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IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
PROPERTY, TRUSTS  
AND PROBATE LIST (ChD)  
[2019] EWHC 1026 (Ch)



No. PT-2018-000812

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Tuesday, 2 April 2019

Before:

MISS PENELOPE REED QC  
(Sitting as a Judge of the Chancery Division)

B E T W E E N :

JOCKEY CLUB RACECOURSES LIMITED

Claimant

- and -

PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANT AND ENGAGING IN SELLING TICKETS AND BADGES WITHOUT THE PRIOR WRITTEN CONSENT OF THE CLAIMANT ON LAND AT CHELTENHAM RACECOURSE AND EDGED IN RED ON THE PLAN ANNEXED TO THE ORDER

(2) PERSONS UNKNOWN ENTERING OR REMAINING AND ENGAGING IN BUYING TICKETS AND BADGES WITHOUT THE PRIOR WRITTEN CONSENT OF THE CLAIMANT ON LAND AT CHELTENHAM RACECOURSE AND EDGED IN RED ON THE PLAN ANNEXED TO THE ORDER

(3) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE PRIOR WRITTEN CONSENT OF THE CLAIMANT AND ASSISTING IN THE BUYING AND/OR SELLING OF TICKETS AND BADGES ON LAND AT CHELTENHAM RACECOURSE AND EDGED IN RED ON THE PLAN ANNEXED TO THE ORDER

(4) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE PRIOR WRITTEN CONSENT OF THE CLAIMANT OR ANY OTHER LAWFUL AUTHORITY ON LAND AT CHELTENHAM RACECOURSE AND EDGED IN RED ON THE PLAN ANNEXED TO THE ORDER

Defendants

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**J U D G M E N T**

## APPEARANCES

MR JOHN STEEL QC (instructed by Pinsent Masons LLP) appeared on behalf of the Claimant.

THE DEFENDANTS did not attend and were not represented.

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(Please note this transcript has been prepared without the aid of documentation)

MISS PENELOPE REED QC:

1 I have before me the trial of a claim in trespass which has been brought by Jockey Club Racecourses Limited against various categories of persons unknown. Jockey Club Racecourses Limited owns Cheltenham Racecourse and has brought this claim against ticket touts who operate on its land when there are race meetings. As his HHJ Gore QC, sitting in the Queen's Bench Division, said recently in the *All England Lawn Tennis Club Ltd v Miller and another* [2017] EWHC 2876 (QB):

“It is a sad modern fact of life that greedy individuals prey on the hard working members of the public who desire to see these events and enjoy them, by conducting business that is described as “ticket touting”, by which they purchase unwanted tickets from ticket holders and sell them for very substantial premiums to others who have been unable to secure tickets through ordinary means and who wish to enjoy the event in question.”

2 The claimant seeks a permanent injunction against:

(1) persons unknown entering or remaining without the consent of the claimant and engaging in selling tickets and badges without the prior written consent of the claimant on land at Cheltenham Race Course and edged in red on the plan annexed to the order;

(2) persons unknown entering or remaining and engaging in buying tickets and badges without the prior written consent of the claimant on land at land at Cheltenham Racecourse and edged in red in plan annexed to the order;

(3) persons unknown entering or remaining without the prior written consent of the claimant and assisting in the buying and/or selling of tickets and badges on land at Cheltenham Racecourse and edged in red on the plan annexed to the order;

(4) persons unknown entering or remaining without the prior written consent of the claimant or any other lawful authority on land at Cheltenham Racecourse and edged in red on the plan annexed to the order.

3 An interim injunction was granted by Nugee J on 24 October 2018 with specific provisions for service of that injunction by affixing notices of it on posts, gates, and hedges of the racecourse, posting it on its website, and having a sealed copy available at its offices during normal working hours. That injunction was to last until 1 June 2019 subject to further order.

4 On 11 February 2019, the matter was brought again before Nugee J who gave directions for the matter to come on for trial. No defendant appeared at either of those hearings notwithstanding that directions were made for the orders to be brought to the attention of potential defendants and, indeed, the order made by Nugee J in October was fairly widely publicised. Nobody has filed an acknowledgement of service, attended either of the previous hearings, or attended to defend the trial and the claimant has had no contact from any potential defendant.

