



Neutral Citation Number: [2021] EWHC 726 (QB)

Case No: QB-2021-000827

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26/03/2021

**Before :**

**THE HONOURABLE MRS JUSTICE STACEY**

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**Between :**

**Mace Limited (1)**

**Claimant**

**Vanquish Properties GP Nominee 1 Limited  
(Incorporated in Jersey) (2)**

**Vanquish Properties GP Nominee 2 Limited  
(Incorporated in Jersey) (3)**

**- and -**

**Persons Unknown Entering In or Remaining at the  
40 Leadenhall Street Construction Site Without the  
Claimants' Permission**

**Defendant**

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**Mr Steven Woolf (instructed by Eversheds Sutherland LLP) for the Claimants**  
**No appearance or representation by the Defendants**

Hearing date: 16 March 2021  
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**Approved Judgment**

**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 Friday 26<sup>th</sup> March 2021 at 10.30am.**

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MRS JUSTICE STACEY

### **The Honourable Mrs Justice Stacey:**

1. This is an application by the first claimant construction company and the second and third claimant landowners for *quia timet* injunctive relief against persons unknown seeking to prevent an activity known as urban exploring from taking place at a construction site at 40 Leadenhall St, London EC3M 2RY (“the Site”). An order for alternative service of proceedings is also sought.
2. A without notice application dated 8 March 2021 came before me in the Interim Applications Court on 9 March 2021 when I granted the claimant’s application for an adjournment for seven days to enable further evidence to be filed. Although today’s hearing therefore appears in the list, it is again a without notice application since as the defendants are persons unknown, it has not been served and there was no appearance or representation on behalf of the defendants.

### **The evidence**

3. The evidence filed in support of this application comprised a witness statement of Andrew Brown, Group Health Safety and Wellbeing Director for the first claimant together with exhibits dated 5 March 2021 and a statement from Stuart Wortley, partner of Eversheds Sutherland LLP, the claimant’s solicitors together with exhibits dated 15 March 2021. I also had before me the application notice, draft order, part 8 claim form and the particulars of claim.

### **Background facts**

4. The second and third claimants are the registered freehold and leasehold owners of the land at the Site in the heart of the City of London which runs between Leadenhall St and Fenchurch St. The first claimant, is contracted to construct a 155m tall building which with 37 floors above ground level and on completion will be about the 10<sup>th</sup> tallest building in the City of London. It is a large and high profile construction site with 4 tower cranes currently on site. At present the tallest tower crane is 57.5m (measured to the height of the cab) which will increase to 162.5m as construction progresses and will be the tallest crane in the City of London.
5. The first claimant construction company is also currently undertaking around 24 other major construction projects in central London. Mr Brown, as the Group Health, Safety and Wellbeing Director has, as his job title suggests, oversight of the management of the health, safety and wellbeing related risks at each of the 25 construction sites.
6. Urban exploring, or in its abbreviated form “urbexing” is an activity which involves the exploration of the built environment, especially tall buildings and construction sites. It is associated with trespassing on parts of buildings to which public access is prohibited. Once on site, photographs and videos are taken and then posted on the Internet and social media sites such as YouTube, Instagram, TikTok and Facebook. Some of the most dramatic pictures and videos attract several million viewers. It is a phenomenon that has grown in popularity globally since 2018, especially in large capital cities such as London.
7. Typically urban explorers target the tallest “trophy” buildings and construction sites with tower cranes in any given city, especially those with the best views. Numerous

examples of videos and photographs showing individuals climbing up, posing on and hanging off tower cranes have been exhibited to both Mr Brown and Mr Wortley's statements. Mr Wortley has exhibited 32 photographs and videos posted between September and March 2020/21 most of which appear to have been taken in London and many involve the climbing of tower cranes. Mr Brown's statement provides the URL link to videos of four examples of urban explorers actually driving tower cranes whilst trespassing on construction sites.

8. Whilst there have as yet been no known incursions or attempted incursions at the 40 Leadenhall Site, there have been seven instances of urban explorer trespass between June and September 2020 on other of the first claimant's sites across London. Between September 2020 to March 2021 there were a further three incidents of urban exploring trespass on the first claimant's sites at Marsh Gate in Stratford and One Thames City development in Vauxhall.
9. There are particular hazards from urban exploration on construction sites, some of which are obvious – such as free-climbing tower cranes, sometimes at night – and other risks which may not be obvious to those who are not trained construction workers who are not wearing appropriate personal protective equipment, such as hidden holes and sudden drops. Many of the photographs and videos show urban explorers engaging in inherently dangerous activities – for example sitting or standing on exposed positions, sometimes performing acrobatic stunts such as backflips and pull-ups from a crane jib and always without safety protection. It is self-consciously reckless and risk taking behaviour.
10. Mr Wortley has listed the 17 known deaths of urban explorers around the world between June 2013 and September 2019, most of whom were young men in their late teens and 20s. The most recent was Johnny Turner in London in September 2019 at a construction site in Waterloo.
11. As well as the obvious dangers to the urban explorers themselves, the first claimant's employees, security guards and emergency services are also put at risk in protecting sites. Although there is no evidence of violence or aggression by the urban explorers, the first responders are at risk when giving chase, sometimes at height amidst the dangers of a construction site in seeking to remove urban explorers who take flight and run off to avoid apprehension.
12. The first claimant has implemented a considerable number of security measures at the Site in an attempt to deter urban explorers. They have installed turnstiles and an identity card system for operatives and 24-hour security personnel. The Site hoardings and vehicle gates surround the site and are at a minimum of 2.4m height. A lighting system has been installed and anti-climb measures applied on hoardings and tower cranes. There is closed-circuit television (including 4 pan/tilt and 16 static cameras specifically set up to detect intruders) as well as static cameras on all tower cranes. Electronic tripwires have also been placed in various locations.
13. It is evident that some urban explorers are undeterred by physical security measures from the boasts of some postings such as Rikke Brewer's YouTube post of 21 September 2020 taken from a tower crane entitled "Sneaking into the world's most guarded construction site."

