

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

Case No: PT-2024-LDS-000022

Neutral Citation Number: [2025] EWHC 957 (Ch)

Fourth Floor  
West Gate  
6 Grace Street  
Leeds  
LS1 2RP

Friday, 10<sup>th</sup> January 2025

Before:  
HER HONOUR JUDGE CLAIRE JACKSON

B E T W E E N:

(1) MOTOR FUEL LIMITED  
(2) PEREGRINE RETAIL LIMITED

Claimants

-and-

(1) PERSONS UNKNOWN WHO FOR RESIDENTIAL PURPOSES (TEMPORARY OR OTHERWISE) ENTER OCCUPY OR SET UP ENCAMPMENT ON THE SITE OF THIRSK SERVICES, YORK ROAD, THIRSK, YO7 3AA, AS SHOWN FOR IDENTIFICATION EDGED RED ON THE ATTACHED PLAN, WITHOUT THE CONSENT OF THE CLAIMANTS

(2) PERSONS UNKNOWN WHO ENTER THE SITE OF THIRSK SERVICES, YORK ROAD, THIRSK, YO7 3AA, AS SHOWN FOR IDENTIFICATION EDGED RED ON THE ATTACHED PLAN, WITH THE INTENTION OF SYPHONING FUEL FROM THE CLAIMANTS' FILLING PUMPS AND/OR A VEHICLE OR RECEPTACLE THAT DOES NOT BELONG TO THAT INDIVIDUAL AND WITHOUT THE CONSENT OF THE OWNER OF THAT VEHICLE OR RECEPTACLE

Defendants

MS M CANEY (Counsel) appeared on behalf of the Claimants  
NO APPEARANCE by or on behalf of the Defendants

JUDGMENT  
(Approved)

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HHJ JACKSON:

1. I have before me an application for summary judgment brought by the two named Claimants against the Defendants. It is important to note at the very outset of this judgment that the Defendants in this case are persons unknown, defined by their conduct, rather than by their identity.
2. In summary, in their application the Claimants seek permission to apply for summary judgment under Civil Procedure Rule 24.4(1)(a), summary judgment pursuant to CPR 24.3 in the form of final injunctive relief and an order permitting the Claimants to serve the final injunction by alternative means.
3. In preparing for this hearing I have had the benefit of reading the hearing bundle, Counsel's skeleton argument, the authorities bundle, and then an updating statement by Claire James dealing with service of those documents on the Defendants.
4. Service of the documents, broadly, save for one document, complied fully and entirely with the order of Her Honour Judge Kelly, dated 23 February 2024, which provided for the service of documents moving forward in the case.
5. The documents in this case are detailed, they are lengthy, but not in a bad way. There is no prevarication in the documents; they are straightforward. They set out the dealings of the Claimants with the relevant land and the actions by individuals on the land since the Claimants came to either own or operate the land, respectively. Given this is an *ex tempore* judgment I do not set out the evidence in the detail it is before me, but the brief summary I will now give is supported fully by the documents before me.
6. By way of background, the claim concerns a BP Fuel and EV power station, known as Thirsk Services, York Road, Thirsk, YO7 3AE. The land will be well known to anybody travelling towards Teesside, or away from Teesside, on the A19 from/to the A1. The First Claimants own the land, the Second Claimants operate the services under a licence to occupy dated 7 February 2024.
7. It is right to note that part of the land is the subject of a long lease to a third party, and that part of the land trades as a Costa Coffee shop. Given that part of the land is operated by a third party it is excluded from the claim and excluded from the land for which the benefit of the order sought is sought.
8. Thirsk services, as opened, provide fuel facilities and charging facilities for drivers of private motor vehicles. It provides a retail outlet selling goods through a Budgens supermarket, a McDonalds, and also welcome respite facilities for HGV drivers, including fuel pumps, parking, and showers. It is to be noted that it is the only services offering those facilities within a ten mile radius.
9. Thirsk Services are relatively new. They only opened on 18 May 2023. The problems in relation to this land began during the development period during which the services were built. The problems began as early as December 2022 and continued on through the entire period of both the development and operation of the site until the order of HHJ Kelly already referred to.
10. The witness statements before me set out in detail incidents of trespass as recorded by the Claimants and by a security company. Sixty-five incidents were recorded between December 2022 and January 2024, with 41 of those incidents between June and September 2023 alone.

