

1.	Claimants
2.	Richard Joseph Jordan
3.	Second
4.	RJ9
5.	Date: 15 June 2020

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

Claim No: PT-2018-000098

B E T W E E N:

(1) THE SECRETARY OF STATE FOR TRANSPORT

(2) HIGH SPEED TWO (HS2) LTD

Claimants/Applicants

-and-

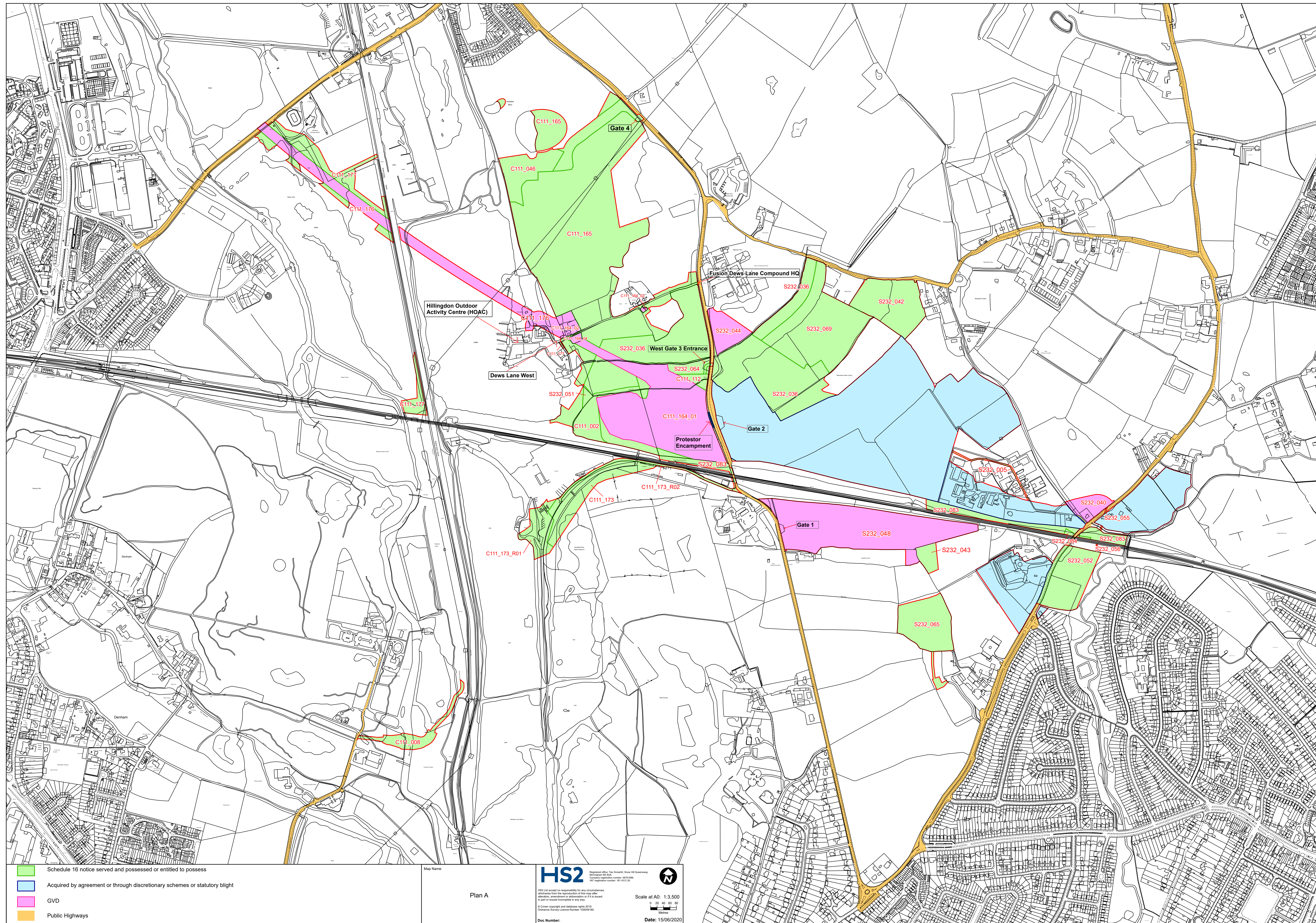
(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANT(S) ON LAND AT HARVIL ROAD, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE AMENDED CLAIM FORM

