



Neutral Citation Number: [2023] EWHC 2461 (KB)

Case No: KB-2023-002576

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

11 July 2023

The Honourable Mrs Justice Lambert

Between :

The London Borough of Richmond on Thames
- and -
Alistair Trotman

Claimant

Defendant

Francis Hoar (instructed by **South London Legal Partnership**) for the Claimant
The Defendant appeared in person

Hearing dates: 11 July 2023

JUDGMENT

Mrs Justice Lambert DBE:

1. The Claimant is the local authority with responsibility for the riverbanks running through the London Borough of Richmond including the land adjoining Ham Lands near Burnell Avenue and the adjacent towpath. The Claimant seeks an interim injunction which, in summary, requires the Defendant to remove his vessel (called KUPE) from its current location on the stretch of the River Thames just south of Burnell Avenue and which prohibits him from mooring KUPE or any other of his vessels which are moored on land owned by the Claimant. The Particulars of Claim were issued in May 2023. The causes of action are in trespass and nuisance. Although there were difficulties in service of the proceedings, they have now been effectively served although no Defence has been filed. The Claimant is represented today by Mr Hoar and the Defendant is present representing himself.

The Facts

2. The factual background to the application is set out in the witness statement of Mr Matt Almond who is employed by the Claimant as Parks Operation Manager. Part of his duties include monitoring and enforcing the moorings controlled by the Claimant on the Thames riverside. The Defendant owns a number of vessels including three large houseboats. Mr Almond describes all three vessels as being in a poor state of repair. KUPE is so dilapidated that it has been prohibited from residential and recreational use due to its dangerous state. It is an unpowered converted barge and is moved around by a smaller vessel which is akin to a tug which is attached to KUPE when moored.
3. The presence of KUPE on the stretch of river near Burnell Avenue came to the Claimant's attention on 29 January 2023. Mr Almond attended on 30 January with a colleague. He noted that KUPE was moored using scaffolding poles which had been driven into the riverbed. A ladder provided access and egress from the vessel: one end of the ladder rested on the vessel, the other on the Claimant's land. The vessel was so close to the riverbank that it appeared to him to be touching or resting on trees growing on the Claimant's land. The Defendant explained to Mr Almond that he did not believe that he was moored on the Claimant's land because KUPE was moored to poles driven into the riverbed.
4. Over the course of the next three months there were a number of further visits to the vessel by Mr Almond and his colleague. On each occasion the vessel remained where it had first been seen by Mr Almond. On some occasions the vessel was observed for a period of over an hour (so exhausting the permissible mooring time before contravening the Claimant's mooring byelaw). Photographs of the vessel were taken showing: the position of the vessel in relation to the riverbank; a plank of wood resting on a ladder running between the vessel and trees on the riverbank; damage to trees and vegetation. Those photographs are in the hearing bundle and I have seen them.
5. Between 31 January 2023 and 21 February 2023, no fewer than eight Notices requiring the Defendant to remove KUPE were served but to no effect. During the period between January and May, the Defendant was spoken to on many occasions and given a series of verbal and written warnings, again to no effect. KUPE remained in situ.

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6. Mr Almond's statement records that on 9 May 2023, he observed damage to a sycamore tree probably caused by people getting onto and off the vessel and damage to the local flora, the yellow flag irises which grow on the riverbank. He also noted that a previous mooring line had been reattached to a nearby tree albeit that rope was not directly attached to KUPE. Those using the vessel park their cars outside resident's houses on Burnell Avenue and Mr Almond's statement records that he has spent a large amount of time dealing with complaints. For a period of time in February a fold up bike belonging to one of the Defendant's shipmates was chained to a tree next to KUPE. A Notice requiring its removal was served, to no effect. The Claimant therefore removed the bike. It remains in storage.
7. Before I deal with the parties' submissions I record the very extensive enforcement history against the Defendant which has included civil enforcement and injunction proceedings. Much of this is documented in Mr Almond's statement but the statement is brought up to date and amplified by Mr Hoar in his skeleton argument. I do not set out the entire enforcement history but note that on 23 November 2020, the Defendant's appeal against the dismissal by magistrates of an appeal against an enforcement notice made by the Surrey Fire and Rescue Service was in turn dismissed. He sought unsuccessfully to challenge that dismissal by way of judicial review. KUPE has been unlawfully moored in Elmbridge, at Molesey Lock and at Queen's Promenade (Royal Borough of Kingston on Thames). On each occasion the relevant local authority has had to issue and pursue injunction proceedings forcing the Defendant to move the vessel. These various sets of proceedings have been subject to unsuccessful appeals or applications for permission to appeal. Most recently, the Defendant has unsuccessfully sought to judicially review the Royal Borough of Kingston on Thames enforcement of the injunction obtained on 29 April 2022 (HHJ Roberts). That application was not successful and the oral reconsideration of the application for judicial review was similarly unsuccessful.

