

Neutral Citation Number: [2023] EWHC 1485 (KB)

IN THE HIGH COURT OF JUSTICE

Claim No. KB-2023-002440

KING'S BENCH DIVISION

B E T W E E N :

Royal Courts of Justice
Strand, London, WC2A 2LL

16 June 2023

Before :

MR JUSTICE CONSTABLE

Between :

UNIVERSITY OF BRIGHTON

Claimant

-and-

PERSONS UNKNOWN OCCUPYING LAND

**(being those occupying the 8th floor and roof of Cockcroft Building, Moulsecoomb
Campus, University of Brighton, Lewes Road, BN2 4GJ)**

Defendants

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STEVEN WOOLF (instructed by DMH Stallard LLP) for the Claimant
No one appeared for the Defendants

Hearing Date: 16 June 2023

JUDGMENT

MR JUSTICE CONSTABLE:

Introduction

1. This is the return date hearing in respect of an interim injunction granted by Mr Justice Bright on 30 May 2023 requiring persons unknown occupying the 8th Floor and the Roof of the Cockcroft Building, Moulsecoom Campus, University of Brighton, Lewes Road, Brighton BN2 4GJ ('the Premises') to vacate.
2. No one has attended for Persons Unknown. I am satisfied on the evidence of Mr Wilson that the interim injunction Order, which specified the time and date of the Return Date, was served in accordance with its terms and that as such, any persons unknown who may wish to have made representations at this hearing could have done so. At the end of the hearing, I indicated that I would grant a Final Injunction, albeit it slightly modified form from that sought, and that I would hand down my reasons later. These are those reasons.

The Facts

3. The Claimant is the freehold owner of the land upon which the Premises is located.
4. At approximately 3.30am on the morning of 25 May 2023, various Persons Unknown entered the Cockcroft Building and broke into the 8th floor offices. They subsequently barricaded themselves within, preventing anyone else entering the premises. Damage was caused to the premises, and the doors were secured shut from inside by screwing batons into the door and across the frames. The Persons Unknown also accessed the Roof, which has a terrace around the perimeter, and displayed banners in support of their cause. On the basis of the publicity generated by the Persons Unknown through social media and banners displayed, it is plain that the reason for the occupation was to protest against the possibility of redundancies taking place amongst staff at the University.
5. Even having been notified of the interim Injunction Order, the protesters refused to vacate. However, rather than seek the committal of the Persons Unknown for contempt of Court, the Claimant sought and successfully obtained an Order for a Writ of Assistance. The enforcement officers were due to attend at the premises on 5

June 2023 to effect the interim Injunction, but the Persons Unknown vacated prior to their arrival. It is unclear whether they did this because of the impending attendance of enforcement officers, or because there was a fire alarm which had been set off by persons unknown.

6. Since Monday 5 June 2023, the premises have been in the possession of the Claimant, by virtue of the interim Injunction, albeit some days later than the Defendants should have departed the premises.

The Claim for Possession

7. The original substantive claim to which the interim relief was ancillary was for possession of the property. The Claimant has now recovered possession. As fairly pointed out by Mr Woolf, it is now recognised that because the Claimant is in possession of the premises as a result of the effect of the granting of the interim Injunction, there no longer a need for a possession order. See *Secretary of State for the Environment, Food and Rural Affairs v. Meier* [2009] UKSC 11, [2009] 1 WLR 2780 @ [60]

“...the essence of an order for possession, whether framed in ejectment or recovery, is that the claimant is getting back the property from the defendant, whether by recovering the property from the defendant or because the claimant had been wrongly ejected by the defendant. As stated by Wonnacott, in Possession of Land (2006), page 22, “an action for recovery of land (ejectment) is an action to be put into possession of an estate of land. The complaint is that the claimant is not currently “in possession of it” and wants to be put “in possession of it”

8. Although it had been indicated in the course of the interim injunction proceedings that the right to possession might be subject to challenge on the basis that the Defendants as protesters were entitled to exercise their rights under Articles 10 & 11 of the Convention European Convention for the Protection of Human Rights and Fundamental Freedoms (the “Human Rights Convention”) and were entitled to enter into occupation, this was not an argument advanced in this final hearing (the Defendants not making any representations). It is not in the circumstances necessary for me to consider the question of possession.

Final Injunction

9. I am, however, invited to make a final injunction to restrain and prevent future acts of trespass for a period of 1 year. This did not originally form part of the Claim (it being a claim for possession, as set out above). I granted the Claimant's application to amend the Claim Form to include a final injunction. The Claimant submits that a final injunction is appropriate as there is no issue as to the Claimant's entitlement to the premises and in the absence of any defence there is no reason why it is not appropriate to make the injunction order.