(2) PERSONS UNKNOWN SUBSTANTIALLY INTERFERING WITH THE PASSAGE BY THE CLAIMANTS AND THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES OR EMPLOYEES WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT BETWEEN THE PUBLIC HIGHWAY AT HARVIL ROAD, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED ORANGE AND THE LAND AT HARVIL ROAD SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE AMENDED CLAIM FORM

(3) to (33) THE NAMED DEFENDANTS LISTED IN THE SCHEDULE TO THE ORDER OF THE HON MR JUSTICE FANCOURT DATED 21 MAY 2020

Defendants / Respondents

**EXHIBIT "RJ9" TO THE
SECOND WITNESS STATEMENT OF RICHARD JOSEPH JORDAN**



Protest Camp on roadside – adjoining land



Butler, Jodie

From: Jenkins, Shona
Sent: 04 June 2020 17:06
To: Caroline Thomson-Smith
Subject: PT-2018-000098 The Secretary of State for Transport and High Speed Two (HS2) Ltd v Persons Unknown and others

Dear Ms Thomson-Smith

Having now taken instructions and based on your assurance that you have no intention of: (i) trespassing on our clients' land; (ii) obstructing access to it; or (iii) returning to the Harvil Road site (save for the reason you have mentioned below), our clients agree to your removal as a respondent to the Extension Application and as a defendant to the proceedings. Please note that the Return Date for the hearing of Extension Application has been listed for 22 June 2020 and we will therefore update the Court and formalise your removal at the hearing.

Notwithstanding the above, we make you aware that you have been identified as one of a number of individuals who took part in a protest yesterday at one of HS2's sites at Steeple Claydon which involved you and a number of other individuals trespassing on our clients' land, disrupting and halting works which were being undertaken by HS2's contractor. We understand that this incident necessitated the involvement of the police and that several protesters (not including yourself) were arrested.

This incident of trespass is a breach of civil law and infringes our clients' property rights. It also impedes the exercise of our clients' statutory rights and performance of our clients' statutory obligations. We formally put you on notice that should there continue to be unlawful acts at this site that our clients may need to apply to the High Court for an injunction restraining trespass and obstruction of that land. If you continue to be identified as an individual who participates in unlawful conduct (which includes trespass), and you fail to give satisfactory assurances that you will not further participate in any further unlawful activity, our clients would be required to name you as a defendant to those proceedings. In those circumstances, our clients would also be seeking an order from the Court that those named as Defendants in the action pay our clients' costs.

We also confirm, for completeness, that in the event that there are any incidents of unlawful conduct by you at the Harvil Road site that it would be open to our clients to seek to re-join you as a defendant to these proceedings. Again, in those circumstances, our clients would be seeking to recover their costs.

We hope that this will not prove necessary.

Yours sincerely

Shona Jenkins | Senior Associate | Real Estate Dispute Resolution | Eversheds Sutherland

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From: Jenkins, Shona
Sent: 03 June 2020 21:20
To: 'Caroline Thomson-Smith'
Subject: RE: PT-2018-000098 The Secretary of State for Transport and High Speed Two (HS2) Ltd v Persons Unknown and others

Dear Ms Thomson-Smith

Thank you for that confirmation. I am taking instructions and will come back to you as soon as possible.

Just by way of clarification and, as a matter of practice, it is not possible to unilaterally remove oneself as a defendant. Either both parties must agree or a court needs to order the removal.

I hope to be in a position to return to you tomorrow.

Yours sincerely

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From: Caroline Thomson-Smith

Sent: 03 June 2020 09:48

To: Jenkins, Shona <ShonaJenkins@eversheds-sutherland.com>

Subject: Re: PT-2018-000098 The Secretary of State for Transport and High Speed Two (HS2) Ltd v Persons Unknown and others

Dear Ms Jenkins,

I have no intention of committing trespass at Harvil Road, nor have I ever had intention of breaking an injunction at Harvil Road. I have no intention of going back to Harvil Road (other than to visit the Dog's Trust from where I adopted my dog - although this seems unlikely at this time).

I am concerned that you say that your clients only MAY remove me as a named defendant even though your clients knew my identity. At the hearing the judge gave me the option of being a named defendant so I do not understand why your clients now feel that they have the right to dictate whether I am removed from these proceedings or not. By your client's admission they had NOT intended to pursue proceedings against me in either the extension or the substantive case so had I not agreed in the hearing on the 21st (after having it not fully explained what the implication would be) that would have been the end of the matter so far as I am concerned and we would not be having these communications.

