

HANSON QUARRY PRODUCT EUROPE LIMITED v PERSONS UNKNOWN

NOTE OF HEARING

20 May 2024 at 4pm

Mrs Justice Heather Williams ("J")

Michael Fry of Counsel ("MF")

J: I have had a chance to look at the papers, subject to anything additional you want to tell me, probably the easiest way of doing it is if I ask you a number of questions

MF: My Lady, I know you are very familiar with the jurisdiction. I am quite prepared to answer any questions my Lady might have.

J: Can I check that a note is being taken of this hearing because we are proceeding without notice and it will be served in due course?

MF: Yes, my solicitor is taking a detailed note

J: A logical place to start is the question of whether this hearing should be without notice. Looking at paragraphs 44 and 45 of your skeleton argument, you appear to accept that section 12 is in play, or at least that it is arguably in play. People sometimes argue that it is not but you have accepted that at least arguably it is. Therefore, in order to proceed without notice, one has to be satisfied of 12 (2) and in this sort of situation, realistically, don't I have to be satisfied of limb (b) i.e. there are compelling reasons why the defendant should not be notified.

MF: That is correct my Lady, I address this in my skeleton. It is simply that practical steps cannot be taken: there was an expectation this morning that there would be people on site this morning, but there were not, which is good and also bad, in the sense that we were not able to draw it to anyone's attention. Throughout the skeleton argument, it is made clear that in respect of the people who are turning up on site, other than guessing that they are local people, the claimant is unaware who they are. It does not yet have a record of each individual, such that we are able to say we know that you have turned up 10 times and so on.

J: Right, so it appears that you are not relying on limb A. You are relying on limb B, that you have taken all practical steps, because either way, one way or another, sometimes in these cases, what is said, is that there is compelling reasons not to notify the Respondents because if people knew there was an injunction in the offing they would cause all sorts of trouble beforehand, you are just referring to practical steps.

MF: Exactly, you are right, it is either or, but probably more A than B, that we have taken all practical steps, particularly given the urgency that I say exists.

J: In terms of the order, I am content to make an order, but we need to discuss certain terms. Can I ask you to amend the current draft and resubmit? I mention that now so that you can keep a running list as we go along.

MF: I understand that.

J: I was a little concerned about the description of persons unknown in (1) and (2), It doesn't appear to mirror what you have in paragraph 2 which is my understanding that it should mirror. Secondly, in any event, before I saw paragraph 2, I do not like the word there "delaying", because for example if you stop to ask the employee the time, you are delaying somebody, in a literal sense, but I would not want someone in breach of an injunction if they did that. It would be preferable if the description of persons unknown in 1 and 2 could reflect what is said in 2 a b and c, would that be practical?

MF: My lady is aware there is a whole body of case law, where the description of Persons Unknown is constantly being amended and improved, but taking it back to basics, that is exactly what it used to be, simply persons unknown trespassing on the quarry, we are meant to avoid legalese but that is sometime unavoidable.

J: And the other parts should be included. I don't think there will be any legalese that is hard to understand. You will amend the description of persons unknown to reflect that please. In terms of the recitals, you will need to draft recitals indicating that I am satisfied that it is appropriate in the circumstances to proceed without notice, using the wording of section 12 (2) itself, in other words that all reasonable practical steps have been taken or words to that effect. And also a recital, maybe the last one, that the court is satisfied that the test in section 12 (3) is met.

J: Dealing with things in the order they appear in the draft order, the next point is the return date, paragraph 2 you have said 28 June, that is over a month, one would normally have a couple of weeks.

MF: Two weeks is the usual, I have put a later date only because in my experience, you inevitably have an adjournment so the defendants can prepare for a hearing. Also, if my Lady is content to list in Cardiff, I am not sure whether in the recess we would be able to get a hearing in Cardiff in 14 days. However, the length of time is a matter for my Lady.

J: It will be term time in 14 days, the first day after new term, which is not ideal, it is better to give a specific date. I haven't had time to check with listings in Cardiff as to whether they can list on a certain day, which puts us in slight difficulty. I will refer to my clerk. [NOTE: The learned judge's clerk later confirmed the date of the return date hearing to be listed in Cardiff] The return date will change in paragraphs 2 and 13.

J: Then paragraph 4. I understand the purpose of paragraph 4, it is intended to provide clarity in respect of paragraph 2. Some of it doesn't concern me at all but I am a little concerned about the breadth of (a). I am not hearing detailed evidence at this stage, and I do not want to tie the hands of a Judge in the future as to what is and is not injunctive. For example, simply standing in the carriageway, I appreciate it could depend on where you are standing but standing *per se* in the carriage way might not necessarily be a breach of the injunction.

