

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

Royal Courts of Justice  
Tuesday, 8th July 2003

[2003] EWHC 1738 (Ch)

Before:

THE RT.HON. THE VICE-CHANCELLOR  
(Sir Andrew Morritt)

B E T W E E N:

LTD.  
(1) HAMPSHIRE WASTE SERVICES LTD.  
(2) SHEFFIELD ENVIRONMENTAL SERVICES LTD.  
(3) SOUTH EAST LONDON COMBINED HEAT AND POWER  
(4) TYSELEY WASTE DISPOSAL LTD. Claimants

- and -

UPON PERSONS INTENDING TO TRESPASS AND OR TRESPASSING  
INCINERATOR SITES AT

ROAD,  
LONDON  
BYPASS,  
DAY  
SIMILARLY  
(1) CHINEHAM, BASINGSTOKE, HAMPSHIRE  
(2) MARCHWOOD INDUSTRIAL PARK, NORMANDY WAY,  
SOUTHAMPTON  
(3) PORTSMOUTH INCINERATOR SITE, QUATREMAINE  
PORTSMOUTH  
(4) BERNARD ROAD, SHEFFIELD  
(5) KENNELS SITE, LANDMANN WAY, LEWISHAM,  
(6) JAMES ROAD, ADJACENT TO SMALL HEATH  
BIRMINGHAM IN CONNECTION WITH THE 'GLOBAL  
OF ACTION AGAINST INCINERATORS' (OR  
DESCRIBED EVENT) ON OR AROUND 14 JULY 2003

Defendants

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J U D G M E N T  
(As approved by the Judge)

**A P P E A R A N C E S**

MISS K. HOLLAND (instructed by Messrs. Pinsents, Birmingham)  
appeared on behalf of the Claimants.

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THE VICE-CHANCELLOR:

1 This is an application without notice made by the four claimants, each of whom is a member of the Onyx Environmental group of companies and owns and operates one or more of the incinerator stations specified in the claim form. The nature of the problem and the relief the claimants seek is clearly explained in the witness statement of Mr. R.C. Hunt made today. In para.3 of that document he explains:

"Each of the claimants owns and operates waste incinerator sites around the United Kingdom. The first claimant also has two further plants under construction. The operating plants are used to process and dispose of locally generated commercial and domestic waste. Energy produced by the incineration process is sold into the national grid. The claimants between them produce about 80 megawatts of electricity for distribution through the grid which is sufficient for the needs of approximately 84,000 homes. In recent years the claimants have suffered seriously damaging and costly invasions by trespassers who style themselves as environmental protesters. The invasions sometimes occur on a predetermined day following an intense period of Internet and other publicity. Such predetermined days are described by environmental protesters as Global Day of Action Against Incinerators."

2 Previous global days of action against and/or invasions of incinerator service stations have included the following: in November 2000, a site at Edmonton owned by Sita and London Waste was invaded by some 12 protesters. On 22nd May 2001, protesters entered a site in Sheffield which now belongs to the second claimant. The publicity material surrounding the events that occurred on that day indicate that the persons who invaded the site were claimed by Greenpeace to be its volunteers. The recovery and enforcement costs incurred by the then owner (none of which had been recovered) amounted to £61,000. On 25th February 2002, a site in Lewisham in London owned by the third claimant was invaded by persons identifying themselves as associated with Greenpeace. The invasion caused considerable concern to the third claimant's employees. The legal and enforcement costs alone (none of which has been recovered) came to about £74,350. On 17th June 2002, protesters invaded the plant of the first claimant which was then in the course of construction. Again, Greenpeace claim that persons connected with it had been amongst them. The legal and enforcement costs came to £120,000 and have not been recovered. In July 2002, there was an invasion at a site at Port Talbot operated by an organisation called HLC.

3 In his witness statement, Mr. Hunt explains why any incursion inevitably leads to a shut down of the plant for health and safety reasons with considerable consequential loss and disruption to community facilities. He also describes how the

activities of the protesters lead to danger not only to themselves but to others.

4 In para.29 of his witness statement Mr. Hunt describes the Internet and other publications which indicate that next Monday, 14th July 2003, has been designated the next Global Day of Action Against Incinerators. He expresses concern that it is most likely that one or more plants owned and operated by one or more of the claimants will be the target. He points out that the police are largely powerless, the sheriff's officers overstretched and a claimant's remedy of damages entirely inadequate.

5 There can be little doubt that if the plant of one of the claimants is invaded on 14th July that claimant will suffer substantial and irrecoverable damage. But for one matter, the case for an interim injunction to restrain threatened trespass to the property of the claimants and each of them is clearly made out.

6 The matter to which I refer is that the claimants are unable to name any of the protesters who might be involved. Accordingly, in the draft claim form and order, the defendants are named as "Persons intending to trespass and/or trespassing upon incinerator sites at", and there follow the six addresses, "in connection with the 'Global Day of Action Against Incinerators' (or similarly described event) on or around 14 July 2003".

7 A similar problem arose in the case involving the Harry Potter book which has recently been published. In that case the evidence clearly showed that a person or persons unknown had illicitly obtained copies of the books some weeks in advance of publication and were trying to sell them or parts of them to the media. For the reasons I gave in my judgment on that occasion, I granted relief against defendants described as "the person or persons who have offered the publishers of the Sun, the Daily Mail and the Daily Mirror newspapers a copy of the book 'Harry Potter and the Order of the Phoenix' by J.K. Rowling or any part thereof and the person or persons who has or have physical possession of a copy of the said book or any part thereof without the consent of the claimants".

