

**IN THE HIGH COURT OF JUSTICE
BIRMINGHAM DISTRICT REGISTRY
KING'S BENCH DIVISION**

Claim No:KB-2024-BHM-000107

B E T W E E N:

THE UNIVERSITY OF NOTTINGHAM

Claimant

-and-

(1) MX JOEL BUTTERWORTH

(also known as RIVER BUTTERWORTH (they/them))

~~(2) MR SAMEH ESMAILZADAH~~

~~(3) MR JOHN ELDRIDGE~~

~~(4) MS ARADHYA NEGI~~

(5) "Non students" PERSONS UNKNOWN, BEING PERSONS ENTERING OR REMAINING IN OCCUPATION OF LAND BY CAMPING ON THE JUBILEE CAMPUS AT THE UNIVERSITY OF NOTTINGHAM WHO ARE NOT CURRENTLY STUDENTS, STAFF OR EMPLOYEES OF THE CLAIMANT OR WHO UPON BEING ASKED WHETHER THEY CAN SHOW THAT THEY ARE STUDENTS, STAFF OR EMPLOYEES OF THE CLAIMANT, FAIL TO DO SO

(6) "Students" PERSONS UNKNOWN, BEING PERSONS ENTERING OR REMAINING IN OCCUPATION OF LAND BY CAMPING ON THE JUBILEE CAMPUS AT THE UNIVERSITY OF NOTTINGHAM WITHOUT THE CLAIMANT'S LICENCE OR CONSENT WHO ARE CURRENTLY STUDENTS, STAFF OR EMPLOYEES OF THE CLAIMANT AND WHO UPON BEING ASKED WHETHER THEY CAN SHOW THAT THEY ARE STUDENTS, STAFF OR EMPLOYEES DO SO

Defendants

**SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT
FOR THE HEARING ON FRIDAY 7 JUNE 2024**

The Hearing

- 1.1 The hearing on 7 June 2024 is the hearing of the Claimant's application for revocation and/or variation of certain directions made in the Order dated 20 May 2024 (as varied by the Order dated 22 May 2024 (as amended under the skip rule on 24 May 2024)), pursuant to the Application Notice dated 5 June 2024.

- 1.2 The time estimate for the hearing is 1 ½ hours.
- 1.3 Suggested pre-reading:
- The Order dated 20 May 2024.
 - The Order dated 22 May 2024 (as amended under the slip rule on 24 May 2024).
 - The Application Notice dated 5 June 2024.

Background

- 2.1 This Claim is a claim for possession against trespassers in respect of an unlawful occupational encampment at the University of Nottingham.
- 2.2 The background to the Claim is set out in the Witness Statement of Jason Carter dated 14 May 2024 and in the Skeleton Argument dated 16 May 2024 of the Claimant's Counsel, Ms Michelle Caney.

The Hearing on 17 May 2024

- 3.1 At the hearing on 17 May 2024, the Court made various orders which were set out in the Order dated 20 May 2024.
- 3.2 Some of the directions set out in that Order were the subject of variations in an Order dated 22 May 2024 (as amended under the slip rule on 24 May 2024).
- 3.3 There is a forthcoming hearing on 19 June 2024, at which the Court is to consider the claim for possession further, most particularly in respect of any encampment occupiers who are students or staff or employees of the University. However, prior to this, namely by 4pm on Monday 10 June 2024, there is a deadline under paragraph 6 of the Order (as varied by the 22 May 2024 Order) for mandatory self-identification by those students, staff or employees who are occupying.
- 3.4 The essence of the mandatory self-identification order is that those occupying have to produce specified forms of personal identification and upon doing so, they will become named defendants to the Claim (paragraph 8 of the Order). Further, those students or staff members who do not produce these forms of personal identification, would come

within an existing order for possession that the Court has made in relation to persons who are not students or staff (paragraph 7 of the Order).

The Application

- 4.1 By way of 'liberty to apply' and pursuant to the Court's case general powers under CPR 3.1(7), one of the principal purposes of this Application is to seek revocation and/or variation of paragraph 6 of the said Order dated 20 May 2024 which was the mandatory self-identification order directed to those occupying at the encampment.
- 4.2 As part of the ongoing duty to assist the Court, the Claimant wishes to draw the attention of the Court to certain issues in advance of the date for compliance with the mandatory self-identification order and in advance of the hearing on 19 June 2024 and request that they be varied and/or revoked in the interests of the overriding objective, for the reasons set out below.

The Relief sought in the Claim

- 5.1 This is a claim for possession of land, in respect of which the remedy is an order 'in rem'. No claim to an injunction is sought, which would be directed at specific persons and to which the remedy of contempt would be applicable if the order was breached.
- 5.2 Unlike the procedure for injunctions against 'persons unknown', the summary possession procedure specifically allows for the description of defendants to be 'persons unknown' where the names of the occupiers are not known: see CPR 55.3(4).
- 5.3 In an attempt to assist the Claimant, the Court by its Order dated 20 May 2024 distinguished between different categories of encampment occupiers and amended the description of the parties in order to grant an immediate order for possession against those persons who were not students, staff or employees. However, as explained above, the scheme of the Order mandatorily required students, staff or employees who are occupiers to provide a specific form of identification and provided that if they did not comply with this mandatory order, they would then retrospectively come within the scope of this existing order for possession.

