

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN LEEDS**  
**PROPERTY TRUSTS AND PROBATE LIST (CHD)**

BEFORE HHJ SIOBHAN KELLY  
ON 23 FEBRUARY 2024

BETWEEN:-

- (1) MOTOR FUEL LIMITED  
(2) PEREGRINE RETAIL LIMITED

**Claimants**

-and-

(1) PERSONS UNKNOWN WHO FOR RESIDENTIAL PURPOSES (TEMPORARY OR OTHERWISE) ENTER OCCUPY OR SET UP ENCAMPMENT ON THE SITE OF THIRSK SERVICES, YORK ROAD, THIRSK, YO7 3AA, AS SHOWN FOR IDENTIFICATION EDGED RED ON THE ATTACHED PLAN, WITHOUT THE CONSENT OF THE CLAIMANTS

(2) PERSONS UNKNOWN WHO ENTER THE SITE OF THIRSK SERVICES, YORK ROAD, THIRSK, YO7 3AA, AS SHOWN FOR IDENTIFICATION EDGED RED ON THE ATTACHED PLAN, WITH THE INTENTION OF SYPHONING FUEL FROM THE CLAIMANTS' FILLING PUMPS AND/OR A VEHICLE OR RECEPTACLE THAT DOES NOT BELONG TO THAT INDIVIDUAL AND WITHOUT THE CONSENT OF THE OWNER OF THAT VEHICLE OR RECEPTACLE

**Defendants**

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**NOTE OF HEARING OF APPLICATION FOR INTERIM INJUNCTION ON 23  
FEBRUARY 2024 AT 11:00 AM**

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**NOTE OF HEARING** prepared by the Claimant's solicitors of the Claimant's application for an interim injunction (the "**Interim Injunction Application**") on 23 February 2024 commencing at 11:00am before HHJ Kelly ("**HHJK**") sitting in the High Court of Justice, Business and Property Courts in Leeds

Actual Start Time : 11:03am

**In attendance:**

- Yaaser Vanderman ("**YV**"), Landmark Chambers – Counsel for the Claimants
- Alicia Foo, Partner, Pinsent Masons LLP - Solicitors for the Claimant
- Connor Merrifield, Associate, Pinsent Masons LLP - Solicitors for the Claimant
- Libby Watson, Associate, Pinsent Masons LLP - Solicitors for the Claimant ("**Claimants' solicitors**")
- Richard Linton, In-house Legal Counsel for the First Claimant
- Dave Ablott, Operations Director for the First Claimant

## **Introduction**

1. Court clerk introduced the parties to the claim.
2. YV stated that the Defendants had not arrived.
3. HHJK requested that the Court's staff announce the claim on the Court's tannoy system including reference to the subject premises of the claim.
4. HHJK stated that, following the tannoy announcement, she was satisfied that if anyone interested in the claim was in the Court building, they would have made it to the Court room.
5. YV told HHJK that his solicitors were telephoned by a traveller following service of the claim by e-mail albeit the traveller did not give his name or the identity of the community group he belonged to. The traveller did not contest the claim, but did state that he felt service of the claim upon him was discriminatory and mentioned that he would be in contact with HHJK.
6. HHJK stated that she would check the Court's inbox to ensure that no correspondence had been received and that a note should be made of this call on any order made as a result of the hearing.
7. YV stated that the Claimants consider that the documents were validly served.

## **Housekeeping**

8. YV took HHJK through the bundles of documents filed and drew HHJK's attention to: -
  - a. the witness statement of Mick Cain, the process server who served the documents upon the Defendants, which included reference to photographs evidencing service of the documents by the taping of lever arch files at the land;
  - b. an amended plan had been filed which excludes the land occupied by Costa Coffee, the area of which is hatched green on the amended plan and is not being sought as part of the interim injunction; and
  - c. provisional / draft warning notice.
9. HHJK stated that this claim is familiar following last week's application for alternative service and that she had read the documents referred to in YV's skeleton argument.
10. YV stated by way of roadmap that he would take the Court through the following issues: (i) service; (ii) relevant land; (iii) instances of trespass; (iv) draft order; and (v) legal tests; and (vi) submissions as to why the legal tests are satisfied.