MF: That is correct. One wouldn't be a defendant without doing that action for the purpose of causing harm, but if my Lady does not like it, it can be simply struck out, as it is a clarity provision, not necessary, and not mentioned in the authorities. If the Court does not want it to be clear in that sense, I understand my Lady's concerns that it might be seen as directive even though it is not intended to be.

J: It might be seen as unduly directive, it's not that it's not clear. I think let's get rid of 4 rather than rewording it, if one inserts lots of qualifications it doesn't actually help the people that it is intended to achieve clarity with. It can be further discussed in the return date if appropriate, when there is more time to consider, but at least for now let's get rid of that.

J: Service by the means set out in paragraph 5 seem perfectly sensible and reasonable and I presume, double checking, when you say in the third line "any order", that is including this order that I am about to make.

MF: Yes, this is the key order, the intention is for that to go either side of the Access in hard copy, and in paragraph 8 (that will become 7) to be handed out to people so far as we are able and practical. It is incumbent on us to make sure people have the order.

J: I don't have any difficulty with that, all very standard wording,

J: For the undertakings at Schedule C, I think we need an undertaking as well to issue the claim form, it should be in the undertakings.

J: I know you or your clients want the order today if possible, but unless we receive it back before 5pm today, it will not be sealed before today, that might be unrealistic even if not waiting to hear about a hearing date. It is more sensible, if I proceed to give judgment. I am happy to grant an order in the terms that we have now discussed, the specific date can be added, you are aware of my intention of the time scale for the return date, and the date can be clarified. If it is not possible to get clarity, we can stick with that Wednesday, but let's hope it can be obtained.

J: I will give a short judgment. The claimants make an urgent application for an interim injunction to protect its Quarry from persons unknown who are trespassing or blocking the access to the Quarry.

The Claimant is Hanson Products which trades as Heidelberg Materials UK. It owns the Quarry and for the last few months, the Claimant has faced an increasing number of protests outside the Quarry entrance which has also led to trespass upon the Quarry land and some disorder and blocking of the public highway.

I will detail that further shortly, but that is the reason behind the application for urgent relief, which is supported by a witness statement dated 20 May. The Quarry is described as a nationally important source of sandstone. There is a particular concern now as, after 13 May, the Quarry is becoming fully operational after operating on a reduced basis following a fire. In short, the activities are having a serious effect on the Claimant's work. Work has had to cease altogether on some days due to the action, particularly stopping large goods vehicles seeking to enter and remain on the site. The Claimant explains that there could be 116 movements a day to and from one highway entrance. This is 14.5 LGV movements an hour. Accordingly blocking them for any time, causes issues for the Quarry and to the main road which serves local villages. The actions further cause financial damage to the Claimant, and danger to road users as there is nowhere for LGVs to safely locate themselves at the entrance. There is a steep drop to the railway line 15/20 meters away, and Mr Radcliffe notes that there are no obvious turning points on the road for LGVs. Any block to the entrance causes serious congestion, and is difficult to traverse, and could lead to the main road closing if lorries are blocked because access is impaired. It is also difficult to overtake them as sight lines would be blocked for lorries, elevating the danger, particularly as there are LGVs arriving that contain explosives, and the Claimant is concerned that such LGVs should not be held on the public highways when containing the potentially dangerous materials, detonators and primers.

There are summaries of the various direct action activities set out in the schedule. Given the time constraints, I can only give a brief summary, but I have considered in full. Since around late Jan 2024, unlawful behaviour from persons unknown including criminal damage to fences, and trespass. On 25 March this year, a number of people trespassed on to the Quarry, and the schedule sets out the detail. Moving forward, 2nd to 5th April, persons unknown blocked the entrance to the Quarry, including public highway and private access. Further details are given. On 8 to 18 April, after a short gap, from Monday 8 April protestors returned, they gathered on the road and adopted a new tactic, lining up on the road, and lying down, for 10 minutes, and after that letting the lorries through. Over a whole week, that soon stacks up. These tactics were repeated on 13 to 18 April from 6am to 6pm. Mr Radcliffe then refers to protests from 24 April onwards, on 26 April protestors trespassed and blocked the access to the Quarry. They came to the access again on 1 May, when he spoke to them. They said they would hold up lorries for 10 minutes, but would not commit to holding them for only that period. On 3 May, lorries were held for 10 minutes at a time, and there were similar instances on 7, 8 May, and on 10 May, including that there was a traffic incident where a car rear ended a third car in relation to traffic that had built up as a result of the blockage. On 13 May, protestors said they were not allowing access at all, the Claimant called 101, and protestors resumed the 10 mins delay tactic, such conduct occurred on 14 May and 16 May and also on 17 May.

