

BUSINESS AND PROPERTY COURTS IN LEEDS

PROPERTY TRUSTS AND PROBATE LIST (ChD)

B E T W E E N : -

- (1) MOTOR FUEL LIMITED**
(2) PEREGRINE RETAIL LIMITED

Claimants

- and -

(1) PERSONS UNKNOWN WHO FOR RESIDENTIAL PURPOSES (TEMPORARY OR OTHERWISE) ENTER OCCUPY OR SET UP ENCAMPMENT ON THE SITE OF THIRSK SERVICES, YORK ROAD, THIRSK, YO7 3AA, AS SHOWN FOR IDENTIFICATION EDGED RED ON THE ATTACHED PLAN, WITHOUT THE CONSENT OF THE CLAIMANTS

(2) PERSONS UNKNOWN WHO ENTER THE SITE OF THIRSK SERVICES, YORK ROAD, THIRSK, YO7 3AA, AS SHOWN FOR IDENTIFICATION EDGED RED ON THE ATTACHED PLAN, WITH THE INTENTION OF SYPHONING FUEL FROM THE CLAIMANTS' FILLING PUMPS AND/OR A VEHICLE OR RECEPTACLE THAT DOES NOT BELONG TO THAT INDIVIDUAL AND WITHOUT THE CONSENT OF THE OWNER OF THAT VEHICLE OR RECEPTACLE

Defendants

**SKELETON ARGUMENT
ON BEHALF OF THE CLAIMANTS**

Hearing: 10.30am on 10 January 2025

I. INTRODUCTION

1.1 This Skeleton Argument is filed on behalf of the Claimants in support of their application for summary judgment against the Defendants under CPR Part 24. A draft of the order sought appears at [HB-4-24]¹. In summary, the Claimants respectfully invite the court to grant:

- (a) An order giving permission to apply for summary judgment under CPR r. 24.4(1)(a);
- (b) Summary judgment pursuant to CPR r. 24.3 in the form of final injunctive relief; and
- (c) An order permitting the Claimants to serve the final injunction by alternative means.

¹ References to Hearing Bundle appear as [HB-tab-page]; References to Authorities Bundle appear as [AB-tab-page].

II. SUGGESTED READING

[90 minutes]

- 2.1 Time permitting, the court is invited to read the following by way of pre-reading:
- a. Particulars of Claim [HB-2-11]
 - b. Application for summary judgment [HB-3-18]
 - c. Claimants' draft order for summary judgment [HB-4-24]
 - d. First witness statement of Andrew Caddick ("Caddick 1") [HB-8-50]
 - e. First witness statement of David Ablott ("Ablott 1") [HB-9-63]
 - f. Second witness statement of David Ablott ("Ablott 2") [HB-10-72]
 - g. First witness statement of Richard Linton ("Linton 1") [HB-11-77]
 - h. Third witness statement David Ablott ("Ablott 3") [HB-12-86]
 - i. *Valero Energy v Persons Unknown* [2024] EWHC 134 at [52]-[78] [AB-11]

III. FACTUAL BACKGROUND

(a) THE LAND

- 3.1 The claim concerns a BP Fuel and EV Power Station known as Thirsk Services, York Road, Thirsk, YO7 3AA ("**the Land**") which the First and Second Claimants own and operate.
- 3.2 The Claimants form part of a group of companies known as the MFG Group. The MFG Group is the UK's largest independent forecourt operator with around 900 service station sites offering fuel services, valeting, retailing, food offerings, HGV parking and facilities.
- 3.3 The First Claimant is the freehold owner of the Land, being the registered proprietor of title numbers NK419750 [HB-16-141] and NYK371348 [HB-18-146]. Part of that land (within NYK419750) is the subject of a long lease [HB-14-100] and trades as a Costa Coffee shop. That area, as shown by the green hatching at [HB-4-29], is therefore excluded from the Land.
- 3.4 The Second Claimant is a subsidiary of the First Claimant and currently operates Thirsk Services under the terms of a Licence to Occupy dated 7 February 2024 [HB-21-154].
- 3.5 The business model operated by the Claimants and the background to the acquisition and development of the Land is explained in Linton 1 at §§6-16 [HB-11-79]. In essence, the First Claimant purchased the four freehold titles noted at §7 [HB-11-80] on or about 20 August

2021 and proceeded to develop the land into what is now known as Thirsk Services. The Second Claimant then took over operation of the site and operates it on a day to day basis.

