

Party: Claimants
Witness: A Barkatali
Statement: First
Exhibits: "AB1" - "AB6"
Date: 13.12.22

Claim Number: KB-2022-004824

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

WITNESS STATEMENT OF

AHMED BARKATALI

I, Ahmed Barkatali, of 48 W Olympic Way, Wembley Park, Wembley HA9 0HS WILL SAY as follows:-

1. I am Ahmed Barkatali, Senior Project Manager for Quintain.
2. I make this witness statement in support of the Claimants' application for an injunction to prevent the Defendants from trespassing on the land and buildings referred to in the Details of Claim as the Construction Site.
3. Where the facts referred to in this witness statement are within my own knowledge, they are true; where the facts are not within my own knowledge, I believe them to be true and I have provided the source of my information.

Background

4. Quintain is a major developer which has, for some years, been one of the principal developers of the regeneration project around the new Wembley Stadium. In that role it has already completed many major construction projects around the Stadium.
5. The First Claimant is a subsidiary of Quintain and is the registered freehold owner of the land shown edged in red on the plan attached to the Details of Claim ("the Construction Site"). The Construction Site forms part of the land within title number NGL815251. I attach, marked "**AB1**" a copy of the title entries and title plan.
6. The land in the First Claimant's freehold title represents the next major phase of development at Wembley Park. It is also being conducted in phases. Ultimately the site will be developed as six inter-related developments, which have been designated NE01 to NE06 (the "NE" prefix indicating that the overall site is in the northeast quadrant of the various sites around the Wembley Stadium development which Quintain is undertaking). The Construction Site represents the intended construction compound for buildings NE01, NE02 and NE03.
7. The Second and Third Claimants (which are also subsidiaries of Quintain) respectively hold leases of building plots NE02 and NE03, granted by the First Claimant in each case for a term of 300 years from 12 September 2022. These leases are the subject of applications for first registration which are currently being processed by HM Land Registry but I am informed that HM Land Registry is suffering very long delays in its registration processes at the moment. The leases are granted in respect of the footprints of the new buildings, and grant rights over the rest of the site of which they form a part. The transactional process for NE01 is also under way.
8. I attach to this statement marked "**AB2**" a detailed site plan which shows (in light green) the footprints of all the proposed buildings within the context of wider development site. To be clear, the injunction is not presently sought in relation to the whole of the area shown in this plan (which corresponds to the First Claimant's wider freehold title) but only the compound which has been created for the construction of the buildings known as NE01, NE02 and NE03. That is what is shown on the plan annexed to the Details of Claim and the draft Order.
9. The construction of the buildings known as NE02 and NE03 is being undertaken by the Fourth Claimant pursuant to separate contracts granted on 13 and 14

September 2022 respectively. The contracts for these 2 buildings have a combined value of around £232 million and a combined Gross Development Value of more than £500 million. Both contracts are in the JCT Design and Build (2016 edition) form, and they include the following clause (clause 2.3 of the schedule of agreed amendments):

"2.3 On the Date of Possession possession of the site or, in the case of a Section, possession of the relevant part of the site shall be given to the Contractor who shall thereupon begin the construction of the Works or Section and regularly and diligently proceed with and complete the same on or before the relevant Completion Date. For Works insurance purposes the Contractor shall retain possession:

- 1 of the site and the Works up to and including the date of issue of the Practical Completion Statement; or*
- 2 of each Section and the relevant part of the site up to and including the date of issue of the Section Completion Statement for that section and, in respect of any balance of the site, up to and including the date of issue of the Practical Completion Statement."*

10. Clause 3.17 of the schedule of agreed amendments provides for the Fourth Claimant to be responsible for site security.
11. The Construction Site currently includes 5 tower cranes - the tallest of which has a jib height of around 85 metres.
12. Some recent photographs of the Construction Site showing the position of the tower cranes and a general view of the site marked "**AB3**".
13. The Court will see that immediately to the east of the Construction Site there is a further compound including temporary and permanent buildings. This area of the wider site is proposed for later phases of development (including the building known as NE06 and part of the building known as NE05). Until recently this land was the site of a temporary (pop-up) cinema project. The cinema site is let on a short lease which expires on 31 January 2023. The site is currently being decommissioned by its temporary lessee so that construction can begin on that area in the new year (beginning with demolition of the old permanent structures remaining on the site). Once possession of that site has been obtained, and construction preparations begin, the Claimants intend to apply to extend the scope of the present proceedings to that site.

14. The existing area of construction (i.e. the Construction Site) is entirely enclosed by hoardings, and so is separated by hoardings from the present cinema area.

