

# ***Wolverhampton City Council v London Gypsies and Travellers***

*What does the Supreme Court judgment mean for  
injunctive relief?*

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# Agenda

- What was the judgment?
- What are the considerations for those seeking newcomer injunctions?
- What does this mean for the grant of injunctive relief and the use of equitable principles more broadly?

# The issue

- Merry-go-round of trespassers
- As soon as an order is obtained against one, someone else may be on site
- Can a newcomer on a site be restrained by a pre-existing injunction against 'Persons Unknown'?

# Who?

- Gypsies and Travellers the focus of this decision
- Considerations of principle apply also to protester cases

# Possible problems

- Not a party
- Cause of action?
- Can you commence and serve?

# Previous decisions

- ***South Cambridgeshire DC v Gammell***  
[2005] EWCA Civ 1429, [2006] 1 WLR 658
- ***Cameron v Hussain***  
[2019] UKSC 6, [2019] 1 WLR 1471
- ***Canada Goose UK Retail Ltd v Persons Unknown***  
[2020] EWCA Civ 3030, [2020] 1 WLR 2802

# The courts below

- High Court (Nicklin J): final injunction not possible against newcomer (as per *Canada Goose*)
- Court of Appeal (Vos MR et al. reversing decision of Nicklin J): trespasser becomes a party on breach (as per *Gammell*)

# It's not *Canada Goose*

- Rejection of distinction between interim and final injunctions
- Preference for a recognition that they are without notice and require safeguards to ensure they are appropriate
- Passing observations on reasoning of Lord Sumption in *Cameron*



# But it's not *Gammell* either

- Trespasser becoming a party on breaching the injunction?
- This approach proceeds wrongly from the premise that the injunction will not be obeyed
- Also, circular: means you only become restrained from doing something by doing it!

# A new type of injunction

- Conclusion: equity has previously developed new forms of injunctions, and this is another instance
- Much of the previous discussion has gone wrong through undue concern with distinction between interim and final injunctions
- Equity unboxed, but rules needed
- A pragmatic approach

# The upshot

- Power to make newcomer injunction exists
- No inherent obstacle to exercising it
- Not therefore automatically appropriate simply to make an injunction without careful consideration of the relevant principles

# Newcomer injunctions: considerations

1. Is there a **compelling justification** for the injunction?

Has the local authority:

- a) complied with any obligations to properly consider and provide lawful stopping places for Gypsies and Travellers?
- b) exhausted all reasonable alternatives?
- c) taken appropriate steps to control or prohibit unauthorised encampments using other measures and powers?

# Newcomer injunctions: considerations

2. Is there clear evidence that a tort or breach of planning control is highly likely to occur?
3. Are the actual or intended respondents, and prohibited acts, defined as precisely as possible?

*Valero Energy Ltd v Persons Unknown [2024] EWHC 134 (KB)*

*Valero Energy Ltd, Valero Logistics UK Ltd, Valero Pembrokeshire Oil Terminal Ltd*

*v*

*Persons Unknown Who, in Connection with Environmental Protests By the 'Just Stop Oil' Or 'Extinction Rebellion' Or 'Insulate Britain' Or 'Youth Climate Swarm' (Also Known As Youth Swarm) Movements Enter Or Remain Without the Consent of the First Upon Any of the 8 Sites (defined below), Persons Unknown Who, in Connection with Environmental Protests By the 'Just Stop Oil' Or 'Extinction Rebellion' Or 'Insulate Britain' Or 'Youth Climate Swarm' (Also Known As Youth Swarm) Movements Cause Blockades, Obstructions of Traffic and Interfere with the Passage By the Claimants and Their Agents, Servants, Employees, Licensees, Invitees with Or Without Vehicles and Equipment To, From, Over and Across the Roads in the Vicinity of the 8 Sites (defined below), Mrs Alice Brencher and 16 Others*

# Newcomer injunctions: considerations

4. Does the injunction contain strict geographical and temporal limits?
5. Has the local authority taken reasonable steps, before the application is made, to bring it to the attention of those likely to be affected?
6. How does the local authority propose to give effective notice of any order?
7. Has the local authority included 'generous liberty' for anyone affected by the terms of the injunction to apply to vary or discharge the order?