- 3.6 Thirsk Services provides welcome respite to those travelling along the A19. It is the only services offering specialist HGV facilities (including specialist fuel pumps, separate HGV parking adjacent to the main forecourt, and showers for HGV drivers) within a 10 mile radius: Ablott 3 §25.2 [**HB-12-93**]. It is imperative that HGV drivers are provided with facilities which meet welfare standards so that they can undertake long haul drives safely.

(b) INCIDENTS OF TRESPASS

- 3.7 As explained in Ablott 1 at §7 [**HB-12-67**], the claim can be divided into two distinct periods:
- (i) December 2022 to May 2023 (the “**Development Period**”)
 - (ii) 18 May 2023 onwards (the “**Operational Period**”).
- 3.8 As soon as the Development Period commenced, the Land became a target for trespassers. The incidents of trespass are detailed in Caddick 1 at §§10-15 [**HB-8-50**], Ablott 1 at §13 [**HB-9-68**], Ablott 2 at §5 [**HB-10-74**] and Ablott 3 at §14 [**HB-12-90**]. The evidence demonstrates a catalogue of serious and repeated trespasses committed by unknown persons.
- 3.9 Although the incidents of trespass started during the period that the Land was being developed into a service station, they continued unabated - and in fact escalated - when the site became operational in May 2023. Between December 2022 and January 2024, 65 incursions occurred, with 41 incidents recorded between June and September 2023 alone.

(c) IMPACT OF TRESPASS

- 3.10 A list of the most serious incidents is set out in the table at §15 of Caddick 1 [**HB-8-57**].
- 3.11 Specific examples of trespasses and associated unlawful conduct are highlighted in Ablott 3 at 14.1-14.5 [**HB-12-90**]. Of particular concern to the Claimants were: (a) repeated encampments with caravans or other vehicles to wrongfully occupy the Land; and (b) the theft and/or attempted syphoning of fuel from filling pumps and vehicles on the Land. The acts of trespass were routinely accompanied by aggressive/intimidating conduct and damage.

- 3.12 As Mr Ablott conveys at §25.1 of Ablott 3: “...*the trespasses and theft undertaken by the Defendants severely intimidated both members of staff of the Claimants and customers of the Claimants alike...*” and “*caused an atmosphere of fear at Thirsk Services*” [HB-12-93].
- 3.13 As a result, the Claimants suffered significant reputational damage and loss of business².
- 3.14 Due to damage caused by the Defendants, the Claimants had to repair lighting, fencing and CCTV. The cost of new fencing in November 2023 was £36,000: Ablott 1 §11 [HB-9-67].
- 3.15 Significantly, the Claimants were required to employ Triton Security and Facilities Management Limited (“**Triton**”) to provide security patrols on a 24/7 basis during the Development Period due to the danger posed: Caddick 1 at §9.1. Despite such a high level of security, the trespasses continued as detailed in the table at §15 of Caddick 1 [HB-8-57].
- 3.16 As the situation persisted during the Operational Period, the Claimants were compelled to continue employing Triton. This is in stark contrast to other sites. As Mr Ablott confirms:
- “By way of comparison, it has not been necessary for the Claimants to employ Triton (or any other security company) at any similar site owned or operated by the Claimants once it has become operational. The need for security patrols to remain in place during the Operation Period at Thirsk Services was a direct result of the Defendants’ wrongful acts and the repeated trespasses suffered by the Claimants prior to the claim being issued.”: Ablott 3 §17 [HB-12-92].*
- 3.17 As well as paying “eye-watering” costs for security [HB-12-91], the Claimants installed boulders to try and block access to the HGV Park and paid for rising ramps to prevent access to the HGV Park: Ablott 1 §§8-12 and 18 [HB-9-67]. The cost of rising ramps was £82,686.
- 3.18 As none of the steps taken were successful in deterring the acts of trespass and wrongful conduct, the Claimants were ultimately left with no option but to seek the court’s assistance.
- 3.19 By the time the claim was issued, the Claimants had incurred security costs of circa £402,000 (£175,000 during the Development Period and £227,000 during the Operational Period³) - with ongoing security costs of £1,850 per week at the time: Ablott 3 §16.1 [HB-12-91].

