Neutral Citation Number: [2020] EWHC 2717 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

QB-2017-006080
QB-2020-003471

Royal Courts of Justice
The Strand
London, WC2A 2LL

Friday, 2 October 2020

Before:

MR JUSTICE NICKLIN
(By telephone hearing)

B E T W E E N :

LONDON BOROUGH OF ENFIELD	Claimant
- and -	
PERSONS UNKNOWN	Defendant
- and -	
LONDON GYPSIES & TRAVELLERS	Interested Party

MR S. WOOLF appeared on behalf of the Claimant
THE DEFENDANTS were not present and were not represented
MR O. GREENHALL (instructed by Chris Johnson of the Community Legal Partnership) appeared on behalf of the Interested Party.

J U D G M E N T

MR JUSTICE NICKLIN:

1. On 29 September 2020, I heard and application by the London Borough of Enfield for permission to amend the Part 8 Claim Form in an action that was originally issued on 21 July 2017, and an extension of an injunction (in modified terms) that was granted on 4 October 2017 ("the Final Order") for a period of three years. The Claimant had been granted an interim injunction on 21 July 2017 ("the Interim Order"). The Application Notice in respect of that application was issued on 22 September 2020. The Claim Form in that action had been issued against "Persons Unknown". In the original Claim Form, and indeed in the injunction orders, no description was given of the Persons Unknown in the title to the action.

2. The original Claim Form sought an interim and final injunction against the Persons Unknown pursuant to s.222 Local Government Act 1972 and/or s.187B Town and Country Planning Act 1990. The Local Authority brought the claim as the owner of around 130 public spaces within the London Borough of Enfield. The action was targeted at, "Unauthorised encampments throughout Enfield by Persons Unknown who are Travellers", as well as attempting to obtain restrictions to tackle the problems of fly tipping at various sites.

3. On Monday this week, Mr Woolf for the Claimant, and Chris Johnson, who is a member of the Community Legal Partnership representing, on that occasion, a group called the London Gypsies and Travellers ("LGT"), made representations to the Court. Mr Johnson and LGT do not represent any individual Defendant, the Persons Unknown; rather LGT, and therefore Mr Johnson on their behalf, is an Interested Party.

4. There were several obstacles to the applicant's application to amend the Claim Form, and the application to extend the duration of the injunction order.

    a. The Application Notice had not been served on any Defendant. Notices had not been posted at any of the sites in respect of which the Claimant was seeking to extend the injunction. By way of explanation for this failure, in the evidence provided to the court, the Claimant suggested that there had only been a "short time" available in order to carry out that notification procedure.

    b. I was doubtful that the Court had jurisdiction to grant permission to amend a Claim Form and/or to extend an injunction made by a final order. The order granted on 4 October 2017 did not contain any provision to extend the duration of the injunction. Although not required to determine this point, it does seem to me arguable that after a final order has been granted, which does not contain a liberty to apply to extend, the proceedings are at an end. The Court has made its determination. Subject to an appeal, the only jurisdiction to vary a final order would appear to be that contained under CPR 3.1(7). The limits of that jurisdiction were considered by the Court of Appeal in ***Tibbles -v- SIG Plc*** **[2012] 1 WLR 2591**. In summary, an application under CPR 3.1(7) usually requires a change of circumstances. The expiry of the period for which the injunction was granted does not appear to me to be a change of circumstances. Indeed, it is specifically foreseen at the date on which it was granted that the injunction would be time limited.

    c. Finally, and perhaps most seriously, it became clear that the Claimant had failed to serve a claim form on any of the Defendants in the original proceeding. CPR 6.3 sets out the methods of permissible service for a Claim Form. Without an order for alternative service, the only method by which the Persons Unknown could be validly served was by personal service in accordance with CPR 6.5. The Claimant did not

contend that the Claim Form had been personally served on any of these Defendants. No order had been made for service of the Claim Form by alternative means pursuant to CPR 6.15, and no order had been made dispensing with service of the Claim Form under CPR 6.16. The Claim Form had therefore not been validly served on anyone when the matter came before the court on Monday this week.