I wish to emphasise again that I was without representation at the hearing on the 21st and that implications of agreeing to being a named defendant were not made as clear as they might have been owing to the truncated nature of conducting a hearing by Skype.

Yours sincerely,

Caroline Thomson-Smith

On Wed, 3 Jun 2020 at 07:31, Jenkins, Shona <ShonaJenkins@eversheds-sutherland.com> wrote:

Dear Ms Thomson-Smith

Thank you for your email. I have noted that you are not prepared to give an undertaking (which is a formal and binding assurance). I am asking you to confirm your intentions as that will be relevant as to whether my clients are content to have you removed as a named individual to these proceedings. If it's the case that you confirm you have no intention to trespass on my clients' land or obstruct access to it, then my clients may be prepared to have you removed as a named respondent even in circumstances where you are not prepared to give the undertaking initially requested.

I look forward to hearing from you.

Yours sincerely

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From: Caroline Thomson-Smith

Sent: 03 June 2020 01:00

To: Jenkins, Shona <ShonaJenkins@eversheds-sutherland.com>

Subject: Re: PT-2018-000098 The Secretary of State for Transport and High Speed Two (HS2) Ltd v Persons Unknown and others

Dear Ms Jenkins,

As stated in my previous email and for the reasons explained, I decline to make any such undertaking, especially given that your client's barrister Mr Roscoe and the Judge did not attach conditions on withdrawing as a Named Defendant and it was not your clients intention to pursue proceedings against me.

Yours sincerely,

Caroline Thomson-Smith

On Tue, 2 Jun 2020, 22:14 Jenkins, Shona, <ShonaJenkins@eversheds-sutherland.com> wrote:

Dear Ms Thomson-Smith

Thank you for your email. I note what you say in relation to providing a formal undertaking. In order that I may take my clients' instructions, please can you confirm that you have no intention of trespassing on my clients' land at Harvil Road or obstructing access to it.

I look forward to hearing from you.

Yours sincerely

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From: Caroline Thomson-Smith

Sent: 02 June 2020 14:28

To: Jenkins, Shona <ShonaJenkins@eversheds-sutherland.com>

Cc: Steven.Brilliant@justice.gov.uk

Subject: Re: PT-2018-000098 The Secretary of State for Transport and High Speed Two (HS2) Ltd v Persons Unknown and others

Dear Ms. Jenkins,

Having considered your witness statement and your email in which you state that your clients had **not** been minded to pursue proceedings against me personally in either the Extension Application or the Substantive case I wish to withdraw as a Named Defendant.

Since it was never the intention of your client to name me as a Respondent, since I did nothing illegal during the protest and since it was explained to me in the hearing that I could withdraw at any time without any conditions being attached to this by the judge or Mr Roscoe I do not see the requirement or me to offer any undertaking to them so I decline to do so.

My position as Named Defendant came almost by accident during the court proceedings as by chance I was allowed on the Skype hearing. I was not being represented and was not fully aware of the implications of being Named Defendant - certainly no cost implication was explained to me in court - which is why I accepted and agreed to that position.

I am surprised that Mr Roscoe was not able to clarify the position to me in the hearing the 21st. It is unfortunate as this would have removed doubt and not placed me in the situation in which I now find myself.

I trust that your clients will find this acceptable.

Yours sincerely,

Caroline Thomson Smith.

On Wed, 27 May 2020, 13:59 Jenkins, Shona, <ShonaJenkins@eversheds-sutherland.com> wrote:

Dear Ms Thomson-Smith

Thank you for your email.

Please note that, as things stand, the evidence our clients have offered evidence against you relate to the single incident of protest as set out in the Witness Statement supporting the Extension Application. Our clients had **not** been minded to pursue proceedings against you personally. You were not named as a Respondent to the Extension Application and it was not our clients' intention to name you as a Respondent to the Substantive Application which it intends to make in due course. However, you have requested to be involved and to be added as a Respondent to the Extension Application and Defendant to the proceedings as per the attached order of the court.