The Parties' Submissions

8. Mr Hoar has drawn my attention to the Claimant's Byelaws Relating to Mooring which were made under section 235 Local Government Act 1972. Under paragraph 1, "moor" is defined to mean "the act of being physically attached to the land, physically touching the land or tied to objects in the land by way of ropes, gangplanks, stakes in the ground or other similar methods." Paragraph 4 of the Byelaws sets out at (a) that "except in cases of an emergency or other unavoidable cause, no person shall on any land designated by Schedule 1moor any boat or permit any boat to be moored for longer than a maximum period of 1 hour in any period of 24 consecutive hours.. without the prior consent of the Council." The land designated by Schedule 1 includes the land adjacent to KUPE. The Byelaws continue: "If a boat continues to be moored after the expiry of 1 hour in breach of byelaw 4(a) further offences will be committed after the expiry of the first hour in every subsequent 24 hour period.." Mr Hoar submits that the lawfulness of the Byelaws is now well established, and relies upon the authority of *Akerman v London Borough of Richmond* [2017] EWHC 84 (Admin) an appeal by way of case stated concerning the lawfulness of the byelaws relevant to the Claimant's application. Although a public law challenge to the vires of the Byelaws, Beatson LJ observed at [28] that it was "*legitimate for the respondent to regulate the way in which the appellant and others occupy the riverbank, land held*

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for the benefit of the whole community, to the detriment of other uses of the land and riverbank.”

9. Mr Hoar submits that KUPE is undoubtedly moored to the Claimant’s land. He draws my attention to the adapted ladder obviously being used as a gangplank running from the vessel and resting in a thicket of sycamore roots and branches on the riverbank. This had been present on each occasion upon which Mr Almond had attended. The Byelaw is lawful and has been breached. The Defendant is therefore moored unlawfully and is trespassing on the Claimant’s land. On this basis he submits the claim against the Defendant in trespass is well made out and undoubtedly raises a serious issue to be tried. He submits that the Defendant is entitled to exercise its powers to ensure that the Defendant’s vessel is removed to prevent further trespassing upon the Claimant’s land by making this application. He relies upon the *Cambridge City Council v Traditional Cambridge Tours* [2018] EWHC 1304 where at [54] Whipple J (as she then was) observed that “*the Council’s claim, which is for trespass on the Council’s land which lies adjacent to the river. The Council is obviously entitled to take action to prevent a trespass on land belonging to it, whether or not that trespass happens to be connected with or a prelude to unlawful activity on the River Cam which falls under the jurisdiction of another authority.*” He submits that damages would not be a sufficient remedy. Unlawful mooring of vessels deprives short stay boaters of the opportunity to moor and causes congestion. The Defendant’s trespassing has already caused damage to local flora (trees and plants) and this damage will continue. In any event the Defendant is now a declared bankrupt and would be unable to pay any award of damages. He submits that the balance of convenience clearly satisfies the grant of an interim injunction.
10. The Defendant has provided me with a large number of various documents. They include various authorities and copies of various statutes. I have read all of those documents but none of the material in his bundle it seems is however relevant to his defence which is simply put. He does not dispute the essential facts underlying the application but makes two points. The first is that he denies that he is moored on the Claimant’s land. He argues that he is moored by way of poles driven into the riverbed and the riverbed is not owned or controlled by the Claimant but by the Environment Agency. He submits that he has a right to navigate the river as he wishes and a right to use the towpath as he wishes. Both are effectively public rights of way.

Decision

11. I am quite satisfied that the Defendant’s vessel, KUPE, is moored on the Claimant’s land in contravention of Byelaw 4. The photographs clearly demonstrate that the make-shift gangplank is a physical attachment between the vessel and the riverbank and that the vessel is physically tied to the riverbank by means of the gangplank. I accept the statement of Mr Almond that the vessel has been moored to the Claimant’s land in this way for – effectively – several months without being moved. Certainly it has not been moored for periods of less than one hour in each 24-hour period. I therefore accept that the Particulars of Claim raise a serious issue to be tried in trespass. The claim is also brought in nuisance but it is not necessary for me to consider that cause of action separately given my finding on trespass. As to the Defendant argument that he has a right to navigate the Thames as he might wish, section 79 Thames Conservancy Act 1932 (which identifies the right to pass and repass in vessels over every part of the Thames and a right to remain stationary

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(anchor or moor) for a reasonable period of time) does not confer an unrestricted right to navigate the Thames but that right is “subject to such restrictions as the Conservators may from time to time by byelaws determine.” Any rights of navigation which the Defendant may have therefore are subject to byelaws issued by the Environment Agency and contained in the Thames Navigation Licensing and General Byelaws 1992 which themselves impose restrictions on amongst other matters, mooring and require at [58] those who use the river to conform to the directions of any Officer of the Authority. I note in this context that there has been a number of attempts (by way of service of notices) by the Environment Agency requiring the Defendant to remove the scaffolding poles driven into the riverbed without the permission of the Environment Agency.

12. I am satisfied that an undertaking in damages would not be sufficient to protect the Claimant. Setting aside that the Defendant is bankrupt, the ongoing mooring of the vessel and its use is causing damage to trees and vegetation. It is affecting the ability of other river users to moor their boats on that stretch of the Thames in accordance with byelaws for periods of less than one hour in each 24 hour period. This will continue until the vessel is moved. I am also satisfied that the balance of convenience favours the grant of the interim injunction sought. There has been no delay in bringing these proceedings and making this application. The Claimant sought to engage with the Defendant before making this application but the Defendant simply ignored Mr Almond maintaining his right to remain moored to the Claimant’s land. I raised with Mr Hoar whether the preferable course in this case would have been to have asked the court to list the application for a final injunction rather than an interim injunction. However I accept that a court date for a two hour hearing such as has been conducted today would have been available rather more quickly than for a final and substantive hearing with evidence. Having found a serious issue to be tried in trespass, there is no reason to allow it to continue. The Defendant is a serial trespasser. For these reasons I am satisfied that it is just and convenient to exercise my discretion under s. 37 Senior Courts Act 1981 to grant such an injunction. There will be a penal notice attached. Any breach of that injunction will amount to a contempt of Court which is punishable with imprisonment or a fine.