10. Irrespective of the absence of a defence or the appearance of any of the Defendants or a representative at this Return Date hearing, it remains always the case that the Court should be vigilant to satisfy itself that the order sought is appropriate. Indeed, the onus on the Court to do this where one of the parties is not present is more acute, and it is also extremely important where the order is a of the nature of a *quia timet* injunction. A *quia timet* ('since he fears') injunction is one granted to prevent the occurrence of an actionable wrong or to prevent repetition of an actionable wrong in the future.

11. Mr Woolf brings to the Court's attention the authority of *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1WLR 2780 in support of the contention that an injunction is appropriate to restrain unlawful occupation where a trespass or breach of planning is threatened, particularly where a trespass has been committed in the past.

"That brings me to the question whether an injunction restraining travellers from trespassing on other land should be granted in circumstances such as the present. Obviously, the decision whether or not to grant an order restraining a person from trespassing will turn very much on the precise facts of the case. Nonetheless, where a trespass to the Claimant's property is threatened, and particularly where a trespass is being committed, and has been committed in the past, by the Defendant, an injunction to restrain the threatened trespass would, in the absence of good reasons to the contrary, appear to be appropriate.

12. What does 'threatened' mean in this context? There is no evidence before the Court that the Persons Unknown have expressly articulated any intention to return to occupy

the Premises should the injunction be lifted. However, it is plain that this is not the test of itself (although it might be a relevant factor).

13. Instead, as set out in the first of the six principles framed by Longmore LJ in *Joseph Boyd and another v Ineos Upsteam Ltd and others* [2019] EWCA Civ 515 and endorsed by Coulson LJ in *Bromley London Borough Council -v- Persons Unknown* [2020] EWCA Civ 12, there must be a ‘*sufficiently real and imminent risk*’ of a tort being committed to justify *quia timet* relief. In this context, I note that Patten LJ used a slightly different formulation, when he referred to the first of a two stage test for granting a *quia timet* injunction as whether there was a ‘*strong probability that, unless restrained by injunction, the defence will act in breach of the claimant’s rights*’. The different formulations found in the authorities likely reflects the fact that (as recognised in *Gee on Commercial Injunctions* (7th Edn) at 2-045) that there is no fixed or absolute standard for measuring the degree of apprehension of a wrong which must be shown in order to justify *quia timet* relief. The graver the likely consequences and the risk of wrongdoing, the more the court will be reluctant to consider the application as premature: ‘*But there must be at least some real risk of an actionable wrong*’.
14. In the present case, the Claimant relies upon (1) the fact that the underlying dispute about redundancies is still live, with students continuing to effect (lawful) protest in parts of the campus and (2) the recent past conduct of the Persons Unknown to satisfy this limb, and in particular the fact that the Persons Unknown have shown a flagrant contempt for the Court and the interim Injunction order by refusing to vacate when served with the Interim Order and only vacated 6 days later (and, indeed, not necessarily because of the existence of the Court Order). In my judgment, this is a factor which weighs heavily when concluding, as I do, that the risk of the protesters returning to the high profile position in the executive’s floor within the Claimant’s administrative building, together with its access to the roof, is sufficiently real and imminent. This is particularly so where the subject matter of the protest, namely redundancies, remains contentious. The first of the six limbs set out in *Ineos* is therefore satisfied, whether framed in the language of ‘*sufficiently real and imminent*’ or ‘*strong probability*’.

15. As to the principles (2) to (6) from *Ineos*:
- (2) it is impossible to name the persons who are likely to commit the tort unless restrained;
16. This is plainly the case.
- (3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;
17. This is also plainly the case, and indeed happened with the interim Order.
- (4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct; and
- (5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do;
18. Taking these together, the injunction sought has been limited to a preventing Persons Unknown occupying the Premises, a specifically defined area of a specifically defined building. Moreover, the injunction as sought would not affect the right of any student to enter the Premises for education/university administration related business. This is because ‘occupying’ has been defined with the draft Order as meaning ‘*remaining in the Premises by barricading oneself within the Premises for the purpose of protesting and refusing to vacate*’. Therefore, lawfully entering the Premises (for the purposes, for example, of meeting one of the employees of the Claimant on the 8th Floor) is clearly not caught by the injunction.
19. However, as I raised with Mr Woolf during his submissions, in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417 at [82], the Court of Appeal indicated that, ‘*They may be defined by reference to the defendant’s intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.*’

20. The words, ‘with the purpose of protesting’ relate to the intention of the Persons Unknown. It might readily be said that this this is not unduly complex, but given that a failure to comply with the injunction may lead to proceedings for contempt of court, it remains preferable in my view (and it was not submitted otherwise) that the acts of barricading and/or refusing to vacate are sufficient to define the prohibited act is a preferable articulation of the Order, and the ‘purpose’ is not referred to.