² Ablott 1, §15 [HB-9-69] and Ablott 3, §16.4 [HB-12-92]

³ Ablott 1, §9-10 [HB-9-66]

IV. THE PROCEEDINGS

4.1 By a Claim Form issued on 12 February 2024, the Claimants claim injunctive relief against two categories of Persons Unknown. A brief chronology of the proceedings is as follows:

- **12 February 2024** Claim issued [HB-1-7]
- **12 February 2024** Application for interim injunction and alternative service
- **15 February 2024** Order for alternative service granted [HB-5-31]
- **19 February 2024** Service of documents effected [HB-44-255]/[HB-45-258]
- **23 February 2024** Interim injunction granted for 12 months [HB-6-37]
- **4 March 2024** Date for acknowledgement of service/admission/defence
- **5 March 2024** Service of interim injunction effected [HB-46]/[HB-47]
- **19 December 2024** Application for summary judgment issued [HB-3-18]
- **24 December 2024** Application served by alternative methods [HB-13-97]
- **10 January 2025** Hearing of summary judgment application [HB-7-47]

4.2 No acknowledgment of service, admission or defence was filed or served by any Defendant within 14 days of service of the claim: Ablott 3 §10 [HB-12-89]. Nor has any defence been served since 4 March 2024. Furthermore, no application has been made to vary or discharge the interim injunction (as permitted by paragraph 4 of the order): Ablott 3 §10 [HB-12-89].

V. IMPACT OF INTERIM INJUNCTION

5.1 As elucidated in Ablott 3 at §§21-24 [HB-12-93], the interim injunction has proven to be very effective. It has clearly had a powerful deterrent effect: the acts of trespass have ceased.

5.2 As noted above, the Claimants took various steps - at significant cost - to try and stop the trespasses without the need for legal action, to no avail. The only thing that has successfully prevented the acts of trespass and wrongful conduct detailed in Caddick 1 is the injunction.

VI. SERVICE OF SUMMARY JUDGMENT APPLICATION

5.1 By paragraph 8 of the Order dated 23 February 2024, the Claimants were permitted to serve any further applications by carrying out the steps at (a) to (c) [HB-6-41]. This included:

- 5.1.1 Fixing copies of the documents detailed in paragraph 8(a) in clear plastic envelopes at various prominent locations around the Land.
- 5.1.2 Uploading the application to the website specified in paragraph 8(b).
- 5.1.3 Sending a link to the said website to the various email addresses listed in schedule 3. This comprised the following bodies [**HB-6-46**]:
- a. Leeds Gate Gypsy and Traveller Exchange;
 - b. York Travellers Trust;
 - c. The Traveller Movement;
 - d. Friends, Families and Travellers; and
 - e. North Yorkshire Council.
- 5.2 The relevant documents were served on the Defendants by 4pm on Tuesday 24 December 2024. This is confirmed by: (a) witness statement of Claire James dated 2 January 2025 [**HB-13-97**]; (b) witness statement of Mick Cain dated 23 December 2024 [**HB-49-268**]; and the certificate of service of Claire James dated 2 January 2025 [**HB-50-301**]. The effect is that:
- 5.2.1 The documents were served at least 14 days before the hearing: CPR r. 24.4(5).
- 5.2.2 To the extent that any ECHR rights may be affected by the relief sought (which, for the avoidance of doubt, is denied), the Claimants have taken all practicable steps to notify the Defendants of the application: Human Rights Act 1998, s.12(2) [**AB-2-6**].
- 5.3 In accordance with CPR r. 24.5(1)(f), the Claimants' application notice drew the Defendants' attention to their right to rely upon evidence in opposition to the application [**HB-3-18**]. No evidence was served by any Defendant at least 7 days before the hearing: CPR r. 24.5(3).
- 5.4 The only reply to the email dated 24 December 2024 [**HB-48**] was an email from North Yorkshire Council on 3 January 2025 querying why the application had been served on them.

VII. LEGAL FRAMEWORK

(a) SUMMARY JUDGMENT

- 6.1 CPR r. 24.2 confirms that summary judgment is available against a defendant in any type of proceedings save as specified in CPR r. 24.2(b). None of those exceptions apply in this case.

6.2 CPR r. 24.3 sets out the grounds for summary judgment. It provides that:

The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—

- (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

6.3 CPR r. 24.4 deals with the timing of an application for summary judgment and the hearing. The following points are relevant for the purpose of the present hearing:

6.3.1 A claimant may not apply for summary judgment until the defendant against whom it is made has filed an acknowledgment of service or defence, unless: (a) the court gives permission; or (b) a rule or practice direction states otherwise: CPR r. 24.4(1).