5. Recognising those difficulties, at the hearing, Mr Woolf, on behalf of the Claimant, formally withdrew the original Application for permission to amend the Claim Form and to extend the duration of the Final Order in the original proceeding. Nevertheless, he indicated that the Claimant would wish to make a further application under CPR 6.15(2) for an order for alternative service, to validate the steps the council had taken to bring the original Claim Form to the attention of the Persons Unknown Defendants.

6. I gave directions for the service of an Application Notice, and for evidence in support by the Claimant for a hearing that was listed to take place today. LGT was also given the opportunity to file any evidence upon which it wanted to rely. The Claimant duly filed an Application Notice dated 30 September 2020 for the CPR 6.15(2) Application, together with a witness statement in support from Antonia Makanjuola, the Assistant Principal Lawyer in the Council's Legal Department.

7. In addition, yesterday, 1 October 2020, the council also issued a fresh Part 8 Claim. In summary, this claim effectively seeks to extend the injunction granted on 4 October 2017, albeit by way of a fresh claim, and in respect of now some limited 96 sites, compared to the 128 sites that were the subject of the Final Order in the original proceeding. Under CPR Practice Direction 8A §20.8, 21 days' notice is required before the Part 8 Claim can be dealt with. The council, as part of its application today, has asked me to abridge the time for service of the Application for an interim injunction. The interim order sought today is limited to fly tipping, and does not seek to restrain the occupation of land by Gypsies, Travellers or others. The Claimant intends to seek an order against "Persons Unknown" in that latter category at the hearing of the Part 8 Claim, but it is not part of the relief they are seeking today.

8. As recognised by the Claimant in its evidence, and Mr Woolf in his submissions, the legal landscape that governs proceedings and injunctions against Persons Unknown has transformed since the Interim and Final Orders were granted in this case. In chronological order the key cases are:

- ***Cameron v Liverpool Victoria Insurance Co Ltd*** **[2019] 1WLR 1471.**
- ***Boyd v Ineos Upstream Limited*** **[2019] 4 WLR 100.**
- ***Bromley London Borough Council v Persons Unknown*** **[2020] PTSR 1043.**
- ***Cuadrilla Bowland Limited v Persons Unknown*** **[2020] 4 WLR 29.**
- ***Canada Goose UK Retail Limited v Persons Unknown*** **[2020] 1 WLR 2802.**

9. There are two issues immediately that I have to decide today:

   a. Whether to grant the Claimant's Application under CPR 6.15(2), the effect of which is an order retrospectively to validate, as good service, steps already taken to bring the Claim Form to the attention of the Defendants in the original proceedings.

   b. Whether to grant an interim injunction in the Claimant's new Part 8 Claim against Persons Unknown to restrain fly tipping at the 96 sites that are subject of the application.

CPR 6.15(2): Alternative Service

10. CPR 6.15 provides:

> "(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
>
> (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.
>
> (3) An application for an order under this rule –
>
> (a) must be supported by evidence; and
>
> (b) may be made without notice.
>
> (4) An order under this rule must specify –
>
> (a) the method or place of service;
>
> (b) the date on which the claim form is deemed served; and
>
> (c) the period for –
>
> (i) filing an acknowledgment of service;
>
> (ii) filing an admission; or
>
> (iii) filing a defence."

11. An application under 6.15(2) is concerned with giving retrospective validation of an event that has already happened: ***AstraZeneca UK Limited -v- Vincent & Others*** **[2014] EWHC 1637 (QB)**. There can be no question now of the Court permitting some future act of alternative service on the Defendants. The Claim Form in the original claim has long since expired.

12. The question is where there is a "good reason" to authorise service by an alternative method. Under CPR 6.15(2) this is essentially a factual enquiry into what steps have been taken, and whether they have or are likely to have brought the Claim Form to the attention of the Defendant: ***Abela -v- Baadarani*** **[2013] 1 WLR 2043**. The mere fact, if it can be demonstrated, that the Defendant did learn of the existence of the claim and the contents of the Claim Form cannot, without more, constitute a good reason to make an order under 6.15(2). However, the wording of the rule shows that this is a critical factor: ***Abela*** [36].

13. It has never been sufficient that the Defendant should be aware of the contents of the originating document, such as a Claim Form. Otherwise, any unauthorised mode of service would be acceptable, notwithstanding that it fulfilled none of the other purposes of serving originating process: ***Barton -v- Wright Hassall LLP*** **[2018] 1 WLR 1119** [16].

