

Insights

INTO THE UNKNOWN - SUPREME COURT CONFIRMS PARAMETERS FOR INJUNCTIVE RELIEF AGAINST TRESPASSING NEWCOMERS

Nov 30, 2023

SUMMARY

Injunctions against “persons unknown” have recently garnered much attention, being deployed in both traditional scenarios such as to prevent traveller groups trespassing on land, and also against protestors or urban explorer threats. Lower Courts grappled with whether such injunctions – wide in scope and carrying serious consequences for breach – could be granted on a permanent basis against newcomers. The Supreme Court, agreeing with the Court of Appeal’s conclusion albeit for different reasons, has confirmed they can.

BACKGROUND

Prohibitory injunctions – Court orders which prevent someone doing something unlawful – have long been a powerful tool for landowners. Breach of an injunction theoretically commands a prison sentence for contempt of Court. As a result of their great power, Courts have always subjected applications for such a remedy to detailed scrutiny.

One traditional use of such injunctions has been by owners of large areas of open or easily accessible land to prevent members of the traveller community trespassing and remaining on such land unlawfully. Typically, in these circumstances, an injunction is sought against “persons unknown”, because it is generally difficult to identify precisely who is trespassing on the land at a particular time.

In recent years, prohibitory injunctions have also become more relevant to other types of landowner. Owners of tall or iconic buildings increasingly worry about dangerous intrusions from so-called urban explorers who photograph or video their trespasses to monetise it on social media. Similarly, increasingly drastic and dangerous tactics from various protest groups have led landowners to seek injunctions to protect their staff, property and members of the public. With more injunctions being sought to restrain a growing list of threats, the progression of *Wolverhampton City Council and*

others v London Gypsies and Travellers and others through the Courts has been eagerly followed by lawyers and landowners alike.

CASE HISTORY

The case started as a group of claims brought by several local authorities for an injunction to prevent travellers trespassing across entire boroughs, covering all public spaces within the relevant local authority area. The Judge at first instance was concerned that these types of trespass injunctions had previously been granted against identified trespassers based on evidence of historic trespass, but had transformed over the years into precautionary (“quia timet”) injunctions to prohibit threatened unlawful encampment on land by anyone (i.e. persons unknown). The Judge therefore undertook a detailed review of a large volume of case law, and also recalled several injunctions that had already been made under similar circumstances for re-consideration. The judgment ended with a helpful distilled list of points to be considered as “safeguards” in future injunction applications. One of the conclusions reached, however, was that final injunctions could not be made against so-called “newcomers”, i.e. persons unknown and unidentified at the time the order was made who occupied and who trespassed after the date of that order.

If this interpretation were correct, short-term, interim injunctions might be a landowner’s only recourse against persons unknown. The cost of obtaining such orders (or continually applying to amend an order to add new defendants) could, to many, be prohibitive.

The Court of Appeal overturned this point. They held, generally, that there is nothing to prevent a final injunction in sufficiently clear terms from binding newcomers and also that there was no rule governing how interim injunctions must only be granted for specific, limited periods of time. However, for both interim and final injunctions they concluded that a periodic review of the injunction would be good practice.

The Supreme Court was asked to re-consider this conclusion.

CLARITY FROM THE SUPREME COURT

Surveying the development of various forms of injunction as equitable remedies apt to evolve over time as circumstances change, the Supreme Court held unanimously that so-called “newcomer injunctions” are a new type of injunction and there is nothing, in principle, to prevent them being granted (on either an interim or final basis). The power to grant such equitable remedies is inherent to the Court’s jurisdiction to maintain the rule of law and they can be a “*valuable and proportionate remedy in appropriate cases*”, even though they effectively “*bind the world*”.

The question which then naturally follows is what makes an “appropriate case”? The Supreme Court suggested that these injunctions should be limited to cases where there is a “*compelling need*”

for the protection of civil rights or the enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant."

In addition, the Supreme Court made it clear that safeguards must be in place before a Court grants such an injunction. As well as traditional temporal and geographical limits on the scope of any order, the Supreme Court suggested that an application (procedurally made on a without notice basis) should be advertised in advance to allow those affected by an order to represent their views. The ability for an order to be easily challenged and varied or discharged will also remain an important requirement. Finally, applicants are reminded of their duty of full and frank disclosure in such applications, including the requirement to inform the Court of any objections that they consider any potential defendant or newcomer may raise were they given the chance.

CONCLUSION

This decision will be welcomed by landowners, confirming as it does that one of the most powerful remedies against unknown trespassers remains available to them and avoiding, as the Supreme Court put it, the prospect of "*litigation without end*".

BCLP have acted in numerous cases involving trespass, urban explorers and protestors. The Supreme Court has provided welcome clarity on the parameters within which we can continue to serve the needs of our landowner clients in future. [Please get in touch](#) to learn more.

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