(6) the injunction should have clear geographical and temporal limits.

21. This is plainly the case. Premises is defined. The temporal limit sought was one year, but Mr Woolf fairly brought to the Court’s attention that the present anticipation of the administration was that the redundancy related issues are likely to be resolved within the next 3-6 months. In these circumstances, I consider it proportionate that the temporal limit should reflect the outer edge of this range (6 months), and the Claimant can of course revert to the Court if it remains the case that there is a real and imminent risk of repetition remaining by mid-December 2023. Thus modified, I do not regard the temporal limit as disproportionate in the circumstances of this case.
22. In Mr Woolf’s written submissions, the six stage *Ineos* test was the extent of enquiry implicitly required of the Court. However, as readily accepted by Mr Woolf in oral submissions, it is necessary in addition to consider the gravity of likely harm. This is considered at paragraph 35 of *Bromley*, in which Coulson LJ states:

‘The other area of potential debate which did not arise in Ineos concerns the nature and extent of the likely harm which the claimant must show in order to obtain the injunction. In my view, the approach which the judge in the present case adopted, that what was required was "irreparable harm", was in accordance with authority:

a) In Fletcher v Bealey (1884) 28 Ch 688, Pearson J said that "it must be proved that it [the apprehended damage] will be irreparable..."

b) In Lloyds v Symonds [1998] EWCA Civ 511, Chadwick LJ stated that "such an injunction should not, ordinarily, be granted unless the plaintiff can show a strong probability that, unless restrained, the defendant will do something which will cause the plaintiff irreparable harm – that is to say, harm which, if it occurs, cannot be reversed or restrained by an immediate interlocutory injunction and cannot be adequately compensated by an award for damages."

c) In London Borough of Islington v Elliott [2012] EWCA Civ 56, Patten LJ agreed with and approved both Fletcher v Bealey and Lloyd v Symonds.

d) Finally, as already noted, in Vastint Leeds BV v Persons Unknown [2018] EWHC 2456, (a case about illegal raves) Marcus Smith J said at paragraph 31 (3) that the relevant question was:

"Would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate injunction... to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?"

23. It is important, therefore, to note that whilst *Ineos* provides a ready 'six stage' test, it is essential not to be misled by the context of that case, in which it was not necessary to consider this further essential element. Therefore, to the six *Ineos* principles must be added the seventh, namely (as articulated by Marcus Smith J and endorsed by Coulson LJ):

'Would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate injunction to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?'

24. I therefore consider gravity of resulting harm. I refer in the first instance back to the basis upon which the interim order was sought, which included the health and safety of both the protesters and of others. Mr Wilson, of the Claimant, gave evidence that the way in which the protesters had sealed themselves within the 8th floor with no easy means of escape creates a material risk to health and safety of the protesters and to others. It is possible in the context of a fire and the need for swift evacuation, the act of barricading (last time, with wooden batons screwing the doors shut) would be regarded as a serious risk to life and limb. Moreover, I take account of the cost of repairs and the cost, both direct and indirect, to the administration of the university by reason of the occupation, which would include the legal costs of getting a further interim injunction should, as I have found is a real risk, the Persons Unknown repeat their actions. Whilst in theory such costs are compensatable in damages, it is necessary (as pointed out in *Vastint* at [37]) to look at the reality of the situation, which is none of these costs would be recoverable. They are, in practice, irrecoverable costs which at least some might consider are better spent providing education to the students and/or mitigating the financial position of the Claimant which has led to the potential redundancies about which the protesters complain. Moreover, I accept, as submitted by Mr Woolf, that there may be reputational damage

nationally and internationally to the standing of the Claimant arising from repeated occupation of its Vice Chancellor's offices and other executive administrative areas. If this led to a drop in student numbers, it could cause financial harm which would be irreparable.

25. In these circumstances, this limb is, in my judgment, also satisfied. I therefore grant a Final Injunction, the wording of which is to be modified to reflect the matters set out above. I thank Mr Woolf for the fair way in which he presented the Claimant's case and the assistance he provided to the Court in circumstances where the Defendants were not represented.