14. The question is whether there is a good reason for the court to validate the mode of service that has been used, not whether the Claimant had good reason to choose that mode: ***Barton*** [9(3)]. The CPR clearly stipulate the acceptable methods for serving the Claim Form. Absent some difficulty in using these methods, CPR 6.15(2) does not enable litigants to devise their own method to effect service. It is necessary in the interests of certainty that the court could permit a litigant to depart from the prescribed method of service only were a compelling case is made out to do so: ***Brown -v- Innovatorone*** **[2009] EWHC 1376 (Comm)** [44] *per* Andrew Smith J.

15. If a claimant would not have been able to demonstrate a "good reason" under CPR 6.15(1) prospectively to apply for an order for alternative service, he or she should not be in any materially better position if the Claim Form is not thereafter validly served, and he or she is forced to apply under CPR 6.15(2) to validate the method in fact used: ***Piepenbrock -v- Associated Newspapers Limited*** **[2020] EWHC 1708 (QB)** [65].

The evidence

16. There is no dispute that the Claim Form was only available on the Claimant's website, and copies of it available for inspection in the Claimant's libraries in the London Borough of Enfield. The Claim Form was not one of the documents that was attached to the physical posts at each of the 130 sites that were the subject of the original injunction. It is correct that the Claim Form was referred to in the injunction order granted on 4 October 2017, and indeed stated to be available on the Claimant's website. One person did, apparently make an inquiry with the Council's Legal Department about the claim.

17. In her witness statement, Miss Makanjuola has helpfully exhibited the documents which demonstrate the following:

    a. The web page which referred to the grant of the interim injunction on 21 July 2017, which included links to the Claim Form and the Claimant's evidence. The relevant page of the website has been viewed 2,168 times.

    b. Miss Makanjuola fairly acknowledges in her statement that members of the Gypsy and Traveller communities may not have immediate access to the internet. In light of that, hard copies of the Claim Form were placed, as I have said, in Enfield's libraries, and a notice publicising this was posted along with the interim injunction at all the relevant sites. No record has been kept of the number of people requesting to see a copy of the Claim Form at any of the libraries where it was available.

    c. A notice was placed in the *Enfield Gazette* and the *Enfield Independent* newspapers on 26 July 2017.

    d. Finally, although the materials made available at each site covered by the injunction did not include the Claim Form, the notice that was posted there was in the following terms:

> "The enclosed document, the order, and the map, together with the claim forms (sic) and evidence in support, have been posted on Enfield Council's website, and can be found at the following web address: www.enfield.gov.uk/injunction. Any person wishing to review hard copies of the order, map and claim form can do so at any of the council's public libraries. Hard copies in the libraries will be

made available as reference copies only, and will be available until 4 October 2017."

After grant of the Final Order, copies of the notice were amended to show the date of 3 October 2020, rather than 4 October 2017.

18. LGT has provided a witness statement from Ilinca Diaconescu dated 30 September 2020. Ms Diaconescu is the policy and campaigns coordinator of LGT. I accept that she can speak with some authority, even if necessarily at a level of generality about the Gypsy and Traveller community given her role. She has expressed concern about the level of digital exclusion in the Gypsy and Traveller community. In that respect she has referred to research published in 2018 titled, "Digital inclusion in gypsy and traveller communities". This research suggests that:

- Two in five Gypsies and Travellers use the internet daily compared with four out of five of the general population.
- Further, only 38 per cent of Gypsies and Travellers had a household internet connection compared with 86 per cent of the general population.
- 32 per cent did not own any devices that could connect to the internet.

Submissions

19. Mr Woolf accepts that the Claimant cannot submit that making the Claim Form available on the council's website will have effectively brought the claim to all of those in the category of Persons Unknown. Nevertheless, he argues that this method of service, together with the other steps taken by the Council, would have been validated by the court had the Claimant applied in advance for an order for alternative service using these methods. He contends that the "Persons Unknown", who are most likely to be affected by the proceedings, for example the Gypsy and Traveller communities, would:

> "In all likelihood have been very aware of the nature of the proceedings from:
>
> 1. Discussions amongst their community.
> 2. From guidance from groups that support the Gypsy and Traveller communities such as LGT.
> 3. From similar orders and proceedings in relation to other locations."