## **Service**

11. YV referred HHJK to the certificate of service filed by the Claimant's solicitors which evidences service was undertaken on 19 February 2024. He further referred to Mick Cain's witness statement which evidenced service of the documents by 3:30pm on 19 February 2024. YV stated that the certificate of service and witness statement show that the documents were served at the locations in the order for alternative service.
12. YV referred to tab 3 of Mick Cain's witness statement which includes photographs of the service of hard copy documents at the land being lever arch files of the documents to be served being sellotaped to various lampposts and locations.
13. YV further confirmed that the Claimant's solicitors did not receive any bounce backs to the e-mails which sent the documents.

14. YV reminded HHJK of the telephone call from the traveller he had mentioned earlier ( see paragraph 5 above)
15. HHJK confirmed that nothing had been filed on CE-File by any Defendant.

### **Relevant Land**

16. YV drew HHJK's attention to the amended plan and stated that the land over which the injunction is sought is edged red and excludes the land hatched green i.e. the relevant land excludes Costa Coffee.
17. YV referred HHJK to the plans and title documentation within the bundle to explain the relevant land and the ownership of the relevant land under title numbers: NYK419750, NYK264413, and NYK371348 in the ownership of MFL

### **Instances of trespass**

18. HHJK stated that she had read the Claimants' witness statements and was content with the nature of those instances of trespass.
19. YK stated that Mr Caddick's witness statement contained a good chronology of the instances of trespass (page 57 of the bundle) and Mr Ablott's statement deals with potential future trespasses/ most recent incident at the land at page 74 of the bundle.
20. YK stated that the Court should be aware of harm caused by the trespass including financial and physical harm as particularised by Mr Caddick and Mr Ablott.

### **Draft Order**

21. YV referred HHJK to the draft order at page 31 of the bundle.
22. YV stated that the draft order needs to be amended to reflect:-
  - a. Reference to the alternative service order; and
  - b. Delete reference to counsel for the Defendants.
23. HHJK stated that the draft order should make reference to the phone call between the traveller, the Claimants' solicitors and the Court's note that it has received nothing on CE-File and refer to the tannoy announcement made at the start of the hearing.
24. YV stated that the draft order should have a 1 year long stop and the words "exclude that area hatched green" should be added at paragraphs 2 and 3.
25. HHJK stated she also wants the land hatched green to be identified as Costa Coffee and asked if there were car parking spaces next to Costa Coffee.
26. HHJK asked for the word "permission" to be added instead of "liberty" at paragraph 6.
27. YK stated that pursuant to paragraph 7 of the order service is to be same as before and that Claimants should put up an A2 sign and that an example of the sign has been provided to the Court. HHJK asked that the sign be in A1.
28. HHJK stated that the bundle at the land needs to be legible and available on site.
29. YK stated that the Claimants would revert to HHJK by e-mail with a workable solution on where the bundle of documents should be located at site.

### **Legal Tests**

30. YK referred HHJK to the tests stated within *American Cyanamid* and also referenced *Wolverhampton* and *Valero*.

31. YK explained that *Wolverhampton* and *Valero* are different in that *Wolverhampton* dealt with a local authority and *Valero* dealt with public land whereas the present case deals with private land and a private owner. Notwithstanding this, YV stated that the Claimants considered that many of the principles stated in these cases should apply albeit perhaps with some modification.

**Submissions as to why the legal tests are satisfied.**

32. YV stated that *Valero* is helpful as the judgment provides a numbered list of substantive requirements and took HHJK through the requirements and explained how the requirements apply to the present case. Notably YV stated:-

- a. The cause of action in the present case is trespass and argued that both Claimants can make out trespass notwithstanding the fact that the first Claimant does not have possession of the land. This is because the first Claimant is in effective control of the second Claimant (evidenced by the same directors of each company) and that the first Claimant is entitled to immediately terminate the second Claimant's licence to occupy;
- b. The Claimants have given full and frank disclosure;
- c. There is a serious case to be tried and that the balance of convenience lies in the Claimants' favour as there has been harm and there is a lack of justification of the Defendants' conduct;
- d. Damages are not adequate as the loss suffered by the Claimants is irreparable and there has been physical harm;
- e. A cross undertaking in damages has been provided by Mr Linton who, although employed by the First Claimant, yet directors are the same and is willing to offer a cross-undertaking in damages on behalf of both Claimants;
- f. It has not been possible to identify the Defendants;
- g. No EC human rights ("ECHR") apply as this is private land
- h. The injunction claimed is clear and precise – it is limited to identified land;
- i. There is a temporal limit on the injunction sought of 1 year and the Claimants are aware of the obligation to progress the underlying claim for a full injunction as quickly as possible; and
- j. The Claimants have sought to make newcomers aware of the injunction and claim.
- k. It is open to the Defendants to apply to the Court at any time.