11. The impact of that trespass can be well imagined by anybody. Encampments were attempted to be set up on the land, vehicles were interfered with on the land, fuel pumps were interfered with, and people were confronted by individuals acting aggressively and in an intimidating manner. That obviously has affected the staff of the Claimants, their contractors, including the security team, and customers. It has affected the reputation of the services, and it is believed has led to a loss of business.
12. More than that, it has directly caused the Claimants a significant cost. The Claimants have had to repair lighting, fencing and CCTV, with the new fencing alone costing £36,000 in November 2023. They have had to install rising ramps at the HGV area at a cost of £82,686. Furthermore, they have incurred costs of security, far beyond security they would have at any other of their operational sites, in the sum of £402,000 by the time the claim was issued, with ongoing security of £1,850 per week.
13. Despite all of those costs and all of that work, the incursions, the attempted encampments, the attempted siphoning of fuel, the intimidation and the damage continued and persisted until the order was granted by HHJ Kelly. The impact of that order has been significant. The acts of trespass have ceased. It is, therefore, clear in this case that the injunction has been very effective and very powerful.
14. The Claimants, naturally, have the concern that should the injunction, which was granted for a period of 12 months, lapse, that the incursions, the trespass, the damage, and the siphoning of fuels will re-commence. Hence, they wish for their substantive claim for a final injunction to proceed.
15. In terms of the proceedings, the claim was issued on 12 February 2024, and it was served in accordance with an order for alternative service, which was granted on 19 February. The date for acknowledgment of service or the filing of an admission or a defence was, therefore, 4 March 2024. No acknowledgment of service, admission or defence was filed or served by any Defendant by that date, nor has any documentation been filed or served by any Defendant since that date. These are, therefore, unopposed proceedings. However, they are unopposed proceedings against persons unknown, and more particularly, they will be, if a final order is granted, proceedings that lead to a final order against newcomers.
16. Therefore, the Claimants face a choice as to what to do procedurally. Should they let the interim injunction simply lapse? They have chosen not to do so, unsurprisingly, given the effect of the previous order of the Court. Or should they ask for the matter to be listed for trial? Should they apply for judgment in default? Or should they apply for summary judgment? They have chosen to apply for summary judgment.
17. I am satisfied on all of the evidence before me and for the reasons set out at paragraph 5.1 to 5.4 of the skeleton argument of Ms Caney, counsel for the Claimants, that this application has been properly served: Deemed service has taken effect so as to allow the Defendants the relevant 14 days before the hearing under Civil Procedure Rule 24.45. They have been duly advised by the front page of the application notice of the time limits for filing evidence, and they have been served with all of the documents in this case, including the documents provided for by the Court in its order listing the case.
18. It is right that I note that the hearing bundle was served one hour 21 minutes late by one of the three means of serving documents. However, that is the only defect Counsel has been able to find in any of the service provisions, and it has been the only one I have been able to identify from reading the papers.
19. The hearing bundle before me, however, really only contains documents that have already been served either as part of the claim, as part of the interim injunction, or as part of this

application. A Defendant would, therefore, already have had the ability to obtain through the relevant website to which documents have been uploaded, through organisations who have been served, or physically by obtaining copies of documents from the site, all of the documents in the hearing bundle.