If, however, you are prepared to provide an undertaking that you will not enter onto the HS2 Harvil Road Site or obstruct access to it, then you need not take any part in the proceedings and our clients would be prepared not to include you as a named respondent any longer. In that regard, we invite you to confirm whether you are willing to provide this assurance and, if that is the case, we will follow up on this formally by way of further correspondence.

In the meantime, I attach the sealed order of the court received from the court today together with the injunction plan by way of service. I will follow up with a copy of the Extension Application separately and my secretary will then follow up with Exhibit SRJ1.

I look forward to hearing from you.

Yours sincerely

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From: Caroline Thomson-Smith

Sent: 27 May 2020 12:25

To: Jenkins, Shona <ShonaJenkins@eversheds-sutherland.com>

Cc: Steven.Brilliant@justice.gov.uk

Subject: Re: PT-2018-000098 The Secretary of State for Transport and High Speed Two (HS2) Ltd v Persons Unknown and others

Dear Ms Jenkins,

Thank you for your email.

I can confirm that this email address is an appropriate means of delivering your documents to me.

I would like to take this opportunity to point out to you that with regard to the hearing of the 21st May I was blissfully unaware of any involvement in the case being brought by Sec of State and HS2 until 7:15 pm on the evening of 20th May. I found out at third hand and quite by chance.

I would also like for it to be noted that 6 days have passed since the previous hearing with 6 days left to submit evidence and I still remain ignorant of precisely what it is I am being accused of.

I find this most unsatisfactory, indeed unfair.

It must have taken some time for Eversheds Sutherland to have prepared this case. I fail to understand how it can be deemed right and proper to include me in the submission to the court on the 21st May without making me explicitly and precisely aware of my alleged involvement in any wrong doing in a timely fashion and therefore affording me the opportunity to prepare a response to the court.

As an obedient citizen of this country with no previous experience of anything of this nature I am finding the whole manner in which this case is being conducted to be wholly unsatisfactory and hugely stressful. I trust you will appreciate this and that I will receive an acknowledgement of the anxiety your handling of this matter is causing.

Yours sincerely,

Caroline Thomson-Smith

On Wed, 27 May 2020, 11:07 Jenkins, Shona, <ShonaJenkins@eversheds-sutherland.com> wrote:

Dear Ms Thomson-Smith

We act for the Secretary of State for Transport and High Speed Two (HS2) Limited in the above proceedings.

Following the hearing on 21 May 2020, could you kindly confirm a postal address for service or confirm that you are prepared to accept electronic service of documents to this email address? We are shortly due to serve the Order following last week's hearing and so I would be grateful to hear from you.

Yours sincerely

Shona Jenkins | Senior Associate | Real Estate Dispute Resolution | Eversheds Sutherland

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Citation Number: [2020] EWHC 1460 (QB)

Case No: QB-2020-001679

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 13th May 2020

Before:

THE HONOURABLE MR. JUSTICE SWIFT

Between:

(1) STUART ACKROYD
(2) WIKTORIA ZIENIUK

Applicants

- and -

(1) HIGH SPEED TWO (HS2)
(2) HIGH COURT ENFORCEMENT GROUP LTD
(t/a NATIONAL EVICTION TEAM)

Respondents

PAUL POWLES LAND for the Claimants

TOM ROSCOE (instructed by Eversheds Sutherland LLP) for the First Defendant
The Second Defendant was not present or represented

APPROVED JUDGMENT

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THE HONOURABLE MR. JUSTICE SWIFT:

