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Wolverhampton City Council v London Gypsies and Travellers [2023] UKSC 47 – narrow and broad lessons



What is an injunction against ‘persons unknown’?

- Injunction designed to bind persons who are not identifiable as parties to the proceedings at the time when the injunction is granted (sometimes referred to as ‘newcomers’)

When are injunctions against persons unknown or newcomers used?

- Gypsy / Traveller encampments
- Industrial picketing
- Environmental and other protests
- Breaches of confidence
- Breaches of intellectual property rights
- Unlawful activities on social media



Issues of Principle

- How to give notice of application?
- When do newcomers become parties to proceedings?
- How can newcomers be described?
- Does the claimant have to have a cause of action at time injunction granted?
- How can claim form be served?

Legal Background



- *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] EWHC 1205 (Ch)
- *South Cambridge District Council v Gammell; Bromley London Borough Council v Maughan* [2005] EWCA Civ 1429
- *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303

Factual Background

- 38 local authorities obtaining injunctions to prevent unauthorized encampments between 2015-2020.
- Either directed at “persons unknown” or by reference to the conduct sought to be prevented.
 - *“Persons unknown entering or remaining without planning consent on those parcels coloured in Schedule 2 of the draft order”*
 - *“Person unknown who enter and/or occupy any of the locations listed in this order for residential purposes (whether temporary or otherwise) including siting caravans, mobile homes, associated vehicles and domestic paraphernalia.”*
 - *“Persons unknown forming unauthorised encampments within the Borough of Nuneaton and Bedworth”*

Factual Background

- Reliance on variety of statutory provisions
- (e.g. Section 187B, Town and Country Planning Act 1990:
“187B Injunctions restraining breaches of planning control
(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.
(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.”
- Also reliance on common law causes of action, such as trespass.

Wolverhampton City Council and others v London Gypsies and Travellers and others

- Applications made to extend or vary injunctions nearing end in 2020.
- Nicklin J decides that there is a need for review of all such injunctions.
- 16 local authorities pursue claims in High Court.



High Court, Nicklin J

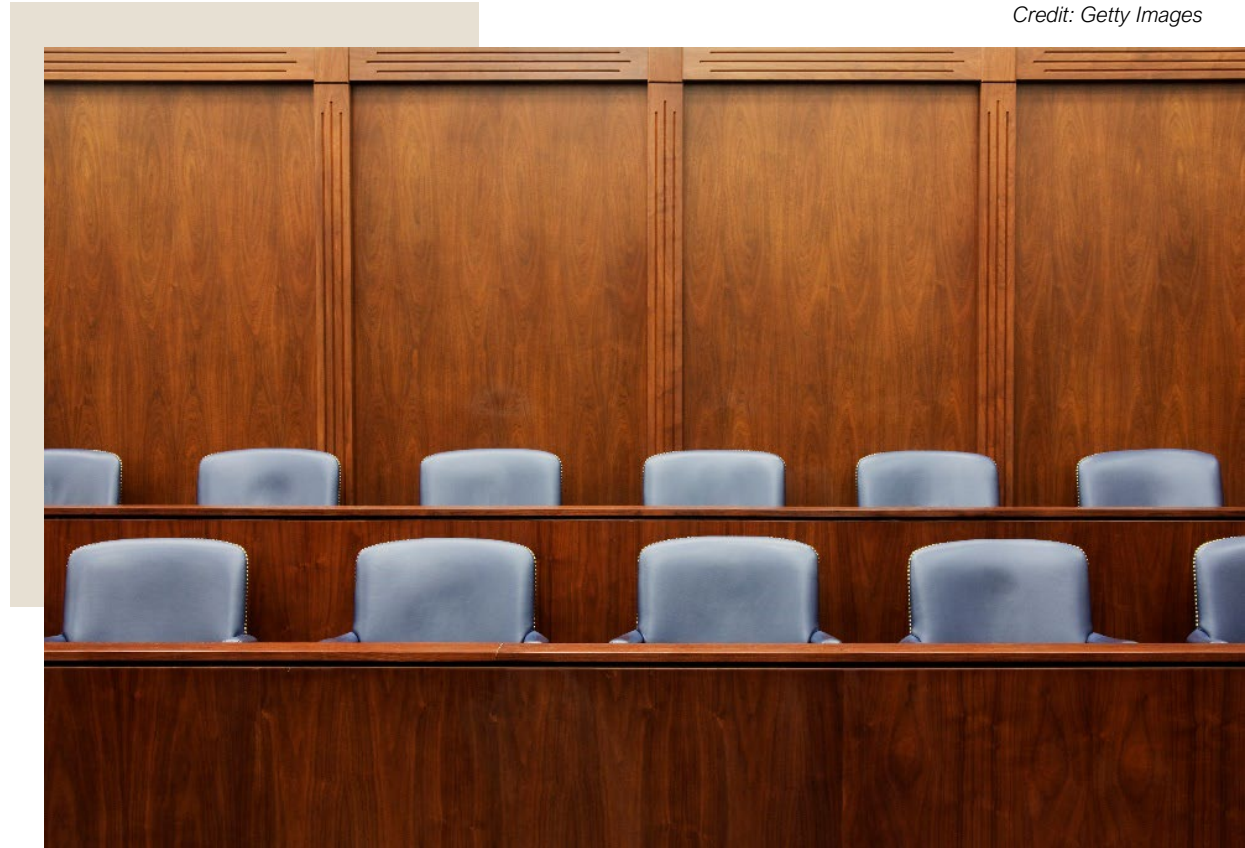
Barking and Dagenham London Borough Council v Persons Unknown [2022] EWCA Civ 13,
[2023] QB 295