20. Mr Greenhall, who today appears for LGT, submits:

a. There is no good reason for an order under 6.15(2). The Claimant failed to apply at the time of the original injunction for an order for alternative service. This mistake does not justify a retrospective validation of what was done by the Claimant.

b. The original order was made in 2017. Three years have passed without any attempt by the council to correct the lack of proper service, despite the well-known decisions at first instance and on appeal in ***Canada Goose***.

c. There is no evidence that any person falling within the category of Persons Unknown, as now defined in the new Claim Form, was aware of the proceeding or the contents of the Claim Form.

d. For the reasons explained in Ms Diaconescu's witness statement, the step of putting the Claim Form on the Claimant's website was, as a result of the level of digital exclusion in the Gypsy and Traveller community, not likely to bring the contents of the Claim Form to the attention of the Defendants. The Claim Form was not posted at each of the sites but could have been.

Decision

21. I refuse the Claimant's application for an order under CPR 6.15(2). I am not satisfied that the council has demonstrated a good reason to authorise service by the method of posting the Claim Form on the Claimant's website, and the other steps that were taken, for example, by placing it in libraries and adverting to the existence of the injunction in the newspaper articles.

    a. The Claimant has not demonstrated that this alternative method, in fact, brought the Claim Form to the attention of anyone in the category of Persons Unknown, who were the Defendants to the claim, save perhaps one person who made an enquiry in relation to the matter of the Claimant's Legal Department.

    b. Further, the Claimant has not demonstrated that this method of service was likely to bring it to the attention of the Persons Unknown Defendants. The level of digital exclusion in the gypsy and traveller community demonstrated in Ms Diaconescu's evidence means that, if anything, the likelihood was that, if effective at all, it would reach only a minority of the Persons Unknown.

22. I am satisfied that had the Claimant sought an order for alternative service back in 2017, the court, as a minimum, would have required service of the Claim Form by posting it at each of the sites covered by the injunction. Making the Claim Form available on the council's website, and advertising its availability there and in libraries, both in the notices that were posted and in the newspaper articles, would have been an important additional method of maximising the likelihood of the contents of the Claim Form coming to the attention of the Persons Unknown Defendants. But on their own, those are not sufficient.

23. I reject the argument that the Persons Unknown would, by a process of discussion in their communities and general experience, become aware of the proceedings and the contents of the Claim Form. General awareness of proceedings is not to be equated with proper service of the Claim Form on a Defendant:

    a. Service of the originating process, here by Part 8 Claim Form, is the very process by which a Defendant is subjected to the court's jurisdiction. In ***Canada Goose***, Coulson LJ stated [45]:

> "It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard: ***Cameron*** [17] in the judgment of Lord Sumption. It is the service of the claim form that alerts a person to the fact that she or he is being made a defendant to the proceeding."

    b. Further, in ***Birmingham City Council -v- Afsar & Others*** **[2020] EWHC 864 (QB)**, the Claim Form in that case simply identified Persons Unknown, like this case, without a description of them. Warby J noted the following [21(2)]:

> "The proceedings were, in this respect, defective at the outset; the description of 'persons unknown' failed to satisfy the essential requirement of identifiability, emphasised by the Chancellor in the ***Bloomsbury*** case and re-emphasised by the Court of Appeal in ***Canada Goose*** at [82(2)]. I do not consider that the Court, or a person given notice of the proceedings, can fairly be expected to work their way through the body of a lengthy statement of case to work out whether they are a target of the claim. In the case of an intended defendant, this may not be realistic, either. I regard the failure to describe the [Persons Unknown] with more precision as a breach of the requirement identified by the Court of Appeal in ***Canada Goose***, and a fundamental defect."

c. The important point from that decision, however, is the distinction between a person's general awareness of the proceedings, as a result of information they are provided, and the important step of being served with documents that makes the person aware that s/he is a party to the proceedings.

24. The consequence of the failure of the application under CPR 6.15(2) is pretty stark. The failure to serve the Defendants in this case means that the Interim and Final orders were made in this case without jurisdiction over any Defendant. The period of validity of the original Claim Form has long since expired: CPR 7.5. For the last three years, therefore, an injunction has been posted at up to 130 sites, directed at Persons Unknown, prohibiting certain conduct, on pain of committal for breach, when jurisdiction had not been established over any individual Defendant because of the failure validly to serve the Claim Form.

