



Neutral Citation Number: [2020] EWHC 1650 (QB)

Case No: QB-2020-002013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/06/2020

Before:

MR JUSTICE FREEDMAN

Between:

Surrey Heath Borough Council

- and -

- 1. James Robb**
- 2. Suzanne Robb**
- 3. Thomas Robb Jnr**
- 4. Kaitlyn Robb**
- 5. Scarlett Rooney**
- 6. Persons Unknown**

Claimant

Defendants

Caroline Bolton (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
Alan Masters (instructed by **Mason & Co**) for the **First 5 Defendants**

Hearing dates: 19 and 22 June 2020

Approved Judgment

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MR JUSTICE FREEDMAN

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Wednesday 24th June 2020 at 4.00pm.

Mr Justice Freedman:

Introduction

1. On 19 June 2020, I heard the Claimant's application for the renewal of an injunction ordered on 12 June 2020 and the Defendants' application for its discharge. At the outset of the hearing, it was identified that the effective return date would not be 19 June 2020, but after the Defendants had had the opportunity to put in further evidence. A day would be available in the week commencing 29 June 2020. There was then fixed a hearing for 1 July 2020, taking into account the convenience of both Counsel. A timetable was arranged for the exchange of evidence. The argument then centred on whether the injunction to restrain residence on the site should be lifted or continued until 1 July 2020. The Court reserved its judgment over the weekend. On 22 June 2020 a judgment was given continuing the injunction until the hearing on 1 July 2020.

Submissions about form of hearing

2. At the conclusion of the judgment, Mr Masters, Counsel for the Defendants said that he expected the hearing to take place in court so that his clients could give instructions during the course of the hearing. Further, he said that he wished to cross-examine Julia Greenfield on her evidence for the Claimant.
3. Neither of these points had been foreshadowed at the hearing of 19 June 2020. As regards the form of the hearings to date each of the hearings of 12 June 2020 and 19 and 22 June 2020 had taken place remotely through video. The reason for that is the current Covid-19 pandemic.
4. The remote hearings took place in accordance with the Protocol regarding remote hearings dated 26 March 2020 issued by the Master of the Rolls and other senior Judges. The Introduction says:

"1. The current pandemic necessitates the use of remote hearings wherever possible. This Protocol applies to hearings of all kinds, including trials, applications and those in which litigants in person are involved in the County Court, High Court and Court of Appeal (Civil Division), including the Business and Property Courts. It should be applied flexibly.

2. This Protocol seeks to provide basic guidance as to the conduct of remote hearings. Whilst most court buildings currently remain open, the objective is to undertake as many hearings as possible remotely so as to minimise the risk of transmission of Covid-19. "

5. Mr Masters said that he did not make a submission before about this at an earlier stage because the Court had not directed that the hearing would be anything other than in Court. That was to ignore the necessity for the use of remote hearings wherever possible in the current pandemic and the Protocol. It also ignored the remote hearings thus far in this case. Against this background, the onus is on a party to draw attention to a requirement to have a hearing in Court and to provide reasons why it would not be just for the hearing to take place remotely.

6. Likewise, there was no mention until after the judgment had been given on 22 June 2020 of a wish to cross-examine Ms Greenfield. This would be an unusual course of action at an interim hearing. Mr Masters said that the hearing on 1 July 2020 would be the final hearing of this matter. That is not the case. It is the hearing of the inter partes interim applications for continuation and discharge of the injunctions. The full hearing would be at trial in the usual way. This mirrors what happened in the case, between some of the same parties (with the same Counsel) in relation to the land at Knoll. The case is called *Surrey Heath Borough Council v Shir, Robb and others*: case number QB- 2019-00350. In that case, a without notice injunction was obtained on 2 October 2019. The final hearing for interim injunctions was on 25 November 2019 and judgment was given on 28 November 2019. The trial was due to take place in October 2020 but the matter was settled by an order of the court in May 2020.

8. The reasons given by Mr Masters for wanting to have a court hearing are as follows:
 - (1) The Defendants will not be able to follow the hearing without the guidance of their legal representatives. For this they need to be together with them.
 - (2) The Defendants form 3 households and in accordance with social distancing they would have to be apart from each other if the matter is to be heard remotely.
 - (3) They challenge the evidence of Ms Julia Greenfield and they wish to cross-examine her. That cross-examination would be more effective if done in a court room. Further, that would enable the Defendants to be present and to assist the legal team in the course of the cross-examination
 - (4) Since the case concerns an injunction affecting their ability to reside on their own land and from what they say are their homes, a remote hearing is undesirable.

9. Ms Bolton, Counsel for the Claimant submits that the usual hearing in the current pandemic is a remote hearing. Leaving aside the difficulties of the court setting up such a hearing, she says that she has been unwell in recent weeks and her medical advice has been that she should not go to Court. Given her involvement in this case and in the previous case mentioned above, it would be prejudicial to her client to have to have new Counsel. She submits that in any event, there are no good reasons to depart from the current starting point of having a remote hearing.

Discussion

10. In my judgment, the hearing of 1 July 2020 should be by video. If it is necessary for them all to be together, the Defendants and the legal team should be able to arrange facilities somewhere whether in chambers or a solicitors' office or some other office or building arranged for the purpose or elsewhere. Whether they do that or not, adjustments can be made to the hearing with breaks so as to facilitate the giving of those instructions.

11. There is no reason at this stage to make an order for cross-examination of Julia Greenfield. Any cross-examination, let alone a wide-ranging cross-examination on her evidence, would be unusual at an interim hearing. It is not the trial of the action. No good reason has been provided for this unusual course. I do not shut out the Defendants from renewing such an application to the judge hearing the matter on 1

July 2020. The judge will be able to see such an application in the context of the evidence, including the evidence to be obtained this week and next week. In case the Judge takes a different view, the Claimant should make available Ms Greenfield remotely. That is not to encourage that course, but simply so that, if and to the extent that cross-examination was ordered, it could take place.

12. In view of the current pandemic and continuing and significant public health issues, it is inappropriate to order that this matter be heard in a courtroom. The court also notes the desire of the Claimant to be represented by Ms Bolton and a lack of continuity if new counsel had to be instructed. This is not a case where justice cannot be obtained through a video hearing. It is not necessary to convene a hearing in a courtroom. If the Defendants and their lawyers wish to get together, they can make suitable arrangements and there can be adjustments to the remote hearing in order to allow the Defendants and their lawyers to confer. This decision is made having taken into account the matters mentioned to the Court including the expressed wish of the Defendants, the nature and consequences of the case, the possibility of cross-examination and the current pandemic and the public health issues.

Disposal

13. It follows that the order that will be made is that the hearing on 1 July 2020 will take place remotely by a video hearing. If the Defendants wish to renew the application for the matter for cross-examination, then they should do so to the judge hearing the matter. The parties should be ready to proceed in any event. A copy of this judgment should be made available to the judge who will hear the matter on 1 July 2020.