revised orders to, they will ensure J gets them.

Judgment

I will now give short judgement.

1. The Claimants are the freehold registered proprietors of Centre Point. Well known landmark building near Tottenham Court Road Station. Divided into four parts including Centre Point Tower of 36 floors, mix of residential and commercial.
2. Activities of people known as urban explorers have grown in popularity in recent times, promoted on social media, trespassing on buildings the public are not allowed to access. The scaling of tall buildings is particularly popular for pictures/filming.
3. This is now well-known to the courts with claimants seeking injunctive relief
4. Over the years, Centre Point has attracted urban explorers. Seven incidents between 2016 and 2022. On some occasions, trespassers scaled building. Damage has been caused and publicity gained on NYE 31/12/16. Damage was caused in Jan 2020. Then a 2 year gap
5. 7/01/22, 11 people entered – 2 concerted attempts to reach the top. Police helicopter called. Intercepted and escorted out.
6. Further instances on 09/04/22 and 19/08/22. Both appear to indicate planned attempts. Thousands of pounds worth of damage
7. After 9/4, claimants have made application for injunctive relief, issued 21/06/22. This is the first time before the courts, on without notice basis.
8. Claim brought against 4 named defendants from Jan 22 incident, plus unnamed. Each named D an UrbEx on social media and the claimants sought to identify them via that route, not just claim against persons unknown though C seeks to restrain any trespass to the roof/external structures.
9. Now accept D2 wrongly identified.
10. I have regard to the PoC, two statements of JDW and PKS and exhibits. I should

observe some difficulty in documents reaching me. Not caused by the claimants or their representatives but a breakdown within the court office – intend to make further enquiries.

11. It is well established that a landowner with title not in dispute is generally entitled to injunction to restrain trespass.
12. It is 9 months since the named D's trespassed, there is no on-going tortious activity BUT, given urbex interest, C seeks to restrain repeats on an anticipatory basis.
13. Law is clear – real and imminent risk required, but court may grant injunction against persons unknown including newcomers.
14. I have had regard to the authorities BL directed me to. *Ineos* and Longmore LJ's list of requirements, plus the *Canada Goose* 2022 EWCA principles. I've also had regard to the EWCA in *Barking & Dagenham*.
15. As far as this application is concerned, the law is uncontroversial. Unnecessary for me to set out the law in detail.
16. I am satisfied claimants are the lawful owner of the land and named defendants do not have permission to scale/access the roof/exterior.
17. No doubt to be urbex has caused not insignificant property damage and financial loss. More significantly, I am satisfied the activities pose a significant risk to life and limb to those involved and innocent bystanders. JDW1 talks of the footfall, there is a clear and obvious risk of a person or objects falling. C has guarded against this at expense with security, and there has also been public expense with the police involvement/helicopter.
18. I am satisfied of real and imminent risks from persons generally intruding on the premises from scaling the building. It seems to me that injunctive relief is needed as this is likely to be repeated. Though the timings are not predictable, it is highly likely trespass will occur again for urbex.
19. There is evidence before me is that injunctions have had deterrent effect.
20. In all the circumstances of this application for interim injunction, I am entirely satisfied that serious issue to be tried and balance of convenience favours granting an injunction. Claimants suffered financial loss that could be satisfied by damages, but other risks cannot especially risks to public safety. Balance of convenience tips one way in this case, injunction to restrain should be granted.
21. Point that has caused me most concern is the position of named defendants. Claimants quite rightly tried to name D's from Jan 22. I am happy that this was done in good faith. But D2 was misidentified. How do we know other D's aren't? D2 appears to have had notice and C attempted to give notices others in same way. D3 responded with profanity. D4 was active recently, can't be said of D1. Cannot know if D1 had sight.
22. Concerns, I won't repeat all discussions, that just sending won't mean reading/receipt. This can be dealt with at the return date. Court must be careful to ensure the protections afforded by the rules of service are kept guarded.
23. Having given careful consideration on the point of names defendants, D3 was in position to respond to counter allegations and chose not to. His response might be viewed as adding weight to a suggestion of risk of imminent trespassing by him again. D4 – on balance of probabilities I think he is aware of these ongoing proceedings. D1

– cannot say the same for him.

24. BUT this is a without notice hearing so I deal on that basis.

25. D2 will be discontinued by order. The other named Ds should remain for now but consideration will need to be given in future as to good service of this order.

26. In the circumstances, I have been through terms of prospective order carefully. I am satisfied that with amendments the order will appropriately hold the ring before the final hearing and satisfied injunction on those terms is required for the reasons I've set out.