IN THE HIGH COURT OF JUSTICE (QBD)

Claim No: QB-2022-001241 ("Shell Haven Proceedings")

Claim No: QB-2022-001259 ("Shell Centre Tower Proceedings")

Claim No: QB-2022-001420 ("Shell Petrol Stations Proceedings")

Between

(1) SHELL U.K. LIMITED

Claimant: (QB-2022-001241)

(2) SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED

Claimant (QB-2022-001259)

(3) SHELL U.K. OIL PRODUCTS LIMITED

Claimant (QB-2022-001420)

-and-

PERSONS UNKNOWN **Defendant**

and

MS JESSICA BRANCH **INTERESTED PERSONS**

FURTHER NOTE ON BEHALF OF

INTERESTED PERSON (MS JESSICA BRANCH) IN CONNECTION WITH BEING PERMITTED TO BE HEARD

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1. The court has asked for further submissions on why it should allow Jessica Branch to address the court, either de bene esse or in consequence of CPR Rule 40.9.

2. Further evidence was invited from Jessica Branch and there are two statements, one from Ms Branch and one from Ms Friel, dealing with particular points about these proceedings.

3. Independent of that evidence, the starting point is:

   (i) that the Claimants sought relief from the court without identifying any actual defendants at all (this being purely prospective, injunctive relief) and without identifying any named defendants. The remedies sought are against "Persons Unknown". One year into this injunction, they know of no actual named defendants.

   (ii) the injunction was limited in duration to one year. The court is being asked to renew injunctions that have (as per 82 (7) of Canada Goose and Ineos) been limited temporally.

4. Pursuing claims against "Persons Unknown" is recognised as being procedurally extraordinary or exceptional. Claimants have to bring claims against parties, not imagined parties, and academic claims are not entertained by the court save in exceptional circumstances: see e.g R v Secretary of State ex parte Salem. A claim for an injunction would normally involve the claimant setting out the allegations against the defendant, and the defendant having an opportunity to agree, or disagree, with the allegations made and relief claimed. The court will not allow the Claimant simply to name an entity that lacks legal personality: see EDO v Campaign to Smash EDO, cited in the existing skeleton argument. There are plenty of ways in which a claimant can bring a disparate group of individuals before the court. One is where a representative defendant is identified: there is well developed case- law going back over 100 years in relation to what is now contained in CPR Part 19.6. As to how this works in injunction with claims against protestors, see, inter alia, RWE Npower v Carroll [2007] EWHC 946.

5. Although the Claimants felt able to allege a common interest among those against whom they seek injunctions (which one might expect to be their position in a case where they allege a conspiracy), they have eschewed this procedural route. They have instead pursued a method of bringing defendants before the court which is of some controversy (hence recent inconsistent decisions as to the propriety of this from the Court of Appeal in Canada Goose and in Barking, and a judgment awaited from the Supreme Court.)

6. However that may be decided, there is no doubt that this is a procedurally unconventional way in which to proceed, and such cases involve the court granting considerable indulgences to a claimant. Instead of the court being placed in the position where it knows exactly who the parties are, and having arguments from all affected, the court was, and is, in the position of having only half the picture. It is for that reason that those who seek ex parte relief are under particular responsibilities to the court, and required to place before the court those arguments that would be placed before it were those against whom the claim is brought able to ventilate their position.

7. Perhaps for that reason, one additional consequence of the procedural choice made by a claimant who seeks remedies against persons unknown is that the Claimants are placed under a series of enhanced responsibilities procedurally, e.g. in relation to service and keeping the court updated: see Canada Goose, paragraph 82, which is cited and relied upon in this claim by the Claimants as well as Ms Branch. Some of paragraph 82 focuses on the duties in relation to service. The purpose of service is to bring the existence of the proceedings to the other parties' attention. There is no point bringing it to their attention if they are not then able to say or do something about it. Some of paragraph 82 is about there being a clear temporal limit to the injunction.

8. In relation to the Shell Petrol Stations injunction in particular, the opportunity for anyone affected to say or do something about it was, in this case, not afforded before the order was granted, and was not afforded at the return date. As the Note of the proceedings before Johnson J shows, two people attended and asked for an adjournment to make representations. That was refused. It is surprising that this was refused, for a number of reasons, including that, as Ms Friel attests, the judge himself announced that he had limited time.

9. Accordingly, the injunction was confirmed in circumstances where the judge declined to adjourn for contrary arguments to be made, was aware that there were contrary arguments and limited the time that he had to consider it. Further,

    (i) as is said above, the judge limited the injunction to one year.

    (ii) The injunction was subject to a provision that anyone could apply on 24 hours' notice to have it set aside.