- 5.4 In accordance with the overriding objective, it is right for the Claimant to draw the attention of the Court to the following matters prior to the date by which compliance with the mandatory self-identification order is required, namely 4pm on 10 June 2024.

The mandatory self-identification order

The form of the Order

- 6.1 The mandatory self-identification order in paragraph 6 of the Order dated 20 May 2024 stated that *“all those occupying the land... shall identify themselves and prove their membership as a current student or member of staff of the Claimant by providing (a) their full name (b) student or staff identification number; and (c) an email address for service of documents; either verbally on the spot, when asked, or by emailing all of these details to the Claimant’s solicitor (Danielle.Long@shma.co.uk).”*
- 6.2 The first point to which the Claimant draws the attention of the Court is that this is a claim for possession only and the Claimant has not asked for a court to require the provision of personal information. The Claimant does not assert that this is necessary or proportionate for the purposes of the relief which they seek, namely the order for possession.
- 6.3 The summary possession procedure anticipates that an order for possession can be made against ‘persons unknown’ where the names of the trespassers are not known. There is no need for defendants to be named as defendants, albeit that it is open for them to seek to be joined and to serve defences. The fact that the mandatory self-identification order has the effect under paragraph 8 of the Order that such persons automatically become named defendants to the Claim may run contrary to the principles behind the summary possession procedure under which the order can be made against ‘persons unknown’ and may also be unnecessary and disproportionate in light of the above.
- 6.4 Furthermore, if and insofar as any person wishes to become a defendant, the requirement that they *have* to produce the personal information referred to in the mandatory self-identification order may mean that this constitutes an unnecessary or disproportionate restriction on their ability to defend.

Abridgement of Time

- 6.5 Given that the self-identification mandatory order is required to be complied with by 4pm on Monday 10 June 2024, the Court is asked for this matter to be heard on Friday 7 June 2024.
- 6.6 In accordance with the Court having urged the parties to communicate, the Claimant is seeking to progress such communications in advance of the hearing on 19 June 2024 but it will not be helpful in these communications for the mandatory self-identification process to be part of the context. The deadline of 4pm on Monday is critical in that respect. Either some or all of the occupiers will have been forced to give such personal information by that deadline or they will find themselves in a position where they have breached a court order and are to be treated as the subject of an existing possession order. This is the reason why the Claimant is applying to the Court at this stage and respectfully requests the Court to deal with the matter urgently on Friday 7 June 2024.
- 6.8 There is no express period specified for notice in respect of ‘liberty to apply’ for the Claimant, although a period of 24 hours was specified in paragraph 15 in relation to those served with the Order. Insofar as it may be considered necessary or appropriate, the Court is asked to exercise its discretion to abridge the time for service of this Application Notice so that it can be heard on 7 June 2024.

The suggested approach

- 6.9 Against this background, the Claimant respectfully requests the Court to revoke the mandatory self-identification order and the orders which flow from it. The orders sought in this regard are set out in paragraph 2 of the Draft Order 2 attached to the Application Notice.

The Possession Order

- 7.1 It is not possible for an existing order for possession to be treated as retrospectively applying subsequently to other persons; see the Supreme Court in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2024] 2 WLR 45: paras [166] and see also [127-130].

- 7.2 It is also not possible, in practical terms, to enforce the existing order for possession by reason of the inability to distinguish, for enforcement purposes, between those persons who are staff, students or employees of the University and other persons.
- 7.3 The revocation of the mandatory self-identification order in paragraph 6 and the revocation of the further order in paragraph 7 (that those occupiers who have not complied with the self-identification order then come within the scope of the existing order for possession) would avoid the issue referred to in paragraph 7.1 above.

The Description of the Fifth and Sixth Defendants

- 8.1 As stated above, in relation to possession proceedings, CPR 55.3(4) merely requires that unknown defendant trespassing on the Claimant's land be referred to as "Persons Unknown". However, if they are to be named, then in the context of the law on injunctions, there is a clear rule that the description must be by reference to their conduct which is alleged to be unlawful and must be clear and specific so that there is no ambiguity as to who is within the scope of the description: see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802.
- 8.2 A change in the proposed description of the Fifth and Sixth Defendants in the form set out in paragraph 1 of Draft Order 1 attached to the Application Notice would avoid these difficulties.
- 8.3 The rationale for this order being made in a separate first order is so that the description of the parties is first changed so that the new description can then appear in the title to Draft Order 2. Consistently with the revocation of the mandatory self-identification order and the new consequential directions proposed, the description of the parties to which those orders apply should be made clear on the face of the Order and hence it is appropriate for Draft Order 1 to be made first so that the title on the face of Draft Order 2 is consistent with those directions and it is clear to whom those directions apply.

KATHARINE HOLLAND KC

MICHELLE CANEY

6 June 2024