- 5 Nevertheless, I need to be satisfied that the claimant can establish the trespass of which it complains and that there is a threat that it will continue in the absence of an injunction. There was evidence before me in the form of three witness statements: from Mr Ian Renton, who is the south west regional director of the claimant; from Louis Jacobus Krog, who is the licensing team leader for Cheltenham Borough Council; and from Paul Dutton who is the Chief Superintendent of Gloucester Constabulary.
- 6 It is clear from the evidence I have seen, and Mr Renton who was in court confirmed the up to date position as explained to me by Mr Steele QC who appeared for the claimant, that ticket touts have, in the past, operated on the racecourse and the interim injunction granted by Nugee J has had a remarkable effect in almost eradicating the practice from the racecourse.
- 7 If trespass to the land owned by the claimant is demonstrated, it is not, in fact, necessary to demonstrate that it has caused damage to the claimant (see *Patel & Ors v WH Smith (Eziot) Limited* [1987] 1 WLR 853), but I would note that the evidence establishes the following. Ticket touting has historically been a big problem at Cheltenham Racecourse. Mr Renton estimates that somewhere between 100 and 150 touts were active on the racecourse during the festival most years and there are normally no fewer than 100 at other race meetings. On occasions, touts have been involved in violent incidents and non-violent antisocial behaviour by touts is a regular occurrence at race meetings. That includes loud swearing, jostling, pushing and shoving, often in order to safeguard a tout's pitch which has a particular impact on vulnerable race-goers. Whilst some touts work on their own, most work in organised groups where some negotiate sale, others are runners, others carry cash, and others are onsite leaders. Many of the touts at Cheltenham are part of organised gangs who arrive together in minivans and minibuses. Chief Superintendent Dutton has given evidence that the touts and those who control them are often engaged in money laundering. The loss to the claimant and therefore to racing per year as a result of touting is estimated to be between £1 million and £1.5 million, none of which is recoverable. The claimant has tried and failed to obtain the names and addresses of certain touts. It has also tried to evict some for trespass but this has proved impossible without causing a breach of the peace or provoking a hostile reaction. The touts often block the free flow of vehicular traffic and pedestrians thereby with the potential to cause a safety hazard. The claimant has attempted to tackle the touting issue by a number of methods, including self-help, ejection, and confiscation of tickets. However, this has proved ineffective.
- 8 The claimant has the full support of Gloucestershire Constabulary and the local authority, Cheltenham Borough Council, and in 2017, the Council passed a public spaces protection order under the Antisocial Crime and Policing Act 2014 to control touting. However, this order has had little or no effect.
- 9 The terms and conditions of entry to the racecourse are brought to the attention of anyone who searches the claimant's website and they are printed on the reverse of tickets. Since the interim injunction, there have also been notices displayed at the racecourse. However, I have concentrated on what the position was when the claim was brought in trespass. Conditions 1, 2, 5, and 7 of the terms and conditions are of particular relevance:

“1.1 All persons who purchase a ticket (as defined below in Condition 2) and all persons who enter the Racecourse (**Attendees**) whether as invitees or otherwise shall be deemed to have accepted these Terms and Conditions (**these Conditions**) and are admitted to the Racecourse strictly subject to these Conditions. These Conditions supersede all previous versions.

1.2 The **Racecourse** within the meaning of these Terms and Conditions is all the land at Cheltenham Racecourse owned and or controlled by Jockey Club Racecourses (also referred to here in as **we** or **our** or the **Operator**) at relevant times and shown on the **Maps at Annex D and E**. It includes the racecourse, stands, buildings, enclosures, rings, concourse, viewing areas, tented village, any bridge over a highway, footpaths, carparks, and all facilities and areas at the Racecourse so owned or controlled by the Operator.

...