10. As is agreed by all, no allegations are made directly against Ms Branch. Instead, she complains of the chilling effect that injunctions of this sort have on her ability to protest, or to encourage others to do so (and the terms of Johnson J's order, for example, prevents people from encouraging others to do the prohibited acts). She does not say that she has not known of the injunction for some time. But that is no reason to say that she should not be able to make submissions at the time that the court has decided, as the Court of Appeal has mandated it to do in Ineos and Canada Goose, that the injunction should come to an end unless renewed. Furthermore, it is easy to understand how someone might be prepared to live with rights of protest circumscribed for one year, but not for a further year, with potentially longer than that contemplated if, as was submitted by Ms Stacey on Tuesday 25th, the Claimants decide to name defendants and those defendants do actually seek to defend, file evidence etc, which she seemed to posit might require a period of up to, or beyond, one year. Ms Branch complains about the chilling effect. She is entitled to complain more deeply about what may turn out to be a deep freeze.

11. So, Ms Branch has done what the order posits. She has made representations, on 24 hours' notice as the order stipulates, to be heard at the time that the court has *already decided* that it should revisit these injunctions. The Claimants are confecting complaints about this. Essentially, one of the prices that they ought to be expected to pay for choosing to proceed in this unorthodox way is that those affected may want to ventilate their position.

12. It might further be pointed out that if, for instance, Ms Branch had made an application within the last couple of months that what the Claimants, and the court, would have done is expected that application to be dealt with at the time that they themselves were coming to court to seek their additional regranted injunctions. In fact, on one fair analysis, the way that Ms Branch has chosen to proceed, namely making representations to a court charged with considering whether injunctions should continue, is the most proportionate way of dealing with these matters. Courts are encouraged to have fewer, rather than more, hearings.

13. All that Ms Branch is seeking to do is to utilise a procedure under CPR Part 40.9 that in the most recent binding case from the Court of Appeal, namely Barking, says is central to the fair operation of persons unknown injunctions.

14. Her position, and approach, is the same as that deployed by those heard as interested persons under CPR Part 40.9 by Ritchie J in Esso v Breen [2022] EWHC 2600 (authorities, page 458). See especially paragraphs 8-10, 12 and 33-45. Of the "factors" identified by Ritchie J in paragraph 45, and as applied to Ms Branch's position in this case, the submissions are these. Taking the factors in turn: (1) no; (2) no; (3) yes in some respects (4) no ; (5) yes; (6) Same low threshold; (7) Ms Branch faces the same cost risk and did not instigate this litigation; (8) the Claimants will not suffer prejudice. Ms Branch should be in no worse a position than those who addressed Ritchie J under CPR Part 40.9

15. It should also be pointed out that an order under CPR Part 40. 9 does not amount to joinder, and appears to be a temporary role in the proceedings. Ms Branch has *already* been affected by a "judgment or order" and she will be affected by any orders that the court might now make in relation both to extending or re- granting the injunctions sought and directions affecting the progress of the claim to trial. The court should hear her, and if CPR Part 40.9 is the formal way of providing her locus, then the court should permit that, and at this hearing.

16. This submission may also have a bearing on the nature of these particular proceedings, and whether the position is that the court is in some way bound by the approaches taken by Bennathan J and Johnson J. The Claimants' submission that this is the case has some considerable difficulties. Those include:

    (i) The court does not actually know the reasons for Bennathan J's decisions. There is no judgment. This problem also applies in relation to a submission that was made yesterday by Ms Stacey KC, who said that the Shell injunction proceedings were withdrawn in relation to the Kingsbury Oil Terminal due to a local authority injunction being obtained. It is true that a local authority injunction was obtained, and Ms Branch and others made representations in that case. A year later, and despite requests and complaints made to the court, Sweeting J has delivered no judgment in that case

    (ii) The court does know that Johnson J made the order in the face of opposition from people who did not address the court and whom he ruled could not address him (or more accurately, have an adjournment for the purpose of addressing

him). Ms Friel's statement shows that this problem goes further: those who wished to oppose were not permitted to do so, and the judge gave the case less only two hours' consideration instead of the longer time expected;

(iii) Since the Claimants proceeded ONLY against "persons unknown", there is no properly identified defendant that has had the opportunity to be heard, so no inferences of fact and law that can be drawn from their non- attendance or non-submission. The position is different from the position in TFL v Lee, where in addition to Lee, there were 62 other named defendants;

(iv) The practice that courts adopt in treating matters as resolved or binding applies only between those who are or were parties to the litigation. Although this is not issue estoppel as such, this thinking is based on the contention that it is an abuse of process for those who were before the court to go behind the court's ruling on the point.

17. The court's task is to consider whether injunctions which were made a year ago and limited to a year should be re- imposed. This is no sort of rubber- stamping exercise. The courts that considered the injunctions previously imposed a temporal element of a year. Re-grant is not automatic, otherwise there is no effective temporal limit on these draconian orders.

STEPHEN SIMBLET KC

25 April 2023