20. I am, therefore, satisfied that the uploading of the hearing bundle one hour 21 minutes late to one of the three means of service, will not have prejudiced anybody in this case. To the extent needed, I, therefore, will extend the time for service by way of upload of the hearing bundle by the extra one hour 21 minutes needed. On that basis, I am satisfied that all documents have been served duly on the Defendants.
21. Moreover, to the extent that any Convention Rights may be affected by the relief sought, the Claimants have taken all practicable steps to notify the Defendants of the application under section 12 of the Human Rights Act 1998.
22. No Defendant has filed any evidence in reply to the application in accordance with CPR 24.5(3). Rather, the only replies to service has been an email from North Yorkshire Council querying why the application was served on them, which has been dealt with by the Claimants' solicitors by way of a phone call, explaining that service was required under HHJ Kelly's order, and an email from Leeds Gate Gypsy and Traveller Exchange querying why they have been served, confirming they do not represent anybody in the proceedings, and asking for no further documentation to be served on them.
23. In addition to the claim, therefore, being opposed, the application before me is unopposed, in terms of evidence filed and attendance at the hearing, as nobody has attended to either appear as a Defendant or to represent a Defendant at this hearing.
24. The legal framework the Court must apply to this application must take into account that the application is an application for summary judgment, but also that it is an application for summary judgment which seeks by way of final order a final injunction for relief against persons unknown, including newcomers. As a result, the Court must take into account the legal framework on tests developed for all of those matters.
25. I am satisfied, having considered Civil Procedure Rule 24.2, that summary judgment is permissible in the circumstances. I am further satisfied that the relevant test is that set out in Civil Procedure Rule 24.3, and that the relevant approach to the summary judgment test is that set out by His Honour Judge Hodge KC in *Vistra Trust Cooperation (UK) Ltd v CDS (Superstores International) Ltd* [2022] EWHC 3382. Therefore, I am considering whether the Defendants have a real prospect of succeeding in defending the proceedings and whether in the alternative there is a compelling reason why the case or issues should be disposed of at trial.
26. In those considerations, I am applying a test of realistic success, as opposed to fanciful success. I am not conducting a trial, but I must consider the evidence both before me and evidence which would be reasonably expected to be available at trial. If I am satisfied I have before me all the evidence necessary for the determination of the application, and the parties to it have had an adequate opportunity to address it, then I can grasp the nettle and decide it.
27. I am satisfied that those tests and those considerations apply, even though this is a claim against persons unknown, by way of summary judgment following the decision in *National Highways Ltd v Persons Unknown* [2023] 1 WLR 2088.
28. In terms of the injunctive relief sought, I am satisfied that this is a precautionary injunction. It is not, therefore, necessary that a relevant person who may be the subject of the injunction

has individually committed the tort. What is required for an injunction to be granted is that the tort is feared on demonstrable grounds.