6.3.2 If a claimant applies for summary judgment before the defendant has filed a defence, the defendant need not file a defence before the hearing: CPR r. 24.4(4).

6.3.3 Where a summary judgment hearing is fixed, the respondent must be given at least 14 days' notice of: (a) the date fixed for the hearing; and (b) the issues which it is proposed that the court will decide at the hearing: CPR r. 24.4(5).

6.4 The procedural requirements for the application are contained in CPR r. 24.5. CPR r. 24.5(1)(f) now requires that the application notice should draw the respondent's attention to their right to rely on evidence opposing the application.⁴ CPR r. 24.5(3) stipulates that, if a party wishes to rely on written evidence at the hearing, other than in a claim under CPR r. 24.4(3), they must file and serve this on every other party at least 7 days before the hearing.

6.5 The principles applicable to a summary judgment application are well-settled. A convenient summary of the approach to a claimant's application can be found in the judgment of HHJ Hodge KC (sitting as a Judge of the High Court) in *Vistra Trust Corporation (UK) Ltd v CDS (Superstores International) Ltd* [2022] EWHC 3382, at [35] [**AB-7-168**]. In essence:

6.5.1 The court must consider whether the defendant has a realistic as opposed to a fanciful prospect of success. A realistic defence is one that carries some degree of conviction i.e. it must be more than merely arguable.

⁴ Rather than simply drawing attention to CPR r. 24.5(1) as was previously the case. With effect from 1 October 2023, CPR Practice Direction 24 was revoked and a new version of Part 24 came into force (158th Practice Direction Update).

- 6.5.2 In deciding whether to grant summary judgment, the court should not conduct a ‘mini-trial’. That, however, does not mean that the court must take at face value, and without analysis, everything that a defendant says in its statements before the court.
- 6.5.3 It is open to the court to take into account not only the evidence on the application, but also the evidence that can reasonably be expected to be available at trial. The court should hesitate about making a final decision without a trial, where reasonable grounds exist for believing a fuller investigation may affect the ultimate outcome.
- 6.5.4 On the other hand, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the application, and the parties have had an adequate opportunity to address it, the court should “grasp the nettle and decide it”.
- 6.6 When final injunctive relief is sought against Persons Unknown by way of summary judgment, the standard test for summary judgment applies: *National Highways Limited v Persons Unknown* [2023] 1 WLR 2088 (“*National Highways*”) (see: [40]/[42] [AB-8-191]).

(b) INJUNCTIVE RELIEF

- 6.7 The High Court may grant an injunction (whether interlocutory or final) in all cases in which it appears to the court to be just and convenient: Senior Courts Act 1981, s.37 [AB-1-3].
- 6.8 When considering whether to grant a precautionary injunction, it is not a necessary criterion that the defendant has already committed the tort. The essence of this form of injunction is that the tort is feared. In *National Highways*, the Court of Appeal overturned a court’s refusal to grant summary judgment for a final injunction against defendants who had not been proven to have committed the tort. As Sir Julian Flaux explained at [37] to [40] [AB-8-191]:

“37. Although the judge did correctly identify the test for the grant of anticipatory injunction, in para 38 of his judgment, unfortunately he fell into error... His error was in making the assumption that before summary judgment for a final anticipatory judgment NHL had to demonstrate, in relation to each defendant, that that defendant had committed the tort of trespass or nuisance and that there was no defence to a claim that such a tort had been committed. That error infected both his approach as to whether a final anticipatory injunction should be granted and as to whether summary judgment should be granted.

38. As regards the former, it is not a necessary criterion for the grant of an anticipatory injunction, whether final or interim, that the defendant should have already committed the relevant tort which is threatened...