1. This is an application for an injunction made by Stuart Ackroyd and Wiktoria Zieniuk. The respondents to the application are High Speed Two Limited and High Court Enforcement Group Limited. High Speed Two Limited has appeared on this application, although strictly it remains an *ex parte* application, by counsel Mr Roscoe. The Applicants are represented by Mr Powlesland of counsel.
2. When the application was initiated it was to prevent the eviction of the claimants and others from premises known as RMC Garages, Dews Lane in Harefield. That property is owned by HS2, the First Respondent, pursuant to a declaration made in exercise of powers arising under the High Speed Rail (London to West Midlands) Act 2017. Specifically, I have been taken to General Vesting Declaration No. 160 which vests in HS2 the particular land where RMC Garages is located.
3. The Applicants, and I am told approximately 15 others, had entered the property at various times after January 2020. Mr Ackroyd was one of the original occupiers of the property; Ms Zieniuk arrived some two weeks ago at the end of April 2020. Those in the property were there with a view to using it as a protest camp, a base from which to express their opposition to the construction of the HS2 Railway project. It appears that those who have been in the property are not necessarily there all the time; people have come and people have gone. Nevertheless, there has, one way or the other, been a constant presence since January this year. As well as occupying the premises other protesters live near the premises, either in tents or in tree houses that they have constructed, again for the purposes of their protest.
4. Yesterday, 12th May, the Second Respondent (bailiffs retained by HS2), were asked to recover possession of the property. The eviction effort went on throughout the day; it paused in the evening; it then recommenced this morning. I am told that the last protester left the site at around about 9 o'clock this morning. In the skeleton argument prepared for this hearing Mr Powlesland states that those in the property resisted their removal "both physically and verbally". It appears to be the Applicants' position that there was some form of violence on all sides; whether that was directed to property or to persons is presently unclear.
5. The Applicants contend that their eviction was unlawful on three grounds. The first question is whether in relation to any of those causes of action the Applicants have demonstrated a sufficient *prima facie* case that at trial they will succeed in obtaining relief in the form that they seek now as interim relief.
6. The first ground is that the process of eviction from the site has involved acts that amount to criminal offences under section 6 of the Criminal Law Act 1977. I am not satisfied that there is a sufficient case that the possibility that offences have been committed under that Act provides a proper basis for the grant of injunctive relief in this case. Even assuming breaches of section 6 of the 1977 Act occurred, I am not satisfied that that would give rise to any private law cause of action that could be relied on by the Applicants. The circumstances in which injunctions are available in aid of criminal law prohibitions are relatively rare and when those circumstances do exist ordinarily injunctions are available only on the claim of those who have responsibility for enforcing the relevant statutory provisions.

7. Mr. Roscoe has taken me to two authorities. The first, *Hemmings and wife v Stoke Poges Golf Club* [1920] 1 KB 720, considered the position in relation to a predecessor statute to the 1977 Act. The conclusion reached in that case was that conduct amounting to a breach of that statute and therefore an offence under that statute did not give rise to any civil liability. The next case is *Secretary of State for Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780. This was a decision of the Supreme Court. It did not deal directly with the point in issue in these proceedings as it was concerned primarily with the availability of injunctions in support of claims of civil wrong. Nevertheless, the judgment of Baroness Hale contains passing reference to the provisions of the 1977 Act and recognition that conduct that might amount, for the purposes of any tort claim, to the use of reasonable force that a landlord or owner of a premises is entitled to use in order to remove trespassers might of itself engage the criminal prohibition at section 6 of the 1977 Act. All that can be said is that, having mentioned those matters, there is no suggestion in Baroness Hale's judgment that the provisions of the 1977 Act grounded any form of civil liability but, as I say, that was not a matter that was squarely before the Supreme Court on that occasion.
8. Nevertheless, having regard to the authority of *Hemmings* and having regard to the provisions of the 1977 Act itself, I do not consider that there is any particularly strong argument (i.e. any argument with any real prospect of success) that breach of section 6 of the 1977 Act gives rise to any form of civil claim available to the Applicants in these proceedings. Mr Powlesland for the Applicants says that the difference may now be made by the existence of the Human Rights Act. It seems to me that if any difference is made by the Human Rights Act it would be in the form of a claim being available under the provisions of that Act directly rather than affecting the position of the availability of any civil claim to arise in aid of or in parallel to breach of section 6 of the 1977 Act.
9. The possibility of a claim under the Human Rights Act is the second basis on which it is said the Applicants have a sufficiently arguable prima facie case. I do not agree that the provisions of the Human Rights Act afford the Applicants any such cause of action. There is doubt, on the submissions I have heard, as to whether the First Respondent is a public authority within the meaning of section 6 of the Human Rights Act. However, I will assume for present purposes that it is such an authority and, on that basis, that in principle a claim is available under the 1998 Act.
10. Mr Powlesland puts the Applicants' case on the basis of breach of Article 8. I am also prepared to accept it is arguable that there has been some breach of Article 8 vis-à-vis the Applicants, although it seems to me that the nature of any interference with the rights under Article 8(1) is very limited indeed. Mr Powlesland submits that the property is the home both of Mr Ackroyd and Ms Zieniuk. But Ms Zieniuk has only been there for a matter of days. Moreover, each entered the premises not as their home but as a site of protest. That is a matter which clearly goes to the extent of any interference with Article 8 rights. Mr Powlesland has been unable to tell me where Mr Ackroyd lived before he moved to the premises or, for that matter, where Ms Zieniuk lived before she went to the premises. There is simply no information that suggests that the premises is, in any genuine sense, the home of either of the Applicants.
11. But even assuming the existence of some form of interference with rights protected by Article 8 the question of justification must be considered. It is inevitable that, were a

breach of Article 8 rights to be demonstrated, a court would conclude that the removal of Mr Ackroyd and Ms Zieniuk was justified. The steps taken to remove them were taken by an owner of land who is seeking to fulfil an important statutory objective.

