Neutral Citation Number: [2022] EWHC 2364 (KB)

Case No: QB-2022-BHM-000044

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil and Family Justice Centre
33 Bull St
Birmingham B4 6DS

Date: 23/09/2022

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

(1) HIGH SPEED TWO (HS2) LIMITED

(2) THE SECRETARY OF STATE FOR TRANSPORT

Claimants

- and –

(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON, IN OR UNDER LAND KNOWN AS LAND AT CASH'S PIT, STAFFORDSHIRE SHOWN COLOURED ORANGE ON PLAN A ANNEXED TO THE ORDER DATED 11 APRIL 2022 ("THE CASH'S PIT LAND")

(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON, IN OR UNDER LAND ACQUIRED OR HELD BY THE CLAIMANTS IN CONNECTION WITH THE HIGH SPEED TWO RAILWAY SCHEME SHOWN COLOURED PINK, AND GREEN ON THE HS2 LAND PLANS AT https://www.gov.uk/government/publications/hs2-route-wide-injunction-proceedings ("THE HS2 LAND") WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS,

SUBCONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES

(3) PERSONS UNKNOWN OBSTRUCTING AND/OR INTERFERING WITH ACCESS TO AND/OR EGRESS FROM THE HS2 LAND IN CONNECTION WITH THE HS2 SCHEME WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT, WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES WITHOUT THE CONSENT OF THE CLAIMANTS

(4) PERSONS UNKNOWN CUTTING, DAMAGING, MOVING, CLIMBING ON OR OVER, DIGGING BENEATH OR REMOVING ANY ITEMS AFFIXED TO ANY TEMPORARY OR PERMANENT FENCING OR GATES ON OR AT THE PERIMETER OF THE HS2 LAND, OR DAMAGING, APPLYING ANY SUBSTANCE TO OR INTERFERING WITH ANY LOCK OR ANY GATE AT THE PERIMETER OF THE HS2 LAND WITHOUT THE CONSENT OF THE CLAIMANTS

(5) MR ROSS MONAGHAN (AKA SQUIRREL / ASH TREE) AND 58 OTHER NAMED DEFENDANTS AS SET OUT IN THE SCHEDULE TO THE PARTICULARS OF CLAIM **Defendants**

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Richard Kimblin KC, Michael Fry, Sioned Davies and Jonathan Welch (instructed by **DLA Piper UK LLP**) for the **Claimants**
Tim Moloney KC and Owen Greenhall (instructed by **Robert Lizar Solicitors**) for **D6 (James Knaggs)**
A number of individuals Defendants represented themselves

Hearing dates: **26-27 May 2022**
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Approved Judgment
on consequential matters

Mr Justice Julian Knowles:

1. This short judgment addresses matters which have arisen following circulation of my draft judgment to the parties earlier this month.

2. Mr Maloney KC and Mr Greenhall on behalf of D6 made a number of suggested amendments in writing to the draft injunction order and have sought permission to appeal against my judgment.

3. Mr Kimblin KC and his juniors replied in writing on behalf of the Claimants.

4. I have considered all the submissions.

5. I decline to make any of D6s suggested changes and I also refuse permission to appeal, on the grounds that an appeal would have no prospects of success and there is no compelling reason why an appeal should be heard (CPR r 52.6(1)).

6. My reasons for so concluding are essentially those set out in Mr Kimblin's document, the substance of which I agree with, and adopt, and for the following reasons.

Suggested amendments to the Draft Injunction Order

7. D6's first suggestion is that there should be two orders – one for the four groups of unknown defendants, and one for named defendants. It is said there should be two orders 'in the interests of clarity'.

8. I disagree. Firstly, this point was not raised at any stage during the hearing and it is now too late. Second, having two orders would promote confusion and not produce clarity. This is one action, and there will be one order. If any defendant is uncertain about the effect of the order then I am sure D6's solicitors will be willing to assist. They have been very helpful as a point of contact with the unrepresented individual defendants, and are very experienced in this sort of case.

9. Next, D6 suggests modifying the Draft Injunction Order so as to add: (a) a need for there to be defined 'consequences' arising from the prohibited acts in [3(a)-(c)] of the Draft Order, notably 'where such conduct has the effect of damaging and/or delaying and/or hindering the Claimants, their agents, servants, contractors, sub-contractors, group companies, licensees, invitees and/or employees'; (b) a provision that no person shall be in breach of [3] without a Defendant 'knowing of the existence of the Order and the terms of [3]'; and (c) a provision that where there are ongoing HS2 works on any portion or parcel of HS2 Land, interference with such works will not constitute a breach of [3] of the Draft Order, unless that portion or parcel of the HS2 Land is clearly demarcated.

10. As to the first of these, it is unnecessary. The 'consequence wording' is appropriately drafted within the definitions of 'persons unknown' in D2, D3 and D4. I am satisfied the issue has been appropriately considered in the Draft Judgment. To introduce 'consequence wording' at [3] serves to significantly attenuate the force of the Draft Order, particularly in respect of D1 and D5-63. I rely on and adopt [9]-[18] of the Claimant's Response to D6's submissions.

11. Second, an additional 'knowledge' provision is unnecessary and inappropriate. The question of knowledge of an injunction in the context of persons unknown alleged to have breached it is not straightforward and can be safely and properly left to committal proceedings when it can be tested by reference to evidence and the authorities, rather than hypothetically in advance. Although submissions were made to me about knowledge at the main hearing (certainly in writing by the Claimants), I purposefully did not address it in the judgment, having decided that the appropriate time and place to deal with it will be at any committal proceedings for any alleged breach of the Injunction.