29. In so far as the final injunction in this case will require an injunction against persons unknown including newcomers, I have read in full the decisions of the Supreme Court in *Wolverhampton City Council v London Gypsies & Travellers* [2024] AC 983, *Valero Energy Limited v Persons Unknown* [2024] EWHC 134 and *Heathrow Airport Limited v Persons Unknown* [2024] EWHC 2599. I am satisfied from those decisions that I have the jurisdiction to grant such an injunction, that in doing so I must be guided by the principles of justice and equity, and that it is right for me to consider the 15 substantive procedural requirements highlighted by Ritchie J. in the *Valero* decision. Noting to myself that given this is a claim against trespassers on private land, some of those requirements will not apply as per the *Valero* decision, but will still apply with relevant modification.
30. I turn, therefore, to the matters I must decide today in determining this application. First, the Claimants require and have sought permission to apply for summary judgment. They require that due to Civil Procedure Rule 24.4(1). Having considered this case, I am satisfied that it is entirely in accordance with the overriding objective for the Claimants to be granted permission to apply for summary judgment against the Defendants.
31. The alternatives, as I have said, would be to allow the interim injunction to lapse when it is an effective injunction, which has stopped tortious conduct. That is not a realistic option. An application for default judgment is not, in my judgment, appropriate in this case, given it is a claim for injunctive relief against persons unknown, including newcomers: As a claim against newcomers it is without notice. Therefore, in my judgment, default judgment is not an appropriate means to proceed in such a claim.
32. That, therefore, left the Claimant realistically with a choice between listing the matter for trial or a summary judgment application. Given the need under the overriding objective to consider justness, proportionate cost, proportionate and effective use of the Court's time, taking into account not just this claim, but the needs for other the Court users, I am satisfied that summary judgment is an entirely appropriate way to proceed in this case, given there has been no response to this claim at all or to any substantive matter during its entire history. I, therefore, in accordance with the overriding objective, grant permission to the Claimants in accordance with Civil Procedure Rule 24.4.
33. I, now, turn to the substantive application for summary judgment, and in particular, to the *Valero* factors.
34. It is clear from the papers before me that the cause of action outlined by the Claimants in their claim form is a good cause of action. The land they own and operate has suffered trespass, and individuals lawfully attending the site with the consent or permission of the First and Second Claimants have been inconvenienced by the actions of unknown individuals. Those actions have included attempts, both successful and unsuccessful, to set up encampments on the site. Those encampments have prevented people using the HGV site and the EV charging facilities.
35. Further, the evidence shows that there have been attempts, both successful and unsuccessful, to siphon fuel at the site from the pumps and from the vehicles of third parties present at the site.
36. Given the Claimants in this matter have a better right to possession of the land than trespassers, they are entitled to pursue a claim for trespass. I do not think I need say more about attempts to siphon fuel from those owning the fuel by individuals who choose to siphon it without consent and, frankly, by way of theft.

37. This is an application to which the duties of full and frank disclosure apply. I have read the papers in full, with care, prior to coming into court today, and I am satisfied that the Claimants are both aware of their duties in that regard and have complied with the same. They have at every stage of these proceedings, set out arguments that could be made against them; they have prepared notes of the hearings and served them; and today, Ms Caney has been at pains to ensure she has complied with her duty in that regard.
38. I am satisfied, in so far as one can be in an unopposed without notice of hearing, that the duty of full and frank disclosure has been complied with.
39. I turn, therefore, to the evidence before me. I am satisfied, having read all of the witness statements before me, that the Claimants in this case have proven that the claim has a realistic prospect of success. They have painted a compelling picture of the conduct which they have suffered from since December 2022 until February 2024, that conduct being tortious in nature and including, as I have already set out, trespass, unlawful conduct and damage, both financially and reputationally.
40. On the other side, no evidence has been served in opposition to the application to contradict the Claimants' evidence or to illustrate any defence, let alone a foreseeable, realistic defence. Whilst that is not a complete answer in a claim against persons unknown, the Court of Appeal in the *National Highways* decision did point out that it is of considerable relevance in the Court's consideration of whether the Defendants have no real prospect of successfully defending the claim for an injunction at trial.
41. I am satisfied on all of the evidence before me that there is no realistic defence to this claim. The Defendants have no right to set up camp on the Claimants' private land, nor to engage in unlawful activities, including criminal damage and theft.
42. That, therefore, brings me on to the balance of convenience. In my judgment, there are strong and compelling justifications to support the grant of relief sought to prevent further such incidents occurring. The chronology in this matter is stark. Without the interim injunction being in place, there were ongoing, persistent actions by individuals of a trespass nature and of a nuisance nature. It was only the granting of interim injunction that stopped that. It can, therefore, be presumed that it is only the maintenance of an injunction for the site which will continue to prevent further problems.
43. An injunction is clearly and plainly available to the Claimants in a case of this nature, based on all of the law placed before me. The Court can restrain an anticipated trespass, and in my judgment, in this case, should do so. The Claimants, at great cost to themselves, tried to prevent the need to come to court, and to secure their land. It did not work despite the moneys they had paid, which exceeded half a million pounds. The injunction did stop the problems. In my judgment, an injunction is justified on the facts and by the serious, real and imminent risks posed by persons unknown if no injunction is in place.
44. I am satisfied damages are not an adequate remedy in this case, not least because the health and safety risks posed by the repetition of the siphoning of fuels are extraordinarily serious. Not only could the individuals siphoning the fuel be the subject of serious injuries; there could be serious injuries to members of the public attending the land simply to have a coffee, a burger, pick up a pint of milk on the way home or to fuel their cars, and, of course, the risk of serious injury to those members of staff employed by the Second Claimant at the site, who could be seriously injured by the siphoning of fuel.
45. Further, the reputational damage to the Claimants business cannot be adequately compensated in monetary terms and would, if matters began again become, in my judgment, irreparable. The granting of injunction in this case is just, fair and necessary, in my judgment.