12. The third cause of action relied on by Mr Powlesland was to the effect that, although both the Applicants were trespassers they nevertheless had better title to the land, or a better right of possession than the First Respondent. Mr Powlesland accepted that this submission that would fall away if the First Respondent's legal right to the land could be demonstrated. In his submissions Mr. Roscoe referred me to the General Vesting Declaration No. 160. On instructions, he has explained to me that that declaration does vest in the First Respondent the land that is the subject of the application in this case (which is shown on the plan attached to that Declaration by reference number 47431). I accept what Mr Roscoe has told me on instructions. The consequence is that the third basis advanced for the claim falls away.
13. For these reasons the application for an injunction fails without the need to consider the balance of convenience. But assuming for the moment that I am wrong in the conclusions I have reached so far as to the likely prospects of success of the causes of action advanced, I would in any event have refused the application for an injunction on the basis of the balance of convenience.
14. Assume for the moment it is arguable that offences may have been committed under section 6 of the 1977 Act. If that is the case it is, in the circumstances of this case also arguable that those protesting, including the Applicants, may themselves have committed offences, for example of assault or criminal damage, possibly also, offences under section 8 of the 1977 Act. The point that this goes to is this: if offences have been committed the correct course of action is to involve the police. I am told, and it is accepted by all parties, that the police were informed of the exercise undertaken by the Second Respondent yesterday and this morning to remove the protesters, and that police officers were present on site from time to time in the course of yesterday. That being so, if it was the case that any criminal offences were being committed the police were well-placed to deal with them and consider for themselves whether they had grounds to suspect that any of the activities that took place yesterday amounted to the commission of a criminal offence by any person.
15. The second point relevant to the balance of convenience is the fact that both the Applicants are trespassers. That is a far from promising starting point for any application for an order that would in substance maintain that trespass. It now appears that the protesters, including the Applicants, have been removed from the premises. In those circumstances, Mr Roscoe says that the request that is now being made of me is to make an order that would effectively reinstate a trespass has come to an end. I do not attach any particular significance to that matter. I accept that when the application was made the Applicants were on the premises. Events have moved on, but that is not a matter that seems to me to be particularly material to whether relief should be granted at this stage.
16. The next point suggested as material to the balance of convenience is that Mr Ackroyd says that he will be left "street homeless" if he is required to leave the premises. I attach very little weight to this matter. Mr Powlesland was unable to tell me where Mr Ackroyd lived before January 2020 when he commenced his protest, but in any event the possibility of being street homeless is not in itself licence to enter

premises unlawfully. Further it is obvious that Mr Ackroyd entered the premises in order to undertake his protest against the First Respondent's construction of HS2, not because of any concerns that he had about being homeless. If the consequence of Mr Ackroyd's removal from the premises is that he is without a roof over his head, his appropriate course of action is to identify his relevant local authority and to apply to that authority for relief. The street homeless point is not a matter then that seems to me to add any significant weight to a balancing exercise in this case as to whether or not I should grant the order requested.

17. I also weigh in the balance that were an order to be made, and were it to turn out at trial that that order had been incorrectly made, it is unlikely that the Applicants would be in a position to satisfy any call for damages that arose in consequence of an interlocutory order having been incorrectly made. Each has offered cross-undertakings in damages, but I cannot see that either has the means to honour the undertaking if called upon to do so. On the other hand, I accept Mr Roscoe's submission that in this case there would be significant costs to the First Respondent were the exercise to remove the protesters from the site either to be halted, or, as events have progressed, to be reversed by order of this court.
18. For all those reasons, my conclusion, had it been necessary to consider the balance of convenience, would be that the balance of convenience falls squarely against granting the interim order the Applicants seek.
19. This application for an interim injunction is refused.

This judgment has been approved by the Judge.