# What did the Supreme Court leave unanswered?

- Costs capping orders
- Cross-undertakings in damages
- Guidance on other types of case e.g. protest



# How has this been applied so far?

*Buckinghamshire CC v Barrett* [2024] EWHC 140 (KBD) – sought to prevent development of a site in breach of planning control- not granted.

*Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KBD) – sought to prevent protesters entering or remaining at specific sites, causing blockades or disrupting traffic on the same sites – granted.

*Multiplex Construction Europe Ltd v Persons Unknown* [2024] EWHC 239 (KBD) – sought to prevent urban climbing / explorers trespassing- granted.

*1 Leadenhall Group London v Persons Unknown* – 28 February 2024 (KBD), extempore judgment sought to prevent urban climbers / explorers trespassing – granted.

# Equity's answer to increasing applications

Between 2015 – 2020, 38 different local authorities (or groups of local authorities) sought injunctions which in broad terms prohibited unauthorised encampments: see paragraph 6 of the Judgment.

Broader application – see paragraph 3 of the Judgment: especially the influence of the internet: “The advent of the internet, enabling wrongdoers to violate private or public rights behind a veil of anonymity, has also made the availability of injunctions against unidentified persons an increasingly significant question.”

Protest cases – see paragraph 235 of the Judgment.

# Previous thoughts displaced

A distinction between interim and final relief: but ‘two silos’ not applicable to newcomer injunctions: see paragraph 139

Persons unknown and ‘the Gammell solution’

A requirement for a cause of action: but see paragraph 43 – “It is now well established that the grant of injunctive relief is not always conditional on the existence of a cause of action.”

# A principled extension

Equity does not shy away from the grant of appropriate remedies where the common law or statute does not provide the answer:

- Norwich Pharmacal Co v Customs and Excise Commissioners [1974] AC 133
- Mareva Compania Naviera SA v International Bulk Carriers SA [1975] 2 Lloyd's Rep 509
- Anton Pillar KG v Manufacturing Processes Ltd [1976] Ch 55
- Cartier International AG v British Sky Broadcasting Ltd [2016] EWCA Civ 658  
(Cartier International AG v British Telecommunications plc [2018] UKSC 28).

## The role of equity (continued)

These principles may be discerned in action in the remarkable development of the injunction as a remedy during the last 50 years.”

Spry, *Equitable Remedies* 9<sup>th</sup> Ed (2014) (as quoted at paragraph 147): “The preferable analysis involves a recognition of the great width of equitable powers, an historical appraisal of the categories of injunctions that have been established and an acceptance that pursuant to general equitable principles injunctions may issue in new categories when this course appears appropriate.”

# The role of equity

When summarising their conclusions (at para 238) the Supreme Court said:

“In deciding whether to grant a newcomer injunction and, if so, upon what terms, the court will be guided by principles of justice and equity and, in particular:

- (a) That equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue.
- (b) That equity looks to the substance rather than to the form.
- (c) That equity takes an essentially flexible approach to the formulation of a remedy
- (d) That equity has not been constrained by hard rules or procedure in fashioning a remedy to suit new circumstances.

# Moving forward

Will there be a flood of new applications?

- unlikely in view of the considerable issues and safeguards outlined in the decision

- now also see 15 points of guidance from the High Court in *Valero* : confusingly that includes, as point 1, that there must be a civil cause of action identified in the claim form and particulars of claim, as well as talking of the injunction not being ‘wholly final’, but ‘quasi-final’.

- also note the 13 points of guidance from the High Court in *Multiplex* (concerning interim applications).

# Moving forward

- Much to resolve
- Interim applications
- Committal







*Thank You*

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