(c) PERSONS UNKNOWN

- 6.9 The law relating to the making of final injunctions against Persons Unknown was in a state of flux between 2021⁵ and 2023, but was settled by the Supreme Court in *Wolverhampton City Council v London Gypsy and Travellers* [2024] AC 983 (“*Wolverhampton*”) [AB-10-211]. The Supreme Court concluded (at [167] [AB-10-273]) that there is “*no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis*”. The Supreme Court gave guidance as to when such injunctions may be justified and the procedural safeguards to apply (see: [187] – [237] [AB-10-278]).
- 6.10 In deciding whether to grant a newcomer injunction and, if so, on what terms, the Supreme Court held that the court should ultimately be guided by principles of justice and equity (per Lord Reed PSC, Lord Briggs JSC and Lord Kitchin at [238(iii)] [AB-10-289]). 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.
- 6.11 In *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 [AB-11-291] (“*Valero*”), Ritchie J, dealing with an application for a final injunction to be granted by way of summary judgment, distilled the guidance promulgated in *Wolverhampton*⁶ into fifteen substantive and procedural requirements (see: [58] [AB-11-320-323]). These requirements are addressed below. In that case, Ritchie J was satisfied it was appropriate to grant summary judgment.
- 6.12 It is pertinent to note that the present application involves injunctive relief against trespassers on private land. It is therefore distinguishable in certain respects from *Wolverhampton* (which concerned injunctive relief sought by local authorities who owed duties to Travellers, and involved public land) and *Valero* (which involved protests being undertaken on both

⁵ When Nicklin J held (incorrectly) that the court has no power to grant final injunctive relief against Persons Unknown who are ‘newcomers’ to the action: *Barking and Dagenham LBC v Persons Unknown* [2021] EWHC 1201.

⁶ And the earlier decision of the Court of Appeal in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, insofar as that guidance remained good law following the Supreme Court’s decision in *Wolverhampton*.

private and public land, and which therefore engaged Articles 10 and 11). Nevertheless, it is accepted that many of the factors identified are still relevant, with appropriate modification.

6.13 The approach articulated by Ritchie J was recently followed by Knowles J in *Heathrow Airport Limited v Persons Unknown* [2024] EWHC 2599 [AB-12-329] (“*Heathrow Airport*”). The court granted an interim injunction, on a without notice basis, to prevent acts of trespass and unlawful protest on private land. Knowles J specifically considered whether the ECHR rights of the Defendants were engaged and concluded they were not [AB-12-332]:

“10. I carefully considered the Convention rights of the Defendants. However, the Airport is private land, and for the reasons I explained in High Speed Two (HS2) Limited v Persons Unknown [2022] EWHC 2360 (KB), [80]-[81]⁷, [131], these Convention rights are not therefore engaged. Persons unknown have no right to enter the Airport (save for lawful and permitted purposes) or to protest there.”

VIII. SUBMISSIONS

(a) PERMISSION TO APPLY FOR SUMMARY JUDGMENT

7.1 As a preliminary matter, the Claimants invite the court to grant permission for them to apply for summary judgment against the Defendants pursuant to CPR r. 24.4(1)(a):

7.1.1 As noted above, no acknowledgement of service or defence has been served by any Defendant. Permission to apply for summary judgment is therefore required.⁸

7.1.2 On the face of it, this would entitle the Claimants to seek default judgment under CPR Part 12. Such an application would, however, be inapposite having regard to the Supreme Court’s ruling in *Wolverhampton* that a claim for an injunctive relief against Persons Unknown is essentially ‘without notice’ against newcomers [HB-10-264].

7.1.3 An alternative route would be for the matter to simply be listed for trial. Given that no Defendant has served a defence, or sought to take any part in the proceedings, it is submitted that this would not be a proportionate step - absent even an initial consideration of the merits - given the cost and added burden on the court’s resources.

⁷ *High Speed Two (HS2) Limited v Four Categories of Persons Unknown* [2022] EWHC 2360, per Knowles J at [80-81] [A-5-72] and [131] [AB-5-90]

⁸ There being no rule or practice direction stating otherwise (CPR r. 24.4(1)(b)).

- 7.1.4 This leaves the Claimants with the proposed application for summary judgment. It is submitted that this is the appropriate course in the present case. This enables the court to consider the underlying merits of the claim, and whether there is a defence with a real prospect of success, or a compelling reason for the case to be disposed of at trial.
- 7.1.5 If not, it is in the interests of justice and the overriding objective to decide that now.
- 7.1.6 A summary judgment application was granted in similar circumstances in *Valero* – in which Ritchie J also granted permission to make the application so as to satisfy CPR r. 24.4 (which he treated as a “tidying up” application: see [11] [AB-11-295]).
- 7.1.7 The Claimants similarly invite the court to grant permission to satisfy CPR r. 24.4.

(b) APPLICATION FOR SUMMARY JUDGMENT

- 7.2 Applying the legal framework at paragraphs 6.1 to 6.13 above, the Claimants submit that: (a) the test for summary judgment in CPR r. 24.3 is met; and (b) this is a compelling case for the grant of final injunctive relief. The *Valero* factors are satisfied for the reasons below.