25. I consider that Mr Greenhall is substantially correct that the Council can be criticised not only for the original failure properly to effect valid service of the Claim Form, but also for the failure to detect this error at any point over the last three years before it was pointed out by the Court on Monday this week. The failure validly to serve the Claim Form on Persons Unknown was one of the principal failures in the ***Canada Goose*** case.

26. A point of some general importance therefore arises in this case. Following the Court of Appeal's decision in ***Canada Goose***, which was handed down on 5 March 2020, Mr Woolf accepts that there were at least grounds upon which the Persons Unknown, or people representing them, could have applied to vary or discharge the Final Order that was granted on 4 October 2017. The principal ground of challenge, although not the only one that could have been made, would have been that the final order purported to bind newcomers, in other words people who were not in the category of Persons Unknown when the final order was granted. Mr Woolf accepts that, whether under CPR 3.1(7) or otherwise, the Court would have retained a jurisdiction to consider whether a change in circumstances, including a change in the law, meant that the terms of the injunction in the Final Order ought to be reconsidered.

27. Before the hearing today, I asked the parties for their submissions on the following question:

> "Is a public authority that has obtained an injunction against Persons Unknown for a number of years under a duty to apply to the court for reconsideration of whether the terms of the injunction remain appropriate if there has, to the knowledge of the public authority, been a change in the law that casts doubt on whether the injunction ought to continue to apply in the terms in which it was originally granted?"

28. I am most grateful to the thoughtful and careful submissions from Mr Woolf and Mr Greenhall in response to this point. Mr Woolf has quite properly referred me to the decision of Eder J in ***Speedier Logistics & Othrs -v- Aardvark Digital & Anor*** **[2012] EWHC 2276 (Comm)**. That was a case dealing with a freezing injunction. The judge addressed the question of the duty of a claimant in circumstances where events occur after the date of the grant of the injunction which render information previously given to the court no longer relevant or accurate. The judge recited the familiar authorities on a party's duty, at the *ex parte* stage, to bring all relevant matters to the attention of the court that would have a bearing on the decision the court was making.

29. However, it had been submitted on behalf of the claimant in that case that this duty ended once there had been an *inter partes* hearing; and that after such an *inter partes* hearing there was no continuing duty upon a claimant to revert to the court upon a subsequent change in circumstances. The judge rejected that submission [25]:

> "I am unable to accept that submission. I cannot see any reason in principle in circumstances where the claimant becomes aware of information which renders what the claimant told the court originally incorrect, not being under a duty to go back before the court to inform the court that there has been a relevant change or, at the very least, to inform the defendant of those new circumstances. Counsel for the claimant submitted that even if there was such a duty in relation to what he described as a 'freezing injunction', there was no equivalent duty in relation to what I might be describe as an 'ordinary injunction'. I accept of course that there are important differences between a freezing injunction, which is often described as a 'nuclear weapon' to the extent that it may freeze assets generally, both within the jurisdiction and outside the jurisdiction, and other injunction. Of course, counsel for the claimant is right to say that there are differences between those injunction, however in relevant respects I do not accept that there is here any relevant distinction in terms of the continuing duty on a claimant to exhort the exercise of the court's discretion on a certain basis. If that basis changes, it seems to me important, as a matter of principle, that the claimant does revert to the court to inform the court of the position. The main reason for that is that the exercise of the court's discretion was originally on a particular basis and, if that basis changes, it seems to me that as a matter of principle, the court must be informed of that change in the ordinary circumstances."

30. The situation here, of course, is that never has been an *inter partes* hearing. There was the interim hearing on 21 July followed by a final hearing on 4 October 2017. At both hearings the only party present and represented, and the only party to make submissions, was the Claimant. It was not therefore an option for the Claimant to take the course of notifying the Defendant of the change of law, as suggested as a possibility by Eder J, because it is not possible to notify those in the category of Persons Unknown.

31. Mr Woolf recognised in his submissions that a requirement to revert to the court to inform it of a material change of circumstances is more pressing where the Defendants are Persons Unknown. The safeguards usually present in *inter partes* adversarial litigation are typically absent where the defendants are Persons Unknown and whose interests are unlikely to be represented. Mr Woolf accepts, rightly in my view, that the court must retain jurisdiction to consider whether the terms of a subsisting injunction should continue in the terms in which it was originally granted.