- Ratio: Interim injunctions could be granted against persons unknown, but final injunctions could be granted only against parties who had been identified and had had an opportunity to contest the final order sought.
- The protection of Convention rights could never justify the grant of an injunction prohibiting the unauthorized occupation or use of land.
- Injunctions discharged insofar as they were addressed to any person falling within the definition of “persons unknown” who was not a party to the proceedings at the date when the final order was granted.

Court of Appeal

- *Barking and Dagenham London Borough Council v Persons Unknown* [2022] EWCA Civ 13, [2023] QB 295 (Sir Geoffrey Vos MR, with whom Lewison and Elisabeth Laing LJJ agreed)
- “the judge was wrong to hold that the court cannot grant final injunctions that prevent persons, who are unknown and unidentified at the date of the order, from occupying and trespassing on land.”
- No meaningful distinction could be drawn between interim and final injunctions in this context [77]

Credit: Getty Images



Jurisdiction to Grant Injunctions

- [17] “The injunction is equitable in origin, and remains so despite its statutory confirmation. The power of courts with equitable jurisdiction to grant injunctions is, subject to any relevant statutory restrictions, **unlimited.**”

Jurisdiction to Grant Injunctions

- Section 37(1) of the Senior Courts Act 1981 merely confirms and restates the powers of the courts to grant injunctions which existed before the Supreme Court of Judicature Act 1873.
- The power to grant an injunction must be exercised in accordance with principle and any restrictions established by judicial precedent and rules of court.
- The width and flexibility of the equitable jurisdiction to issue injunctions are not to be cut down by categorisations based on previous practice.

The importance of service

- It is only when individuals are served with the claim form that they ordinarily become parties.
- If newcomers are not parties to the proceedings at the time when the injunctions are granted, it follows that newcomer injunctions depart from the court's usual practice. [26]
- There are a number of exceptions to this general rule e.g. reporting restrictions, embargoes on draft judgments.

The importance of service

- It is generally sufficient that the defendant is aware of the injunction at the time of the alleged breach of it. [55]
- Alternative methods of service can be permitted, and the court has power to dispense with service [56]

Cause of action

- When the order is made, there is no existing cause of action against whom the order is addressed.
- Principle that an injunction must be founded on an existing cause of action against the person enjoined has been eroded - *Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24, [2023] AC 389
- “...*the grant of injunctive relief is not always conditional on the existence of a cause of action.*” [43]

A New Injunction

- [142] “Recognition that injunctions against newcomers are in substance always a type of without notice injunction, whether in form interim or final, is in our view the starting point in a reliable assessment of the question whether they should be made at all and, if so, by reference to what principles and subject to what safeguards.”

Effect

[238] “Such an injunction (a “newcomer injunction”) will be effective to bind anyone who has notice of it while it remains in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action. It is inherently an order with effect contra mundum, and is not to be justified on the basis that those who disobey it automatically become defendants.”

Applicant Requirements for Newcomer Injunctions

- Injunctions are only likely to be justified as a novel exercise of the court's equitable discretionary power of the applicant [167]:
 - (i) demonstrated a compelling need for the protection of civil rights OR the enforcement of public law is not adequately met by other available remedies;
 - (ii) built procedural protections into the application for the rights of persons unknown who might be affected by the injunction;
 - (iii) complied in full with the disclosure duty which attached to the making of a without notice application; and
 - (iv) showed that, on the particular facts, it was just and convenient in all the circumstances that the injunctions sought should be made

The test

- [67] They are only likely to be justified as a novel exercise of an equitable discretionary power if:
 - (i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights;
 - (ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers;
 - (iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application
 - (iv) The injunctions are constrained by both territorial and temporal limitations;
 - (v) It is, on the particular facts, just and convenient that such an injunction be granted.

Guidance for Courts

- A properly justified injunction made by the court would:
 - (i) spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct;
 - (ii) extend no further than the minimum necessary to achieve the purpose for which it was granted;
 - (iii) be subject to strict temporal and territorial limits;
 - (iv) be actively publicized by the applicant so as to draw it to the attention of all actual and potential respondents and
 - (v) include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction

Guidance for Local Authorities

- Has local authority complied with its obligations (such as they are) to consider and provide lawful stopping places for Gypsies and Travellers within their area?
 - General needs assessments (Housing Act 1985, s. 8(3) duty)
 - [202]: “... an absence of sufficient transit sites in an area (or information as to where available sites may be found) may itself be sufficient reason for refusing a newcomer injunction.”
- Has LA exhausted all reasonable alternatives?
 - Dialogue/consultation with communities?
 - Provision of permanent accommodation?
 - Other available controls, e.g. public law powers, criminal law, byelaws?
- Consultation and co-operation
- Full disclosure duty

Thank you for listening

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