46. The decision in *Valero* requires the Court to consider Convention Rights. At paragraphs 7.24 to 7.26 of her skeleton argument, Ms Caney has dealt with them. I accept everything she says in those paragraphs, and I accept that there is no engagement of a convention right in this case because there is no convention right that allows an individual to trespass on another's private land, to attempt to set up a camp there and then to behave in the way individuals in this case have behaved.
47. As to the procedural requirements of *Valero*, they are addressed in Ms Caney's skeleton argument at 7.27 to 7.36. Her analysis is, in my judgment, flawless, and I accept everything she says therein. I, therefore, by way of summary accept it has not been possible to identify persons unknowns, but that they are identified, so far as this case is concerned, by their conduct, and that conduct is clearly defined and is evident from the papers.
48. The terms of the injunction are clear and precise. The prohibitions match the claim. The claim is subject of clear geographical boundaries with the geographic limits clearly justified. It is to be remembered, as I said at the outset of this judgment, that the area occupied by Costa Coffee has been excluded from the geographical boundaries, showing, in my judgment, that the Claimants are seeking simply to protect the land they own or operate.
49. The final injunction sought is limited to three years from the expiry of the existing interim injunction: That, in my judgment, is a fair period.
50. I am satisfied for the reasons already set out that service has been affected of both the claim and the application. The draft order proposes a review hearing; that seems to me entirely sensible. The order also provides for the right to apply to set aside or vary the injunction on short notice. Therefore, any persons unknown who arrive on the scene as newcomers, who could be subject to the order, have the right to apply to bring this back to court at any time, even though this is a final order. That seems to me, together with the review, to be sufficient protection for newcomers in this matter.
51. I am, therefore, satisfied to grant summary judgment in this case.
52. That leaves the issue of alternative service. In broad terms, the order sought by the Claimants follows HHJ Kelly's order providing for service as previously. There is one change, which is in the draft order, and which Ms Caney highlighted to me in her submissions, which is that two A1 signs as ordered by Judge Kelly has become one A1 sign in the draft. In my judgment, it should return to the two A1 signs, so that the service at site is as per ordered by Judge Kelly.
53. There is one other change to the service that I consider needs to be made from Judge Kelly's order, and that is that service previously was to include, as I have already set out, Leeds Gate Gypsy and Traveller Exchange. They have, of course, now asked not to be served with any more documents. I think the Court can, in the circumstances of this case, grant that wish, and therefore, they can be removed from the list of organisations to whom the order and documents are to be emailed. That removal both applies to service of the final injunction and to service of documentation moving forward in the case, so will include service of documentation for the review hearing.
54. For the reasons I have given, I, therefore, grant the application in the terms sought, save for the changes I have highlighted to the draft order on service. I have read the draft order in detail and I am happy with it. I will make an order subject to the two changes highlighted.

**End of Judgment.**



Transcript of a recording by Acolad UK Ltd  
291-299 Borough High Street, London SE1 1JG  
Tel: 020 7269 0370  
legal@ubiquis.com

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