14. I am satisfied that the first claimant has taken all reasonable and sensible precautions that could be taken to prevent urban explorers from gaining access to the Site and the measures will remain in place going forward.
15. Urban explorers do not advertise which buildings or construction sites they intend to visit in advance and the claimants cannot know when or where the next attempt will be made. The first claimant's security teams only log incidents of breaches by security and they are not aware of reconnaissance trips and preparatory work. The identities of urban explorers seeking to trespass on the Site are unknown to the claimants and cannot be ascertained. Although the identities of a number of high profile and prolific urban explorers are known, the claimants are unaware who, if any of them, is planning on "urbexing" the Site. However the 40 Leadenhall Street construction site is such a large, high profile and obvious target for urban explorers and will increasingly become so as the height of the building rises. The first claimant took over occupation and control of the Site in March 2020 and the target date for practical completion of the project is December 2023.
16. Since 2018 all except one of the construction sites in London involving new buildings of 150m or more has been targeted by urban explorers. After a trespass and social media posting has been uploaded some construction companies and site owners have then applied for and obtained injunctive relief from the courts which has largely been effective in preventing further trespass. There have been a number of contempt proceedings consequential on subsequent breaches of court orders and sentences have included the imposition of a 26 week immediate custodial sentence that was widely reported and well known within the urban explorer community and believed to have been an effective deterrent.
17. The one exception to the construction sites referred to in the paragraph above where there has been no "urbexing" activity is South Quay Plaza where a *quia timet* injunction was obtained prior to any incursion (*Berkeley Homes (South East London) Ltd & ors v Harry Gallagher & ors* [2019] EWHC 632 (QB)).

### **Legal principles**

18. It is well recognised that a landowner whose title is not disputed is *prima facie* entitled to an injunction to restrain trespass on his or her land save where exceptional circumstances apply (see for example *Patel v WH Smith (Eziod) (Limited)* [1987] 1 WLR 853 per Balcombe LJ at 858E-859D and Neil LJ at 862D).
19. But in this case there is no current, ongoing trespass and nor has there been an urban explorer trespass at the Site. An interim anticipatory order on a *quia timet* basis is sought. The court must be satisfied that there is both a "real risk" or "strong probability" of an infringement of the rights of the claimants and that if there were a breach of those rights the harm that might occur would be both "grave and irreparable" such that damages or an immediate injunction at that point would not be an adequate remedy. There must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief.
20. The court has jurisdiction to grant injunctive relief against a class of defendants named only by a description as an exception to the general rule that the full name of each party must be set out in the title of proceedings (PD7A paragraph 4.1) *Cameron*

*v. Liverpool Victoria* [2019] 1 WLR 1471 per Lord Sumption at paras 10-11; 13 and 15). However the definition of the relevant category of unknown persons requires very careful thought to be as precise as possible so as not wrongly to expose individuals to the risk of criminal contempt proceedings for lawful behaviour. The scope of the prohibited activity must be limited in nature and extent to an activity that anyone would clearly realise was not permitted. The injunction must not be framed by reference to a legal concept such as, for example, “trespass” and nor should breach be dependant on a subjective mental element, such as the contemnor’s intention.

