

BETWEEN:

THE LONDON BOROUGH OF LAMBETH

Claimant

-AND-

(1) CAUL GRANT

(2) KAYLEE

(3) PERSONS UNKNOWN

Defendants

Judgment

Keywords: trespass – statutory common land – possession – Article 6, 7, 10, 11 ECHR – fair hearing – judicial independence – effect of media reports of ongoing case – effect of public profile of a party

Representation:

Counsel for the Claimants instructed by the solicitors for the London Borough of Lambeth,
Mr Mark Tempest

For the Defendants in person:

Mr Caul Grant (First Defendant)
Ms Paige Dennis (One of the occupants of the land in issue)
Namaste¹ (One of the occupants of the land in issue)

Accessible language summary (not part of ratio of judgment)

This summary has a Flesch score of above 50 and was written to ensure accessibility of the judgment to readers with average reading ability.

Lambeth Council own and control Clapham Common. The Defendants are staying on part of the Common and say that they are allowed to be there because they are protesting and that they have legal rights to do so because of Human Rights law which protects the right to protest and to assemble, lawfully. The Council are asking for a court order to evict the protesters. They agree that the protesters have the right to protest but they say that it is proportionate to evict them and it is legal to do so. The Judge heard both sides and

¹ Namaste did not specify a personal pronoun and I am therefore referring to that party as they wished to be named, and I have not accordingly presumed to select a pronoun for them.

adjourned the case with an order that the parties produce written evidence so that the hearing can resume fairly soon with that evidence in a more formal state. After the case there were comments by one side in Social Media and a more senior judge was appointed to take over the case from the Judge.

Judgment

1. This very brief judgment is provided by way of my written reasons for my decision made on 29 June 2021 in the course of a hearing of the possession claim brought against the Defendants in respect of land forming part of Clapham Common (“the Common”). It also takes into account events subsequent to the hearing.
2. I am grateful to counsel for the Claimants for his assistance in proposing the form of order and to all parties for their submissions. It was a mostly good natured hearing. Counsel opened the claim and I heard Mr Grant followed briefly and not completely by Ms Dennis and Namaste in that order, unsworn but proceeding as a mix of submissions and evidence. The case adjourned to resume with the addition of formal written evidence in part because the informal evidence of the Defendants indicated some factual disputes in relation to the use of the land.
3. Briefly, the Claimants allege that the Defendants, who presently occupy part of the Common, whilst having entered the site legitimately (not as trespassers), have subsequently become trespassers because they have exceeded the scope of the permission given to users of the common, including in particular certain bylaws, and further that the actions of Mr Caul Grant, who claims to have exclusive possession of the site, and alleges that he has the right to exclude allcomers if he so wishes, amount to a different but clear form of trespass by denying the rights of the owner.
4. In the course of the hearing after the Claimants had opened the case it became apparent that, whereas Mr Caul Grant makes the bold claim which he does, the other occupants at least in the form of Ms Paige Dennis and Namaste, who addressed me politely and cogently, are of the view that (whilst not overtly saying that they disagree with Mr Grant) they are in occupation as part of a protest and in the exercise of their rights and that removal would be an unlawful interference. Mr Grant’s case must thus be sharply distinguished from that of the other Defendants who addressed me. He believes that Article 7 of the Convention, notwithstanding that on its face it relates only to Criminal proceedings, is the ultimate descendant of clause 61 of Magna Carta, which he agrees is not in force, and that by a line of reasoning which one would expand upon in a full judgment, the fact that he was in the past a victim of clinical negligence and some other wrongs by the State entitles him to effect a remedy by way of seizure of public land.
5. Mr Grant addressed me for some time on the detail of this, resisting efforts to interrupt until it became necessary in fairness to stop him so that I could hear the other Defendants who are facing potential removal. He also relied on a bundle of documents provided to me which went into matters relating to his personal experiences of injustice. By contrast the other Defendants addressed me briefly in relation to their assertion that their protest camp is a legitimate exercise of

freedom to associate and to protest. I heard them informally and unsworn, without cross examination, sufficient for me to understand generally the case they wish to make out.