(A) Substantive Requirements

(1) Cause of Action

- 7.3 Trespass to land is the commission of an intentional act which results in the immediate and direct entry onto land in the possession of another without justification: *Transport for London v Persons Unknown* [2023] EWHC 1038 per Morris J at [33] [AB-9-200].
- 7.4 It is well established that an entitlement to exclusive possession, or actual possession itself, is not required where possession, or injunctive relief, is sought against trespassers: *Manchester Airport Plc v Dutton* [2000] 1 QB 133 (“*Dutton*”) (see 150B-152A [AB-3-25]).
- 7.5 All that needs to be demonstrated by the claimant is a better right to possession of the land than the trespassers: *HS2* per Knowles J at [77] [AB-5-71] and *Heathrow Airport* at [44].
- 7.6 In the present case, it is submitted that both Claimants have a better right to possession than the Defendants. The First Claimant is the freehold owner of the Land [HB-16] and [HB-18]

and therefore plainly has a superior title to the Defendants. The Second Claimant also has a better right to possession than the Defendants by virtue of its Licence to Occupy [HB-21].

7.7 It could be argued that the First Claimant has no cause of action in trespass as it has granted a right of occupation to the Second Claimant. The authorities demonstrate, however, that this is no bar to a cause of action in trespass (see in particular *Dutton* per Laws LJ at 150B-E [AB-3-25]). As Kennedy LJ observed in *Dutton* (at 151D), the understandable object of the law has always been to grant relief to a claimant who can rely on a superior title [AB-3-26].

7.8 In any event, the First Claimant can rely on a cause of action in trespass as it is in effective control of the Second Claimant and can in practice terminate the Licence to Occupy. Notably, the fact that HS2 was not in actual possession of large areas of land did not preclude an injunction in *HS2*; its right to obtain possession was sufficient (see: [76]-[79] [AB-5-71]).

(2) Full and Frank Disclosure

7.9 As this is an application for injunctive relief to be granted against Persons Unknown, it is acknowledged that the Claimants are subject to important duties of full and frank disclosure.

7.10 The Claimants are aware of their duties and have complied with the same. This has included:

7.10.1 Setting out potential arguments that could be made by the Defendants in opposition to the relief sought, both at the interim injunction stage and the present application.

7.10.2 Preparing and serving a note of the earlier hearings on 15 February 2024 and 23 February 2024. The Claimants will also prepare and serve a note of this hearing.

7.11 The Claimants recognise that their duties will continue if a final injunction is granted and that this could require them to return the matter to court sooner than the proposed review.

(3) Sufficient Evidence to Prove the Claim

7.12 As Ritchie J explained in *Valero* at [58(b)] [AB-11-321]:

“There must be sufficient and detailed evidence before the Court on the summary judgment application to justify the Court finding that the immediate fear is proven on the balance of probabilities and that no trial is needed to determine that issue. The way this is done is by two

steps. Firstly stage (1), the claimant has to prove that the claim has a realistic prospect of success, then the burden shifts to the defendant. At stage (2) to prove that any defence has no realistic prospect of success. In PU cases where there is no defendant present, the matter is considered ex-parte by the Court. If there is no evidence served and no foreseeable realistic defence, the claimant is left with an open field for the evidence submitted by him and his realistic prospect found at stage (1) of the hearing may be upgraded to a balance of probabilities decision by the Judge. The Court does not carry out a mini trial but does carry out an analysis of the evidence to determine if the claimant's evidence is credible and acceptable."

- 7.13 There is ample evidence before the court to establish that the claim has a realistic prospect of success. The evidence cited at paragraph 2.1 above paints a compelling picture of the tortious conduct which the Claimants suffered from December 2022 until February 2024. The evidence further demonstrates how the persistent acts of trespass, coupled with various examples of unlawful conduct, were having significant ramifications for the running of the Claimants' businesses as well as creating serious risks of harm and substantial financial loss. That being the case, the burden shifts to the Defendants and the analysis moves to stage (2).
- 7.14 On the other side of the coin, no evidence has been served in opposition to the application (or the matter generally) to contradict the Claimants' evidence or illustrate that a "foreseeable realistic defence" exists. Whilst it is not a complete answer in a claim against Persons Unknown, it is notable that no defence has been filed, and no Defendant has engaged in the proceedings, despite being given ample opportunity. As the Court of Appeal held, when overturning the refusal to grant summary judgment in *National Highways* [AB-8-192]:

40. The test which the judge should have applied in determining whether to grant summary judgment for a final anticipatory injunction was the standard test under CPR r 24.2, namely, whether the defendants had no real prospect of successfully defending the claim. In applying that test, the fact that (apart from the three named defendants to whom we have referred) none of the defendants served a defence or any evidence or otherwise engaged with the proceedings, despite being given ample opportunity to do so, was not, as the judge thought, irrelevant, but of considerable relevance, since it supported NHLs case that the defendants had no real prospect of successfully defending the claim for an injunction at trial." (emphasis added)

- 7.15 As well as no individual Defendant choosing to take part in the proceedings, none of the bodies who represents Gypsies and Travellers' interests who (in accordance with the Supreme Court's guidance at [176] of *Wolverhampton* [AB-10-275]) were served with: (1) the claim; (2) interim injunction; and (3) summary judgment application, have done so either.

(4) No Realistic Defence

7.16 In reality, there is simply no defence with a real prospect of success. The Defendants have no discernable right to set up an encampment on the Claimants' private land, let alone engage in unlawful and dangerous activities such as fuel siphoning or cause criminal damage.

(5) Balance of Convenience – Compelling Justification

7.17 Conversely, there is strong and compelling justification to support the grant of relief sought to prevent further such incidents occurring. The balance of convenience weighs heavily in favour of granting final injunctive relief. There is nothing on the other side of the scales.

7.18 As observed in *HS2* (at [72]): “*A landowner whose title is not disputed is prima facie entitled to an injunction to restrain a threatened or apprehended trespass on his land*” [AB-5-70].

7.19 The availability of injunctive relief to restrain an anticipated trespass is well established: see, e.g.: *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780 (“*Meier*”) [AB-4-28]. Such an injunction may be granted, even if imprisonment is unlikely, if the court takes the view that it may have a deterrent effect, see: [81] [AB-4-51].

7.20 In the present case, the evidence demonstrates that the Claimants took extensive steps, and incurred costs exceeding £500,000, to try and prevent the tortious activities which ultimately led to them praying in aid of the court. However, it was only the interim injunction which succeeded in stopping the unlawful activity. It has plainly had a powerful deterrent effect.

7.21 The making of a final injunction is indisputably justified on the facts, and by the serious, real and imminent risks posed by Persons Unknown if no injunction is in place. The Claimants' well-founded fears and concerns are cogently articulated in Ablott 3 at §§25-26 [HB-12-93], to which the court is respectfully referred. Fundamentally, as Mr Ablott expresses at §25.2.3:

“The Defendants’ trespasses pose an existential risk to the profitability, and continuance, of not only Thirsk Services but of the Claimants as going concerns.”

(6) Damages not an Adequate Remedy

7.22 It is submitted that damages would not be an adequate remedy in the circumstances:

7.22.1 The financial loss that has already been suffered by the Claimants is substantial and there is no prospect of recovery from Persons Unknown: *Valero* at [70] [AB-11-326].

7.22.2 In any event, the health and safety risks posed by any repetition could potentially cause serious injuries for which damages would not be a full remedy: *Valero* at [70].

7.22.3 The reputational damage to the Claimants' businesses cannot be adequately compensated in monetary terms and could be irreparable: see paragraph 7.21 above.

7.23 Accordingly, the only adequate remedy to meet the justice of the situation is an injunction.

(7) Convention Rights

7.24 Conceivably, the Defendants could seek to argue that ECHR rights would be infringed by the relief sought. As this is not a protest case, Articles 10 and 11 are not engaged. The Claimants do not accept that any Article 8 rights could realistically be engaged on the facts.

7.25 Nevertheless, even if they were, just as any argument by a protestor relating to Article 10 and 11 rights on private land would be bound to fail (see *Valero*, at [66] [AB-11-325]), the same must be the case for any Article 8 rights relied upon by travellers on the Claimants' land. The Defendants indisputably have no right to occupy the Land or set up a 'home' there.

7.26 Alternatively, any potential Article 8 argument ought not to prevent the granting of the final injunction. Rather, any particular individual who wished to raise an Article 8 ECHR point on the specific circumstances of their case could instead do so under the liberty to apply provision at §6 of the draft final injunction [HB-3-26]: *Wolverhampton* [183] [AB-10-277].