32. In the light of these submissions and the decision in ***Speedier Logistics***, I consider that there is a duty on a party, such as the Claimant in this case who (i) has obtained an injunction against Persons Unknown *ex parte*, and (ii) is aware of a material change of circumstances, including for these purposes a change in the law, which gives rise to a real prospect that the court would amend or discharge the injunction, to restore the case within a reasonable period to the court for reconsideration. Although there are many reasons why this duty should apply particularly to a public authority, it does not appear to me that the duty is limited to public authorities.

Interim Injunction in the new Part 8 Claim

33. As noted above, on 1 October 2020, the Claimant issued a new Part 8 Claim. Two categories of Persons Unknown are now identified as Defendants in new Claim Form as follows:

> "(1) Persons unknown who enter and/or occupy any of the locations listed in this order ("the locations") for residential purposes (whether temporary or otherwise) including siting caravans, mobile homes, associated vehicles and domestic paraphanelia (sic)
>
> (2) Persons unknown who enter and/or occupy any of the locations listed in this order ("the locations") for the purposes of fly-tipping or discarding waste including entering with caravans, mobile homes, pick-up trucks, vans or lorries and any associated vehicles"

34. At this stage, Mr Woolf only seeks an interim injunction against the second category of Persons Unknown. To do so, he seeks an abridgment of the required period of notice. The Claimant intends to seek an interim injunction against the first category of Persons Unknown as a later point when proper notice has been given.

35. The issue that has caused me concern in relation to dealing with this application is the conundrum that is presented following the decision of the Court of Appeal in the ***Canada Goose*** case; the difference between the effectiveness of interim injunctions granted against Persons Unknown when measured against the effectiveness of a final injunction in substantially the same terms. Although an interim injunction against Persons Unknown *can* bind non-parties, an injunction made by final order made can only bind those who are parties to the proceedings in which it is made (see discussion in ***Canada Goose*** [66]-[72], [89]-[92]).

36. Where Persons Unknown are the defendants to proceedings, that means that, at the point at which the court grants the final order, it only binds those who can be identified as the Persons Unknown defendants at the date of that order. In some cases, it will be possible, as in the ***Canada Goose*** case itself, to at least identify, if necessary by reference to video evidence, those upon whom there has been notice or service of the injunction and Claim Form.

37. In ***Canada Goose*** there were people – the protestors - who it was alleged had already carried out tortious acts. Subject to issues of service, they became defendants in the proceedings and would be bound by any final injunction. In the current case, the class of Persons Unknown is defined prospectively. There are currently no members of the class of persons unknown; the interim order anticipates, and seeks to prevent, persons acting in the prohibited way. In such a case, there can be no certainty about who has been served with the Claim Form and therefore become a defendant to the proceedings. The effect would be that, once converted into a final order, the injunction would be, for all practical purposes, impossible to enforce. It cannot be enforced against historic defendants because they cannot be identified. And as a matter of jurisdiction and principle, it cannot be enforced against those who are described as

"newcomers" in the Court of Appeal's decision in ***Canada Goose***, because they were never parties to the original proceedings.

38. This effect, which is one of the submissions that was made forcefully to the Court of Appeal in ***Canada Goose***, but rejected, is that a party may end up obtaining more valuable protection by way of interim order than he would be able to achieve by way of final order. The Court of Appeal addressed the argument raised by the appellant about the apparent difference of enforceability of interim and final injunctions [92]:

> "In written submissions following the conclusion of the oral hearing of the appeal [the Appellant] submitted that, if there is no power to make a final order against "persons unknown", it must follow that, contrary to ***Ineos***, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also "persons unknown" who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that."

39. In ***Canada Goose***, the Court of Appeal was satisfied that there existed wrongdoers in the category of Persons Unknown against whom meaningful final relief could be granted. That is not the position in this case. I accept the evidence, put forward on behalf of the Claimant in this case, that fly tipping is a serious problem for local authorities, including the London Borough of Enfield. The witness evidence of Ms Maguire that has been presented to the court contains graphic photographs of the consequences and the vast amount of waste that can be deposited on land by fly tippers operating on what appears to be an industrial scale. It is therefore understandable that the Claimant wishes to take all available steps to try and prevent this unlawful activity or at least to provide effective remedies against those who engage in it.