21. In cases such as these, a person becomes both a party, a person bound by the order, and in breach of the order simultaneously, by doing the act which the injunction restrains (whilst knowing of the injunction) (*South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 at para 32). Any person who is not yet a party to the proceedings, but who is directly affected by a judgment or order is entitled to apply to have it set aside or varied at any time without being a party under CPR 40.9.
22. In *Boyd & Anor v. Ineos Upstream Ltd & Ors* [2019] EWCA Civ 515 at para 34 Longmore LJ identified the 6 requirements for the grant of an injunction against persons unknown as follows:
  - i) There must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief;
  - ii) It is impossible to name the persons who are likely to commit the tort unless restrained;
  - iii) It is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;
  - iv) The terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct;
  - v) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and
  - vi) The injunction should have clear geographical and temporal limits.
23. Even though it may be difficult to enforce an order against ‘persons unknown’ (for example, because it is necessary to show that that the perpetrator was aware of the injunction before breaching it) or even where enforcement proceedings are unlikely, nonetheless, the Court can properly still grant the order on the basis that the order may have a real deterrent effect (*Secretary of State for the Environment, Food, and Rural Affairs v. Meier & Ors* [2009] 1 WLR 2780 see Lord Neuberger’s comments at 79-81).
24. An interim injunction is temporary relief, intended to hold the position until determination of the substantive claim. Final orders against “persons unknown” bring their own difficulties and are to be approached with caution (see *Canada Goose UK Retail Limited v Persons Unknown* [2020] 1 W.L.R. 2802 paras 89 – 93). Whilst only interim relief is sought in the application before me and it is not necessary to the issues on final orders against persons unknown that might arise, it is therefore

important to ensure that the temporal scope of an interim injunction is indeed interim and proportionate and not a de facto final order.

### **Discussion and conclusions**

25. I am satisfied that the claimants are the lawful owners and occupiers of the private property that is the 40 Leadenhall Street construction site and that urban explorers do not and would not have permission to enter the Site. If they were to do so it would be a civil trespass. Although there have, as yet, been no known incursions at the Site I am satisfied that there is a real risk and strong probability of trespass by urban explorers. The Site is an attractive trophy site for urban explorers given its size, height, prestige and location which is very likely to be seen as a tempting challenge. The pattern of behaviour and bravado of urban explorers in relation to other notable London sites in the past two years leads me to conclude that the probability of a trespass is not only imminent and real, but also high. It is only a question of time and the risk increases and becomes more immediate as the construction work proceeds and the height of the building rises.
26. The risk of death or serious injury from an urban explorer trespass at the Site is both real and would be grave and irreparable as demonstrated by the number of deaths of urban explorers over the past six years. It follows that damages would be an inadequate remedy given the potential consequences and risk of loss of life of young men with their futures ahead of them.
27. The first claimant have already put in place robust security measures to minimise the risk of trespass by urban explorers and those measures will remain in place. I am satisfied that they are insufficient to deter urban explorers and no further measures, short of an interim injunction have been identified that would be effective. As demonstrated by the boast in the title of Rikke Brewer's September 2020 YouTube post, for some urban explorers traditional security methods are perceived as a challenge to be overcome that enhances the sense of triumph if successfully achieved. The penal notice on an injunction however has proved to be an effective deterrent in conjunction with other security measures.
28. Even though there has not yet been a trespass by urban explorers at the Site, the balance of convenience is clearly in favour of an interim injunction. *Quia timet* relief is justified.
29. The first claimant's offer of a cross undertaking in damages, if indeed it is ever likely to be called upon, can be fully satisfied by the claimants.
30. Addressing each of the requirements set out in paragraph 34 of *Ineos*, I am satisfied that it is impossible to name the persons who are likely to commit the tort of trespass unless restrained: they will not advertise a planned trespass in advance for obvious reasons. It will be possible to give effective notice of the injunction if it is prominently displayed on the hoardings around the Site perimeter in a laminated or weatherproof A3 size notice and the first claimant's undertake to replace the notices that become displaced. During the course of this hearing we have discussed and honed the precise wording of the order as to the form of the notice around the Site and alternative service on a website with a publicised URL and at the claimants' solicitors.

31. It is important to ensure that the terms of the injunction go no further than necessary to protect the claimants from the threat from urban explorers. Trespass can take many forms from rough sleepers seeking shelter for the night, curious observers, those conducting clandestine sexual liaisons, to thieves looking for machinery and equipment to steal. However the mischief feared by the claimants which they seek to prevent by the order sought is the risk of urban explorers scaling the heights of the Site. It is that highly likely, real and imminent risk that entitles the claimants to the interim relief sought and for that reason the terms of the order must be framed as precisely as possible to prevent and deter that activity. To that end the order shall specify that the defendants must not, without the consent of the claimants, climb to a height of more than 5m above street level upon any part of the Site. The order initially proposed applied to all trespass at the Site which would have been disproportionately wide in its ambit.
32. I am satisfied that the terms of the injunction as developed during the course of the hearing are sufficiently clear and precise so as to enable persons potentially affected to know what they must not do. By annexing a plan as well as the address and verbal description of the Site in the order itself the geographical limits are clear.
33. As discussed above, it is important that the term should not be of such a length as to amount, in effect, to a final injunction. The period of six months or so does not offend that requirement (see *Multiplex v Persons Unknown* [2020] EWHC 2403 (QB) per Soole J), but in order to avoid a return date in the vacation period I will order a return date of 15<sup>th</sup> October 2021 which makes the term just shy of 7 months which I find is still reasonable and proportionate and consistent with an interim injunction.
34. Accordingly I grant the claimants' applications and (1) grant permission to issue the claim against persons unknown; (2) make an interim injunction order to restrain trespass; and (3) make an order for alternative service of proceedings as set out in the approved minute of order.