(B) Procedural Requirements

(8) Identifying Persons Unknown

7.27 It was never possible for the Claimants to positively identify a Defendant by name prior to the claim being issued for the reasons outlined in Caddick 1 at §16 [HB-8-61]. In particular:

7.27.1 The police have never managed to arrest any of the trespassers.

7.27.2 The police do not generally provide support to the Claimants during the eviction of caravans/motorhomes.

7.27.3 It has proved difficult to take photographs of the trespassers and some have exhibited aggression towards security officers, particularly when challenged.

7.27.4 In any event, the Claimants have no other way of identifying the individuals.

7.28 The claim therefore identifies the Persons Unknown by reference to their tortious conduct. The Defendants are further defined by reference to geographical boundaries. The injunction mirrors the feared torts as pleaded in the Claim Form and Particulars of Claim. This satisfies the guidance in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802.

(9) The Terms of the Injunction

7.29 The terms of the injunction are clear and precise. The prohibitions are set out in plain words and avoid using legal or technical language. They do not prohibit conduct which is lawful. The fact that the interim injunction has worked demonstrates that it is readily understandable.

(10) Prohibitions Match the Claim

7.30 The injunction identifies the Persons Unknown by reference to their tortious conduct. The prohibitions match the feared torts as pleaded in the Claim Form and Particulars of Claim.

(11) Geographic Boundaries

7.31 The injunction is defined by clear geographic boundaries, as delineated at [HB-4-29]. Notably, the injunction does not capture all the land at Thirsk Services, and excludes other land owned by the First Claimant (namely title numbers NYK264413 and NYK316141). The area sought to be protected by the injunction is thus limited to what is strictly necessary.

(12) Temporal Limits – Duration

7.32 The final injunction sought is temporally limited to three years from the existing expiry of the interim injunction. This is an appropriate duration in the context of the present case having regard, in particular, to: (a) the volume and frequency of prior trespass; (b) the length of time that incidents of trespass continued; (c) the serious harm posed by a risk of repetition; and (d) the need to provide an adequate period of respite and allow the business to recover.

(13) Service

- 7.33 As set out above, the claim documents and interim injunction were served according to the places and methods permitted by the orders dated 15 February 2024 and 23 February 2024. The court can be satisfied that those documents reached the attention of Persons Unknown that they were directed towards given that the interim injunction has worked so effectively.
- 7.34 If granted, it is submitted that the final injunction would also be likely to come to the attention of the Defendants by the alternative methods in the draft injunction [HB-4-27].

(14) Review

- 7.35 Provision has been made in the proposed final injunction for there to be a review hearing on the first available date after 21 August 2026. In essence, this allows for a review to take place just after 18 months into the life of the order. It is submitted that such a period is appropriate and proportionate in this case having regard to the private nature of the land and the limited geographical reach of the order. In contrast to *Valero* and *Wolverhampton* (in which annual reviews were directed), the injunction only covers a limited area of land at a single site. In *Valero*, the injunction covered 8 sites. In *Wolverhampton*, the injunction protected 60 sites. In addition, there was a specific reason for the annual review directed in *Wolverhampton* initially as the Local Authority were in the process of providing a Transit Site for travellers.

(15) Right to Set Aside or Vary

- 7.36 In any event, as with the interim injunction, the proposed final injunction gives any Persons Unknown the right to apply to set aside or vary the injunction on short notice (see: §6 [HB-4-66]). This enables any person affected by the order to bring it back to court at any time.

(c) APPLICATION FOR ALTERNATIVE SERVICE

- 7.37 If granted, the Claimants invite the court to enable service of the final injunction to take place by the alternative methods and places specified at §12 of the draft order [HB-4-27] (or such further methods as the court thinks fit) for essentially the same reasons as the earlier orders. The court can be satisfied that this will be effective: paragraph 7.33 is repeated.

IX. CONCLUSIONS

8.1 For the reasons set out above, it is submitted that the Claimants have a clear and compelling case for the grant of a final injunction. All of the substantive and procedural requirements identified in *Valero* are amply met. There is no defence with a real prospect of success or any compelling reason why the claim should proceed to trial. It is therefore in the interests of justice and the overriding objective to determine it now. Accordingly, the Claimants respectfully invite the court to grant summary judgment in the form of final injunctive relief.

MICHELLE CANEY

St Philips Chambers

8 January 2025