33. YV and HHJK subsequently discussed the location of the warning notice at the land.

**JUDGMENT BY HHJK**

34. This is an application by Motor Fuel Limited and Peregrine Retail Limited for an interim injunction in respect of land or part of land at Thirsk Services near the A19. The Claimants bring a claim against persons unknown.
35. In brief, there have been instances of trespass by a number of caravans and other vehicles for the purposes of temporary occupation or encampment at the services.
36. I will go through various matters of service, the area of land relevant, instances of trespass, the legal tests applicable, and submissions on the legal tests by YV.
37. I had considered YV's skeleton before today's hearing and I am aware of this matter as I dealt with the Claimants' application for alternative methods of service.

38. I have read the Claimants' witness statements of Mr Caddick, Ablott and Linton and have read the docs to which YV has referred me to in his skeleton argument.
39. I have also had the opportunity to see the notice warning of the applicability of an interim injunction at the land and have received a brief summary of its terms.
40. I have been given details of how the claim documents have been served.
41. Using YV's roadmap: -
42. I made the order in relation to alternative service and I am satisfied from the Certificate of Service dated 21 February 2024 signed with an appropriate statement of truth by Connor Steven Merrifield that service occurred before 4pm on 19 February 2024 and that 3 clear days have been provided.
43. In addition, I have seen the witness statement of Mick Cain dated 22 February 2024 who is the process server instructed by the Claimants. Mr Cain attached the documents at the land and has evidenced this with photographs.
44. I am satisfied that service has been done in accordance with the order for alternative service.
45. Insofar as ECHR rights apply, I accept and find that the Claimants took all reasonable steps by affixing the documents at the land and by e-mailing various parties.
46. The land is at Thirsk Services near the A19. The relevant land is the land edged red on the amended plan. The area hatched green on the plan is leased to Costa Coffee to operate and the injunction is not sought and not granted in relation to the land hatched green. The injunction does not capture all of the land at Thirsk Services including the land occupied by McDonalds and other land owned by the Claimants.
47. The issue may arise, although this is supposition and conjecture, as there is a traveller site owned by the local authority immediately adjacent to Thirsk Services which may be overfull.
48. I am satisfied as to the ownership of the land and have been referred to the relevant registers of title and that the first Claimant has licensed the land to the second Claimant.
49. YV set out in his submissions that the first Claimant is entitled to an interim injunction as well as the second Claimant.
50. I accept his submissions as the licence for the second Claimant to occupy the land can be terminated at will by the first Claimant if it so desires and that the first Claimant has 4/5 directors of the second Claimant and therefore I am satisfied the First Claimant's right to possession of the land is better than the trespassers once the licence is terminated

### **Incidences of Trespass**

51. I don't propose to go through all of the instances of trespass. Instances of trespasses have occurred for a significant amount of time.
52. The Claimants have instructed a security guard team to prevent the syphoning of fuel.
53. There have been numerous instances of trespass across 2023. There were 65 incidents which have occurred since December 2022. I believe from 1 June 2023, a further 41 incidents have occurred. These include a number of caravans being set up at the land.
54. The Claimants have put boulders on the entrance to the HGV Park and have installed a raised ramp to prevent caravans from entering the land.