1.5 Any person who breaches any of these terms and conditions shall be liable to be evicted from the Racecourse as a trespasser. Attention is drawn in particular to conditions 5.1 and 7.1 below.

..

2.1 All Badges, Privileged Access Swipe System (PASS) Cards, tickets, electronic passes and other entitlements to enter the Racecourse in any form (each being a **Ticket** for the purposes of these Conditions) shall be subject to these Conditions whether or not purchased.

2.2 Tickets may only be purchased or allocated by an authorised source approved by the Operator. No other tickets are valid and do not permit entry onto any part of the Racecourse.

2.3 No Tickets shall be:

(a) transferred, sold or offered for sale:

(i) if prohibited by law;

(ii) to anyone under the age of 18; or

(iii) in the course of any business transaction whatsoever (including sales to or by any ticket tout);

(b) coupled or bundled with any other product or services or used for any commercial or promotional purpose whatsoever; or

(c) Offered or obtained as a competition prize, without our consent (which we may withhold in our absolute discretion).

2.4 Any Ticket obtained in breach of these Conditions shall be void. Any person seeking to use a void Ticket may be refused entry to, or ejected from, the Racecourse without refund and may be subject to legal action.

...

5.1 We reserve the right in our absolute discretion at any time and without prior notice to refuse admission to or expel and/or ban any Attendee who:

- (a) has breached, is or we reasonably suspect is likely to breach these Conditions;
- (b) has, is or we reasonably suspect is likely to commit a criminal offence or otherwise do anything which is unlawful; or
- (c) behaves or we reasonably suspect is likely to behave in an unacceptable or unruly manner or in a manner likely to cause offence to other Attendees,

Any ban we may impose may, at our option and discretion, relate to the Racecourse and/or any other racecourse in Great Britain and may be temporary or permanent.

...

7.1 Except Attendees who have been given express prior permission and authority in writing by the Operator, no persons may trade, advertise, distribute leaflets, charity collect or conduct any other commercial or promotional activities on the Racecourse. Trading, advertising, leafleting and commercial or promotional activities in any form by unauthorised Attendees is strictly prohibited. This prohibition extends to and includes:

- (a) any unauthorised ticket or race card selling or hawking, ticket touting or assisting with any such activity;
- (b) any person directly or indirectly involved in the collation and/or distribution of any audio, visual, audio-visual coverage of or data relating to any race or fixture at the Racecourse or any other British racecourse which has not been expressly permitted in advance in writing by the Operator.”

10 It is clear, therefore, that an invitation to the Racecourse for those who buy tickets and for others is governed by the terms and conditions and that ticket touting is expressly forbidden by condition 7 and indeed other conditions.

## TRESPASS

11 As stated above, I have to be satisfied that the defendants have committed trespass and there is a threat that if an injunction is not granted that trespass will continue. When hearing the application for an interim injunction in October 2018, Nugee J considered there was a serious issue to be tried as far as trespass is concerned. I have to be satisfied on the trial of this claim, albeit undefended, that a trespass has been committed.

12 It is well established that a person who has a right to enter someone else’s land but acts in excess of that right is a trespasser. In *Hillen v ICI (Alkali) Limited* [1936] AC 65, Lord Atkin stated page 69:

“My lords, in my opinion, this duty to an invitee only extends so long as and so far as the invitee is making what can reasonably be contemplated as an ordinary and reasonable use of the premises by the invitee for the purposes for which he has been invited. He is not invited to use any part of the premises for purposes which he knows are wrongfully dangerous and

constitute an improper use. As Scrutton LJ has pointedly said, when you invite a person into your house to use the staircase, you do not invite him to slide down the bannisters. So far as he sets foot on so much of the premises as lie outside the invitation, or uses them for purposes which are alien to the invitation, he is not an invitee but a trespasser and his rights must be determined accordingly.”

*Hillen* was not a case where the cause of action was trespass but turned on whether someone who had lawfully been invited onto to the defendant’s barge became a trespasser when he did something dangerous.