Security at the Construction Site

15. As the Court would expect, Quintain takes safety and security issues extremely seriously. We significantly exceed the minimum requirements in relation to these issues which are prescribed by key legislation, namely the Construction Design and Management Regulations 2015.
16. The Construction Management Strategy prepared by Stace LLP for this project provides for regular security patrols and regular meetings with the Metropolitan Police and Contractors.
17. A copy of the relevant pages of the Construction Management Strategy are attached to this statement marked "**AB4**".
18. The Fourth Claimant's Project Director for this project is Daniel Mackell. I have enquired about the security measures which are in place at the Construction Site to seek to prevent or deter urban explorers and other trespassers, and I am informed that they include:-
 - 18.1 a single entry point for personnel via the site welfare (located on Engineers Way until June 2023 then Fulton Way from June 2023 onwards) with access control systems including floor to ceiling turnstiles operated by swipe cards and biometric identity testing. Other gates exist around the perimeter in case of a need for particular forms of access, but they are generally kept secure;
 - 18.2 security personnel at the Construction Site 24 hours a day, 365 days a year;
 - 18.3 continuous perimeter hoardings at a minimum height of 2.4 metres with gates in the hoardings at the same heights;
 - 18.4 emergency / essential lighting is provided on the main site walkways overnight (and also on hoardings);
 - 18.5 anti-climb measures are in place on all tower cranes (each is fitted with a lockable metal ladder hatch, anti-climb mesh and anti-climbing fans);

18.6 24 hour monitored closed circuit television (including coverage of the full site boundary and the crane bases with monitoring conducted both on site and remotely) which includes an integrated loudspeaker system.

19. I am satisfied that all sensible precautions that could be taken to prevent urban explorers from gaining access to the Construction Site have been taken by the Fourth Claimant, but ultimately it is only practicable to make a Construction Site difficult to access (not impregnable).

The reasons for seeking an injunction

20. In 2018, Wembley Park Limited (another Quintain company) along with others obtained an injunction to restrain trespass by urban explorers on 15 construction sites which were then underway within the Wembley complex.
21. I was not involved in obtaining that injunction but I have read the witness statement of Matthew Voyce (Quintain's Construction Director) dated 4 December 2018. A copy of that statement and its exhibits is attached marked "**AB5**".
22. In that statement, Mr Voyce refers to incursions onto one of the plots which was then under construction by a Mr George King-Thompson (who I am informed by Mr Wortley was subsequently given a prison term for climbing The Shard in breach of an injunction). In his statement, Mr Voyce referred to several videos and images uploaded in October and November 2018 which showed Mr King-Thompson climbing tower cranes on one of the plots.
23. The Court granted an injunction to protect the plots then under construction. A copy of this Order is attached marked "**AB6**".
24. In Quintain's view, the 2018 injunction provided an effective deterrent to urban explorers. As the Order required, prominent warning notices drawing attention to the fact that breach of the injunction might result in imprisonment were affixed at regular intervals on the hoardings around each construction site. Since those warning notices were affixed, Quintain is not aware of any incident of trespass by urban explorers at any of the sites covered by that Order.
25. However, the injunction only related to sites then under construction (and only whilst they were protected by hoardings).
26. Quintain does not automatically seek injunctions to restrain trespass on all of its construction sites. It undertakes an assessment of the threat to each site and

only applies for an injunction where the threat of trespass is sufficiently obvious and immediate to necessitate seeking the Court's assistance.

27. Quintan considers that a serious risk has arisen in respect of the Construction Site now that construction has begun in earnest. It has all the features which make it an obvious and specific target for urban explorers:-

27.1 it is a large and high profile construction site with excellent transport links;

27.2 it is adjacent to the iconic Wembley Stadium and high points on the Construction Site will command excellent views of the stadium (as did the cranes on the plots which were subject to trespass in 2018); and

27.3 it includes 5 tower cranes (and will soon contain more).

28. Whilst I am satisfied that the Fourth Claimant is doing all it can to secure the site, and also to prevent the climbing of cranes on the site, those measures cannot be 100% effective on their own. Mr Joyce records that (as I would expect) similar measures were in place at the sites which were trespassed in 2018.

29. For these reasons I believe there is a real and immediate risk of trespass by urban explorers at the Construction Site.

30. I also believe that such injunctions are effective to protect sites from trespass. I have been informed by Mr Wortley that, in his experience, urban explorers understand the effect of injunctions and generally steer clear of sites which are protected by way of an injunction. Mr Wortley's experience is that such injunctions have proved to be a genuine and effective deterrent. At least the more experienced protagonists are aware of the potential serious penalties which a breach could involve, particularly since Mr King-Thompson's own activities led to widespread media coverage when he was imprisoned for breaching the injunction protecting The Shard. Quintain's experience at Wembley since 2018 has been consistent with this.