40. Mr Woolf has explained to me today why the Clamant believes remedies that are provided under the Environmental Protection Act are not as effective as civil injunctions against Persons Unknown. Largely, this appears to because, he suggests, civil proceedings offer a speedier procedure to take action against those who occupy land by way of a commercial operation to dispose of large quantities of rubbish or refuse.

41. The difficulty is this: even if I were to grant an interim injunction in terms that were proportionate and targeted at the type of fly tipping that I have described, there would be no real prospect of serving the injunction order. No-one is presently occupying any of the land and carrying out fly-tipping on it. The Claimant seeks orders for alternative service of the Claim Form and any injunction. But, even assuming that such orders were made, the court would shortly thereafter move to consider what final relief should be granted. In a typical Persons Unknown claim like this, no Acknowledgement of Service is filed and there is no attendance by, or representation of, any defendant at the final hearing. In this case, for example, the Interim Order was granted on 21 July 2017 and the Final Order at a hearing on 4 October 2017, i.e. less than three months between initial and final hearings.

42. The point can be demonstrated in this way. Assume that the Court were to make a final order in the terms sought by the Claimant against Persons Unknown. It would not provide any real protection to the Claimant because, in all probability, the Claimant would not be able to demonstrate whether any individual person had become a defendant to the claim. If no one can be identified as a defendant, the final order binds no-one. ***Canada Goose*** establishes that final injunctions against "Persons Unknown" do not bind newcomers. The consequence is that a hypothetical fly tipper who turned up at any of the ninety-six sites in respect of which the Court had made the final order would not actually be restrained by the injunction: s/he is not bound as an original defendant to the claim and s/he is not bound as a newcomer.

43. The result would be most unsatisfactory: barring some unusual development in the case, any interim injunction the Court granted would be more effective and more extensive in its terms than any final order the court could grant. As there is unlikely to be much by way of development between the grant of the interim and final order in this case, this raises the question as to whether the court ought to grant any interim relief at all. This arises because, unlike ***Canada Goose***, at the date of grant of any interim injunction, no people exist in the category of Persons Unknown.

44. In terms of practical reality, the only way that the London Borough of Enfield could achieve what it seeks out to do, is to have a rolling programme of applications for interim orders. As soon as a final order was granted it would become worthless against "newcomers". To continue effective injunctive relief against "newcomers" the Council would have to commence fresh proceedings and seek a new interim order. That would be litigation without end. It presents a real challenge to the conventional understanding of adversarial civil litigation as it is conducted in this jurisdiction.

45. I am not satisfied therefore that I should grant an interim order today. Besides the points I have identified, there is no evidence of any current occupation of land by fly-tippers and no evidence of any threat by any particular individual to do so. Having considered the submissions of Mr Woolf, it seems to me that many of the concerns that he has identified, particularly the time it takes for the court to hear an application for an injunction as a response to people occupying land to conduct what are effectively commercial fly tipping operations, can be accommodated by other measures short of granting an interim order in the form he seeks.

46. It appears to me that this case raises issues of wider importance in relation to injunctions of this type. They require proper thought and consideration by the court. I will therefore adjourn the Claimant's application for an interim injunction. The court is more likely to achieve a fair and just result, by allowing an opportunity for proper consideration of the points that arise, than dealing with the matter on the hoof, as it really is, as a result of the service of an application for an interim injunction in the fresh proceedings that were only issued yesterday. I propose that the court will invite the Attorney General to appoint an *amicus* to make submissions in the public interest on the wider implications of the ***Canada Goose*** judgment in the Court of Appeal, and its effect on interim and final orders made against Persons Unknown in cases like this. There is a real and recognised problem in cases like this that the arguments of only one side are advanced.

47. As I have said, I believe that the effects that the Claimant is concerned about can be mitigated, if not completely at least substantially, by the court making orders that enable applications to be made promptly to the court in the event that there are incidents of occupation of land by what can be described as commercial fly tippers.

48. But for the reasons I have explained, I am not satisfied that it is appropriate to grant, and, as an exercise of my discretion, I refuse to grant an interim injunction on this occasion. The application for such relief will be adjourned to be fixed on a later date.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

Transcribed by ***Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital

This transcript has been approved by the Judge