- 13 In the criminal case of *R v Jones & Smith* [1976] 1 WLR 672, which turned on whether one of the defendants who entered his father’s bungalow with an accomplice and stole a TV was a trespasser for the purposes of the Theft Act 1968, Jones LJ stated:

“Taking the law as expressed in *Hillen v Pettigrew* and *ICI (Alkali) Limited*, and *R v Collins*, it is our view that a person is a trespasser for the purposes of section 9.1(b) of the Theft Act 1968 if he enters the premises of another knowing that he is entering in excess of the permission that has been given to him, or being reckless as to whether he is entering in excess of the permission that has been given to him to enter. Provided the facts are known to the accused which enable him to realise that he is acting in excess of the permission given or that he is acting recklessly as to whether he extends that permission, then that is sufficient for the jury to decide that he is, in fact, a trespasser.”

- 14 This principle was applied by the House of Lords in *Tomlinson v Congleton Borough Council & Ors* [2004] 1 AC 46 where a visitor to a public park who disobeyed signs which forbade swimming made himself a trespasser on entering the water. Lord Hoffmann, citing *Hillen*, said:

“...I can see no difference between a person who comes upon land without permission and one who, having come with permission, does something which he has not been given permission to do.”

- 15 It seems to me that these cases, if applied to the facts here, render ticket touts trespassers particularly on the basis of *R v Jones & Smith*. If ticket touts enter the Racecourse with a view to ticket touting, which is clearly contrary to the terms and conditions of entry applied by the claimant, they do so as trespassers. In the unlikely event they enter with an innocent purpose, if they start to buy and sell tickets contrary to the terms and conditions which clearly would have come to their attention at that point, they would be acting in excess of the permission given to them to be on the racecourse.
- 16 It also seems clear to me that anyone carrying out ticket touting would either per se know that this was not an act which is allowed by the racecourse, or would have seen tickets or the website of the claimant and have been made aware that the effect of the terms and conditions made ticket touting an activity which was not part of the invitation extended by the claimant.

## **INJUNCTIONS AGAINST PERSONS UNKNOWN**

- 17 There is clear authority that the court has jurisdiction to grant injunctive relief against a class of defendants named only by description (see *Bloomsbury Publish Group Ltd v News Group*

*Newspapers Limited* [2003] 1 WLR 1633; *Hampshire Waste Services v Persons Unknown* [2003] EWHC 1738 (Ch); and *Chelsea Football Club v Brewer* [2008] EWHC 1424 (Ch)). It is also clear that an injunction granted against persons unknown with a reference to their intentions, as in this case, is now a familiar practice (see *Ineos Upstream Limited v Persons Unknown* [2017] EWHC 2945 (Ch)). The question has also arisen in other cases whether it is fruitful for a court to grant an injunction in circumstances where it might be difficult to enforce. In *Secretary of State for the Environment, Food, and Rural Affairs v Myer & Ors* [2009] UKSC 11, [2009] 1 WLR 2780, the Supreme Court considered two applications made by the Secretary of State, one for possession in response to a number of travellers establishing an unauthorised encampment in woodland owned by him and the second an injunction to restrain the defendants from re-entering the occupied site and others sites. In relation to the latter Lord Neuberger said at [83]:

“In some cases, it may be inappropriate to grant an injunction to restrain a trespassing on land unless the court considers not only that there is a real risk of the defendants so trespassing, but also that there is at least a real prospect of enforcing the injunction if it is breached. However, even when there appears to be little prospect of enforcing the injunction by imprisonment or sequestration, it may be appropriate to grant it because the judge considers that the grant of an injunction could have a real deterrent effect on the particular defendants.”

- 18 Lord Neuberger’s words could not be more prescient in this case. On the basis of the evidence which has been provided since the interim injunction was granted last October, it has had a remarkably deterrent effect,

## CONCLUSION

- 19 I am grateful for the careful way in which Mr Steele has taken me through the evidence and the case law. very fairly making points against his arguments where appropriate. I am satisfied that the ticket touts operating at Cheltenham Racecourse are trespassers and therefore the claimant is entitled to have the interim injunction made permanent.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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**This transcript has been approved by the Judge**