8 As I said in para.19:

"The failure to give the name of the defendant cannot now invalidate the proceedings, both because they are started by the issue of the claim form at the request of the claimant and because, unless the courts thinks otherwise, Rule 3.10 so provides. The obligations the overriding objective casts on the court are inconsistent with an undue reliance on form over substance. The proper application of Rule 3.20 is incompatible with a conclusion that the joinder of the defendant by description rather than by name is for that reason alone impermissible."

In Para.21 I continued:

"The crucial point, as it seems to me, is that the description used must be sufficiently certain so as to identify both those who are included and those who are not. If that test is satisfied, then it does not seem to me to matter that the description may apply to no one or to more than one person, nor that there is no further element of subsequent identification whether by service or otherwise."

I concluded in para.22:

"I can see no injustice to anyone if I make an order in the form sought but considerable potential for injustice to the claimant if I do not."

9 Counsel for the claimants submits that the position is in essence the same here. Subject to two points on the suggested description, I agree. The two points are that it seems to me to be wrong that the description of the defendant should involve a legal conclusion such as is implicit in the use of the word "trespass". Similarly, it seems to me to be undesirable to use a description such as "intending to trespass" because that depends on the subjective intention of the individual which is not necessarily known to the outside world and in particular the claimants, and is susceptible of change.

10 It seems to me, therefore - and counsel, as I understood it, accepted the proposed amendments - that the description of the defendants should be changed, and the form that I would propose to use is as follows: "Persons entering or remaining without the consent of the claimants, or any of them, on any of the incinerator sites at", and then addresses 1 to 6 are set out, and concluding "in connection with the 'Global Day of Action Against Incinerators' (or similarly described event) on or around 14 July 2003". In principle I am prepared to grant or consider the grant of an injunction in which defendants are described in those terms.

11 As I have indicated, the merits of the claim appear to me to be substantially in favour of the grant of an injunction. The point that at one stage led me to hesitate was the question whether, if the criminal law and the remedy in damages are inadequate, is a remedy by way of interim injunction any better? Counsel has satisfied me that it is not a ground for refusing the injunction that it might prove difficult to enforce. I accept that submission. There are, I think, a number of authorities to the effect that the court will not, if it sees a clear case for the grant of an interlocutory injunction, withhold it on the grounds of any perceived difficulty in its enforcement.

12 The other issues arise in relation to the form of order and

for service of the relevant documents. CPR 6.8 provides:

"(1) Where it appears to the court that there is a good reason to authorise service by a method not permitted by these Rules, the court may make an order permitting service by an alternative method.

(2) An application for an order permitting service by an alternative method -

(a) must be supported by evidence;

(b) may be made without notice.

(3) An order permitting service by an alternative method must specify -

(a) the method of service; and

(b) the date when the document will be deemed to be served."

13 The proposal in the draft order, which is amplified in the evidence of Mr. Hunt, is in these terms:

"Service of the claim form in this action, this order and the witness statements and exhibits containing the evidence relied upon by the claimants by fixing the documents securely to posts in conspicuous places round the perimeters of the six sites be good and sufficient service. The said documents shall be deemed to be served on the date of such affixation at the six sites, such date to be verified by the completion of a certificate of service."

14 The practice direction to CPR 6.8 provides in para.9.1:

"An application for an order for service by an alternative method should be supported by evidence stating:

(1) the reason an order for an alternative method of service is sought, and

(2) what steps have been taken to serve by other permitted means."

15 The first of those subparagraphs is clearly satisfied by the facts of this case. As counsel fairly pointed out, no steps have been taken to serve by any other permitted means because the point has not yet arisen; that does not appear to me to be any reason to withhold the order for effectively substituted service which she seeks.

16 The other points on the form of the order which I should mention are, first, that it is required to include the cross-

undertaking in damages which is now set out in schedule 2, para.4. Second, that it should provide, as it now does, that any person may apply to the court at any time to vary or discharge this order but if he wishes to do so he must first inform the claimants' solicitors in writing at least 12 hours beforehand. Finally, the form of order proffered contained as a blank the normal return date for such an application. In the nature of these proceedings that seems to me to be unnecessary. What is required is that any person who wishes to do so should be able promptly to apply for the order to be discharged, which I have allowed for, and, provided that is included, I see no purpose in a formal return date on a claim such as this.

17 For all the reasons I have endeavoured to explain, I consider that this is a proper case in which to make an order against defendants so described, and on the terms which are set out in the draft. I will accordingly, invite the associate to draw up the order in that form.

Costs - presumably we just leave those where they are for the moment?

MISS HOLLAND: My Lord, yes. I have put them reserved in the order. There was one matter I should finally draw to your attention. It had been anticipated that the claim form and the application notice would have been issued this morning before the hearing. They have not been so, my Lord, I propose to include an undertaking to issue those in the order.

THE VICE-CHANCELLOR: Thank you. Would you sign a draft of the order for the associate's benefit with the various amendments we have discussed?

MISS HOLLAND: Yes.

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