6. The Claimants accept that the Defendants' Article 10 and 11 rights are engaged and that they would be interfered with if the eviction took place, but allege that a proper application of existing principles of law and the very recent decision of the Supreme Court in Director of Public Prosecutions (Respondent) v Ziegler and others (Appellants), [2021] UKSC 23 handed down on 25 June 2021 just three clear days before this hearing means that once I have considered the relevant factors and have navigated the principles there, the consequence should be eviction nonetheless. I am tasked therefore with applying that decision and the general law to the evidence in this case. The consequent interference with the Defendants' Art. 10 and 11 rights would on his submission be justified in accordance with accepted principles of Convention Law.
7. Were this a full decision after the conclusion of the case I would set out those points in more detail but at this stage no final decision has been made and hence I give my reasons briefly in relation to the decision that the case should resume with witness statements from the Defendants. The significance of *Zeigler* (reversing the prior Divisional court decision) is that these same Defendants had previously been evicted from a site at Shepherds' Bush, London, by one of my brother judges of this court on a date prior to the handing down of the Supreme Court decision, and hence the legal ground had been re-expressed and not so far applied by any first instance court, as counsel informed me. Accordingly whilst the Claimants would say the result will be no different it was very proper of counsel to ensure that this court was appraised of the need to apply that new decision which the Defendants otherwise may well not have been aware of and about which they may wish to seek advice.
8. It goes without saying that a court must decide according to evidence yet to be filed and must follow a procedure which is fair within the meaning of Article 6 especially where rights of the significance of Articles 10 and 11 which are key democratic (but qualified) rights are engaged and would be interfered with if an order was made for possession. In the circumstances a very summary hearing affording only perhaps 15 minutes to Ms Dennis and Namaste without witness statements from them, and where some facts as to the nature and conduct of the camp are disputed, seemed to me insufficient to satisfy the 'fact specific' inquiry which this court is required to undertake (see per Lords Hamblen and Stephens at para. 59 of *Zeigler*:

"59. Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case."

9. Mr Tempest for the Council realistically accepted that such was not a surprising approach in the circumstances of a case such as this at a short hearing and helpfully proposed a timetable for exchange of evidence so that when the hearing

continues matters will be more formally before me. It was not asserted that this was a case which was so urgent that such a course was inappropriate.

10. I will make a brief observation of the role of the court in this case because those affected by the case were not all present. It is clear from case law including *Zeigler* that it is not appropriate for a judge to decide about the merits of views expressed by protesters, not least because that would tend towards a position where freedom to express unpopular opinions could thereby be judicially chilled. Extrajudicially I note comments by Lord Sumption a jurist formerly of the Supreme Court, in the news media who more pithily expressed much the same point: *"Laws are not there to regulate opinions — even 'offensive' ones"*.²
11. This case, then, cannot be about adjudicating on the substance of the Defendants' protest. What is in issue here is not in any sense the right to peaceful protest or assembly and the Claimants in no way challenge the rights of these protesters to do so, lawfully: what is in issue is the question whether, properly applying *Zeigler* and the terms of the Convention on Human Rights, it is lawful and proportionate to evict them in the factual circumstances of this case.
12. When these Defendants appeared, with others not intending to address me, the general sense – and very explicit position of Mr Grant – was that they fully expected not to have a fair hearing, and that 'judges' are part of a system which is likely to owe some form of allegiance to its own, or to politicians or perhaps other influences. For Mr Grant, neither I nor any judge could in his view hear the case precisely because I and they are judges, and in some sense therefore likely to be loyal to other judges who he feels wronged him many years ago. He intends to make an application to challenge the court's jurisdiction. It therefore took some quite direct and forthright – perhaps even slightly irritated - observations from me as to the reality that a judge is sworn to apply the law to the facts and the parties before her, and not to be care about political matters, what the media or any politicians may think or some notion of what 'judges' may want, before we got to the point where these Defendants, though I think still not Mr Grant, said that they felt confident that they will receive a fair hearing even if at the end they might be evicted if the decision were to go against them.
13. For more on the subject of the importance of judicial independence, the Defendants who are non-lawyers may wish to see the Judiciary website <https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/independence/> where among other things the emphasis which I set out in court is reiterated more eloquently and some history and other information is provided:

"It is vitally important in a democracy that individual judges and the judiciary as a whole are impartial and independent of all external pressures and of each other so that those who appear before them and the wider public can have confidence that their cases will be decided fairly and in accordance with the law. When carrying out their judicial function they must be free of any improper influence. Such influence could come from any number of sources. It could arise from improper pressure by

² I am not of course suggesting that these Defendants views are 'offensive', that is not for the court to judge.

the executive or the legislature, by individual litigants, particular pressure groups, the media, self-interest or other judges, in particular more senior judges.”

...

“It is vital that each judge is able to decide cases solely on the evidence presented in court by the parties and in accordance with the law. Only relevant facts and law should form the basis of a judge’s decision. Only in this way can judges discharge their constitutional responsibility to provide fair and impartial justice; to do justice as Lord Brougham, a 19th Century Lord Chancellor, put it ‘between man and man’ or as Lord Clarke, former Master of the Rolls put it more recently in 2005, ‘between citizen and citizen or between citizen and the state’.”

14. In the directions which I made for service of witness statements I also specified that in the Defendants’ statements they should include proposals to address concerns which the Claimants had expressed in their claim as to the manner of use of the land. The context of that order was that the Claimants had asserted, I think correctly, that the exercise of rights of protest and assembly do bring with them a certain obligation for ‘give and take’ or as counsel put it, dialogue, between a public authority such as the council and the protesters. Given the evidence which I heard unsworn from Ms Dennis and Namaste, who expressed the firm desire not to damage the land or natural environment it appeared to me that whilst no specifically injunctive interim relief is sought other than eviction there is scope for some steps to be proposed to address some concerns of the Claimants until matters resume and I strongly encourage the parties to do that and to protect the land and natural environment on the Common. Indeed the parties are encouraged to engage on such matters even ahead of service of formal statements, notwithstanding the very swift timetable in this case. In the event that an order for possession is made in due course one would hope in similar spirit that that they would not wait to be removed but would make a point of leaving the land peacefully and ‘leaving no trace’ in the natural environment which they indicated they intend to respect, which from photographs appears to be natural woodland.
15. The case had overrun quite considerably beyond normal sitting times and I have therefore provided these written reasons after the event.

After the hearing

16. Subsequent to the hearing it was drawn to my attention by a colleague that (as is normal in cases before the Masters, because the cases before us are often high profile or concern celebrities or politicians, or tragic accidents) some statements had been made in social media about the case by the Defendants. These arguably implied that the Defendants felt that the time during the adjournment might enable them to expand the scope of the camp, and that ‘permission’ had been given to occupy. I caused to be circulated a reminder to them that no permission had been granted and that in the event that circumstances changed ‘on the ground’ the Claimants if so advised may well apply back to court on an urgent basis if the case then merited urgent eviction. That can happen in any case and is not a grant of some special right to the Claimants.

Postscript

17. On 2 July 2021 I was notified by the Senior Master that the case had been referred to a more senior judge. The reason was: *'the public profile that this group has acquired, and because there are some inaccurate reports about what has happened being published on the internet'*. I must apologise to the parties, and to counsel, that my indication that the case had to resume before me has in the event turned out to be incorrect. Any costs thrown away will I assume be treated as falling within the 'Reserved costs' order which I made when adjourning.

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MASTER VICTORIA MCCLLOUD

Royal Courts of Justice, Strand.

Hearing: the 29th June 2021.

Reasons: 5th July 2021.