

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

B E T W E E N

- (1) QUINTAIN (WEMBLEY RETAIL PARK) LIMITED
- (2) WEMBLEY NE02 INVESTMENTS LIMITED
- (3) WEMBLEY NE03 INVESTMENTS LIMITED
- (4) JOHN SISK & SON (HOLDINGS) LIMITED

Claimants

and

PERSONS UNKNOWN ENTERING OR REMAINING AT
THE PROPERTY DESCRIBED IN THE DETAILS OF CLAIM
WITHOUT THE CLAIMANTS' PERMISSION

Defendants

Note of Hearing before

HHJ Simpkins in Court 16

16 February 2023

The Judge explained the background to the application for the benefit of the Brian Farmer of the Press Association.

The Judge referred to the Supreme Court consideration of *Barking and Dagenham v PUs* which might result in changes to the practice of injunctions against Persons Unknown.

Tim Morshead KC explained that the Judge needed to be satisfied as to the risk of trespass and submitted that the facts satisfied all relevant tests – including the most stringent (that of "... *strong probability* ...") applied by Marcus Smith J in *Vastint* (paragraphs 13(4)(d) and 31(3)).

The Judge was also referred to test of real and imminent risk adopted in Nicklin J *Canada Goose* (and endorsed by the Court of Appeal in *Barking and Dagenham v PUs*).

TMKC explained that the Claimants were seeking a renewal of the interim injunction.

TMKC explained that Articles 10 and 11 of the European Convention were not engaged here at all (given that the Construction Site is private land).

The Judge delivered an *ex-tempore* judgement which noted the following:-

- This was the return date application for injunction ordered by Cotter J on 16.12.22
- The Judge was satisfied that sufficient notice of the proceedings and the Order dated 16 December 2022 had been given to enable anyone affected by it to apply to vary / discharge the Order (and they would retain this going forward)
- The Judge referred to:-
 - the attraction of the cranes on the Wembley construction site
 - evidence of urban exploring accidents
 - the risks which urban exploring activity causes for security staff / emergency services
 - the particular risks associated with urban exploring on construction sites
- The Judge applied the *American Cyanamid* test and was satisfied that:-
 - there was a serious issue to be tried
 - damages would not be an adequate remedy
 - the balance of convenience favours the Claimant
- The Judge applied the *Canada Goose* guidelines and was satisfied that the injunction should be continued:-
 - the identity of the Defendants was unknown
 - the class of PUs was correctly identified by their unlawful conduct
 - the risk of trespass was real and imminent (the risk was present once the cranes were erected and would continue until construction was completed)
 - the warning notices around the construction site would bring the proceedings and the Order to the attention of anyone considering breach
 - the acts prohibited by the Order matched the threat of trespass
 - the terms of the injunction were clear and precise

- The terms of the Order were discussed / agreed between the Judge and TMKC