55. The trespassers have broken into cars and have taken fuel from the Services' pumps without paying.
56. The occupiers of the relevant vehicles have been aggressive to staff at the Services. In one incident, a car was blocked in and staff were worried for their personal safety.
57. None of actions are legally permissible on the land and the problems have occurred across an extended period.
58. There is a real threat that these difficulties will continue and the Claimants have made a real attempt to stop the trespasses such as putting boulders on site and installing a ramp – which cost nearly £80,000. The Claimants have spent a considerable amount of money - over £405,000 trying to stop the trespasses. There has been loss of business whilst the Claimants have not been able to use the HGV Park
59. The harm by the continued and repeated trespasses is real and significant to employees and to the public and the Claimants have suffered damage for trespass which is sufficient for an interim injunction.
60. I am grateful to YV for setting out so clearly in his skeleton the legal tests.
61. The usual applicable tests for an interim injunction were particularised in *American Cyanamid*. Two further cases are of assistance being: (1) the Supreme Court's comment in *Wolverhampton*; and (2) the case of *Valero*.
62. I accept the observations made by YV that *Wolverhampton* and *Valero* are distinguishable as:-
  - a. In *Wolverhampton*, the applicant was a local authority and local authorities have various obligations to travellers. This is different as in this case the applicants are private landowners. Moreover, *Wolverhampton* was a claim for a final injunction; and
  - b. In *Valero*, this again was a claim for a final injunction, and was related to land that was both public and private.
63. Ritchie J set out 15 factors that apply in *Valero*. It is right to note at this stage that that no representative of anyone who may be affected by the interim injunction has attended these proceedings. I was at pains at the start of the hearing that anyone in the building here for this application should be able to attend. I delayed the start of the hearing which was listed at 11:00am and tannoyed the building stating the name of the land. This is a combined building with different courts.
64. I am also satisfied that the traveller community are aware of these proceedings as shown by a member of the traveller community telephoning the Claimants' solicitors who was upset by service upon him. Insofar as necessary to say, I am satisfied that all of those to whom documents have been served pursuant to the order for alternative service, it was appropriate to make an order for alternative service upon.
65. This application is made against persons unknown and the application was served widely. Any discrimination to be alleged in terms of service will be dealt with in due course.
66. Claimants must show a better right to possess the land. Clearly the second Claimant does as it has a licence to occupy. I am also satisfied that the first Claimant is and should be entitled to the relief sought. The directors of both Claimants are the same and, if the licence to occupy was terminated, the first Claimant would immediately be able to establish a better right to possess than the Defendants. Acts for syphoning fuel are unlawful acts and both Claimants are entitled to an injunction.
67. I am satisfied that the Claimants are aware of the duty to give full and frank disclosure and have confirmed that they will prepare a note of this hearing and make it available to any potential Defendant.

68. I am also entirely satisfied that that there is no realistic defence to the claims for trespass made by the Claimants.
69. There is a serious case to be tried and no realistic prospect of the Defendants defending the claim. There has only been a telephone call from a person alleging discrimination.
70. For the reasons given, I am satisfied that there is a real and imminent risk and that there is no equivalent for ECHR Article 8 and 11 rights as this is private land and therefore such claims are bound to fail.
71. Insofar as any of Art 8 rights for reasons given in paragraph 183 of *Wolverhampton* are relevant, such persons can apply under the provisions as set out in the draft order.
72. I agree that the balance of convenience is the Claimants' favour due to the serious harm caused by the Defendants and as this is an interim order, the full claim can be defended.
73. I am satisfied that damages are not an adequate remedy. There is significant financial loss to the Claimants, risks to people due to threats given, and risk in relation to the syphoning of fuel. HHJK quoted paragraph 68 of the *Esso Petroleum* case.
74. A cross-undertaking in damages has been given and I accept the undertaking on behalf of both Claimants.
75. As for description of persons unknown, I am satisfied that it is not possible to identify persons unknown and although there have been some police incident numbers, the police only attended on a couple of occasions and never arrested any individuals and cannot provide any names as the police do not provide support on private land. It is difficult to see who the individuals are; the Defendants wear hats and have collars turned up which makes identification difficult.
76. I accept that that the terms of the injunction are clear and precise and that the Claimants will warn newcomers of the injunction as they approach the land warning of the proposed location of the injunction. I accept that this is likely to come to the view of the newcomers to the land especially as the plan is very clear and will reference Costa Coffee.
77. The Interim injunction is sought for 1 year or until a final order is made.
78. There is the possibility that anyone affected can make an application at any time and any such person must give 72 hours notice to the Claimants' solicitors; if any applications arise, it is sensible that I deal with those applications if available.
79. I am satisfied that the Claimants are aware of their obligations to proceed with the claim for a final injunction. I am satisfied that 1 year is appropriate to allow for applications and the updating of the Claimants' witness evidence.
80. For all the reasons given so far in relation to service, further documents should be served in the same way as previously with slight amendment to paragraph 9.
81. I am satisfied that clean legible bundles of the documents will be available to potential Defendants at the land if they ask to see them.
82. The right to apply to set aside or vary this order is set out in the draft order. There will be a final hearing in due course.
83. For all of those reasons, I will grant the injunction sought.

**End 12:57**