The Claim Form is yet to be issued but an undertaking will be given that it will be issued in 48 hours. The injunction will prohibit trespass to land and nuisance, and the injunctive conduct in para 2 of order is as follows

The defendants are forbidden from doing any of the following:

- a. entering or remaining on any part of the Quarry;
- b. deliberately obstructing or otherwise interfering with the free movement of vehicles, equipment or persons accessing or egressing the Quarry; or
- c. interfering with any sign, fence or gate on the perimeter of, or within, the Quarry.

Protesters rights protected by the exemptions in paragraph 3

In terms of trespass, the protestors do not have the right to be on private land. Private nuisance arises when there is an interference with enjoyment of land. Unlawful interference can be a private nuisance, *Cuadrilla* 2024 WLR 29 at para 13. In relation to the Claim in nuisance, appropriate to have regard to protestors potential ECHR Article 10 and 11 rights but I am satisfied that the order does not occasion a disproportionate interference with those rights.

The Order will not prevent protest in a variety of ways, just one. The unlawful behaviour is causing substantial damage, it might be unrealistic to think it could be compensated, thirdly, it is causing health and safety issues. Fourth, I bear in mind the interference with the rights of other road users. Fifth, in the limited time I intend to give the Order, there are other protections. The Defendants might apply on notice to vary it.

Mr Fry accepts that section 12 applies or arguably applies, I proceed on the basis that it does. The Order may only be made without notice pursuant to subsection 2 if the person against whom the application is made is neither prewarned nor present if the Claimant has A taken all steps or B there are compelling reasons. This is not an occasion where notice is inappropriate but it is said that the identity of the protestors is simply not known at this stage, so it is simply not practical at this stage to notify them of this application. I am mindful of this in directing that there will be as short a return date as proposed.

For those reasons, there is a serious issue to be tried in relation to trespass and nuisance.

If applicable, s12(3) is met, in so far as this is an injunction to restrain publication before trial. Publication should not be allowed until trial.

Compensation is not adequate. The balance of convenience lies in the Claimant's favour, even noting the potential Article 10 and 11 rights, in relation to the nuisance claim. I have already indicated that the Claimant does not know who the defendants are so has brought the claim against Persons Unknown. I queried the current description in the draft order, as it did not seem to me to coincide with the prohibited conduct at para 2 of the order, and might go wider than that. Mr Fry has indicated that he has no issue with the description of the defendants to be amended to reflect para 2.

Because it is served against person unknown, it is important to consider the *Canada Goose* case:

1 any defendants known are identified, does not apply. 2 persons unknown must be people not identified and must be capable of being identified. I am satisfied that the relevant description means that they are persons who are capable of being identified. Defendants must be identified by their conduct which is alleged to be unlawful. 3 only if sufficient real and imminent risk of a tort being committed, I am so satisfied. 4 individuals if known must be named or identified in the appropriate manner and the claim form will reflect same. 5 the prohibited act must be reflected in the prohibition, I am satisfied that para 2 corresponds to the threatened tort. After discussion, para 4 will be excised. It was put there to provide clarity, but the terms were unduly wide and went beyond torts in question. Para 2 is clear. Requirement 6 of Canda Goose is that it must be clear enough to allow people to know what to do. Para 7, there are temporal and geographical limits in the order, such as maps, the temporal issue will only last to the return date, which can be on 5 June. So far as alternative service is required, this is addressed, currently at paragraphs 5 to 9 of the order, I am satisfied that para 5 is standard, affixing sealed copies of court documents, the claim form, the particulars of claim, this application and the note of this hearing, affixing in prominent places, near the entrance to the quarry, sending electronic copies to email addresses and uploading electronic copies in PDF form, also, and the Claimant's solicitors' contact details are provided. I am satisfied in all the circumstance that the arrangement set out in draft order, will sufficiently bring matters to the attention of the defendants, which is the key matter.

That concludes the matters I need to cover in relation to the order. In Schedule C, there should be added the undertaking in relation to issue of the claim form.

MF: Looking at the order, at what was paragraph 5 (d), I might put the website address in there.

J: Yes, that is sensible.

MF: In view of the nature of without notice proceedings, it is worth recording that paragraph 28 of my skeleton has been considered, in view of the duty to give full and frank disclosure.

J: Yes, I hope it is apparent from the Judgment that I did take those points into account. Mr Fry very properly drew to my attention points that might be made by the Defendants if this was an on notice application, and I have taken that into account those points. Please include that in the note.

MF: I shall correspond with the clerk regarding draft order.

J: Thanks you for your assistance.