12. Third, demarcation is impractical, inappropriate and unnecessary. Again, this point was not raised at the hearing. I am satisfied that the service provisions in the Draft Injunction Order are extensive, and can reasonably be expected to bring the Order to the Defendants' attention, *per* the *Canada Goose* requirements. Similar provisions in relation to the injunction application were effective, witnessed by the many submissions which the court received. The land affected by the injunction is clearly set out in a publicly accessible form. If any defendant wishes to protest lawfully on land and is unsure of its status as either pink or green land (and so unsure whether they would be trespassing), then they can contact the Claimants' solicitors who, as officers of the court, will be duty bound to assist them and provide the answer. Alternatively, such a defendant can seek the assistance of D6's solicitors, whom I am again confident will assist.

13. As to the practicality of demarcation, Bennathan J remarked in his *National Highways* case, in a passage, which I quoted in the judgment at [147]:

> 'In other cases, it has been possible to create a viable alternative method of service by posting notices at regular intervals around the area that is the subject of the injunctions; this has been done, for example, in injunctions granted recently by the Court in protests against oil companies. That solution, however, is completely impracticable when dealing with a vast road network.'

14. The same is true in this case.

15. Furthermore, as the Claimants point out, the requirement for knowledge is not an issue which concerns D6. It has never been part of D6's case that he was not served with the application or the Draft Injunction Order. D6 has participated in proceedings throughout. It cannot properly be argued that a provision on 'knowledge' is therefore necessary in [3] in order to safeguard his position.

Permission to appeal

16. On behalf of D6, four grounds of appeal are suggested. In my judgment they are all unarguable and for that reason I refuse permission to appeal.

17. First, D6 submits that I erred in law in concluding that the Claimant had an immediate right to possession of the entirety of the land subject to the order capable of founding a claim in trespass.

18. I do not consider it to be arguable that I did err. It is a fact that, for the reasons I set out at length in the judgment, the Claimants are either in possession of HS2 Land, or have the right to immediate possession of it, the relevant statutory notices having been served. The evidence was clear and explicit. D6 seeks to construe the statutory provisions in the Phase One Act and the Phase 2a Act as requiring work to be imminent before the relevant possession right is triggered. I disagree. There is nothing in the statutory wording which supports his position and to so construe it would be invite the 'guerilla tactics' by protesters to which I referred in my judgment. Also, as the Claimants point out, at an earlier stage it was accepted by D6 in the context of the possession order for Cash's Pit land that the Claimants had the relevant interests in that land concerned.

19. Next, it is said that I erred in concluding that the First Claimant could rely on its A1P1 rights as against the Defendants' Article 10 and 11 rights. Again, I dealt with this point at length in the judgment. As I explained, there is authority binding upon me that it can. There are also the judgments of Arnold J in the *Olympic Delivery Authority* cases which, whilst not binding upon me strictly, I should follow unless I think they are wrong. I do not. I respectfully consider they are right. If D6 wishes to try and persuade the Court of Appeal to revisit this issue then he is free to do so, but I decline to grant permission to appeal in the face of clear binding and persuasive authority that is against his position.

20. Next, it is said I erred in law in defining the prohibited conducted in the injunction Order: (a) by reference to a legal cause of action; (b) by reference to vague/imprecise terms such as 'slow walking'.

21. Both of these points are, with respect, without merit.

22. The Draft Injunction Order does not define what is *prohibited* by reference to legal causes of action. Paragraphs 3 and 5 are plain. They describe in ordinary non-legal and non-technical language that which the Order prohibits. What the Order does in [4] is carve out exceptions by making clear that *lawful* activities are *not* prohibited. These provisions are for the *benefit* of the Defendants. It is verging on the ridiculous to suggest that the Injunction is somehow wrong or unlawful in so providing. What, one might ask, is the alternative? That the order should spell out all of the different *lawful* potential activities on the highway that are not prohibited, eg, going for an evening stroll; holding a placard; picnicking in a layby and picking bluebells (cf *Hinz v Berry* [1970] 2 QB 40, 42); stopping to admire the view, etc, etc? It is plainly not practicable to do so.

23. As to the 'slow walking' point, this misses out the key provision in [3] of the draft injunction order. This prohibits in [3(b)], 'deliberately obstructing or otherwise interfering with the free movement of vehicles', and then gives as an example of such conduct in [5(f)]: 'deliberate slow walking in front of vehicles in the vicinity of the HS2 Land.'

24. There is nothing vague or unclear about these provisions. I am confident that protesters and would-be protesters know exactly what they or others have been doing which these provisions now prohibit. Also, as the Claimants point out, it was part of D6's case that slow walking should be permitted because it was a long-established form of protest (Skeleton, [118]). At the same time, it was also submitted by D6 that

'slow-walking' was too vague, relying on *Ineos* (Skeleton, [12]). I accept that there is an element of D6 wanting to have it both ways in this suggested ground of appeal.

25. I required the insertion of the words 'deliberately' and 'deliberate' in the original draft Injunction to make clear that a disabled or mobility impaired person who happened to be crossing in front of an HS2 vehicle, thereby temporarily delaying it, would not be in breach.

26. Lastly, so far as service is concerned, I am satisfied that the service provisions are full, extensive, and satisfy *Canada Goose*. They were effective in bringing the application to widespread attention, as I described in the judgment, and I am satisfied they will similarly bring the Order to widespread attention.

27. Furthermore, the Order contains provisions requiring the Claimants to effect personal service on any Defendant of whose identity they become aware (at [11]). So, personal service is a requirement if it is reasonably practicable. The net result is that if the Claimants become aware of, for example, a trespasser, the trespasser has to be served unless there are good reasons why that cannot be done.