31. The risks and potential consequences if / when urban explorers do enter a construction site are obviously very significant:-

31.1 any trespasser, but particularly an urban explorer, would expose themselves to significant dangers despite the steps we have already taken to reduce risk as far as possible. As I have already said, construction sites contain greater levels of potential risk than other sites. Many of the activities which urban

explorers engage in whilst on site are inherently dangerous. For example, it is obviously unsafe to climb a tower crane without any safety equipment;

31.2 the activity is potentially also dangerous for other people, including the Claimants' employees or contractors and for the emergency services and others who would have to come to their assistance should they get into difficulty;

31.3 I have watched a number of urban explorer videos. It is obvious from them that the protagonists show little regard for their own safety or awareness of, or concern for, the risk which they are exposing themselves to. The Claimants have no confidence that anyone trespassing on the Construction Site would prioritise their own safety, or that of others;

31.4 Another obvious feature of urban exploring videos is the fact that, when urban explorers are challenged by security, they often run away (and sometimes make a feature of evading security in their videos). It is obvious that people seeking to escape capture on a site will be taking even less care for their own safety (and that of others) as they do so;

31.5 although it is very much a secondary concern for the Claimants, the financial impact of urban exploring is potentially significant. Tower cranes which are known to have been climbed have then to be checked with potential consequential delays to work on the site. If anyone were injured on the site, at least that area, and possibly the site as a whole, would have to be closed down to allow authorities to investigate. Any such interruptions on a project of this scale and complexity is potentially financially significant and, of course, the Claimants would not expect to be practicably able to recover such losses from anyone. However, I stress the Claimants' primary objective in seeking this injunction is to preserve the safety of everyone at the Construction Site.

32. I believe that these risks can only be practically addressed by successfully dissuading urban explorers from trespassing at all, and I believe that the only way of achieving that is with the Court's assistance through the grant of an injunction.

33. The Order which the Claimants seek is framed so that it would prevent only activity which is a trespass and which I am advised is therefore inherently unlawful. I have no reason to believe that the Construction Site is likely to be the target of protest of any kind, or that there is any other reason why the Court might be

concerned that the injunction might interfere with some activity which is worthy of protection. I therefore cannot envisage any way in which someone might be adversely affected by the grant of this injunction in relation to their own lawful activities.

34. I therefore believe that there is a real and imminent risk of an invasion of the Claimants' property rights if an injunction is not granted, and of serious injury to the Claimants (and others). Given the nature of those risks, and the nature of any likely defendants, damages would clearly not be an adequate remedy to the Claimants.

Terms of the injunction

35. The terms of the draft Order only protect those parts of the Construction Site which are enclosed from time to time by hoardings. I am informed that this is a common formulation for such injunctions and that it provides significant protection against the injunction operating in an unnecessary or unjustified way:

35.1 because only areas which are enclosed within a secure perimeter are protected by the injunction, there is no risk of anyone breaching the injunction by inadvertently straying onto an open area which is, in fact, private land and so amounts to a trespass;

35.2 the injunction is inherently self-limiting in that once hoardings are removed from the site (because the need for a secure perimeter has receded) the injunction ceases to have effect. So the injunction automatically ceases when the need for it comes to an end.

36. The Court will see that the draft Order provides for notice of the injunction to be posted regularly around the site, and I am satisfied that there is no difficulty in doing so. Again, I am informed that such notices have proved an effective way of bringing injunctions to the attention of urban explorers. The notices contain a URL which will allow a potential trespasser immediately to view the order from their phone. Given the nature of this activity, and the age of those involved in it, I consider that there is no real chance that someone thinking of engaging in this activity might do so without being aware of the injunction and its terms, or might be confused about the terms of the injunction.

Undertaking in damages

37. Although I can foresee no way in which anyone affected by the injunction could suffer loss or damage, I am nevertheless authorised on behalf of the First Claimant to provide the necessary cross-undertaking to pay any sum which the Court considers appropriate to compensate the Defendant for any loss if it is subsequently determined that the Claimants are not entitled to the Order which they seek.
38. The First Claimant's accounts for the year ending 31 December 2021 show a trading profit over that period of around £71.5 million and a balance sheet value on that date of around £131 million. A copy of these accounts will be available at Court on the hearing of the injunction application should the Court wish them to be put into evidence.

STATEMENT OF TRUTH

I believe that the facts contained in this Witness Statement and Exhibits are true.

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised to make a Statement on behalf of the Claimants.

A. M. Barkatali

Ahmed Barkatali

13 December 2022