

Claimant: Shell UK Ltd, Shell International
Petroleum Company Ltd, Shell UK Oil Products
Ltd
Name of Witness : Jessica Branch
Statement No : 2
Exhibits :
Date : 26 April 2023

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”)

IN THE HIGH COURT OF JUSTICE

KINGS BENCH DIVISION

B E T W E E N :

(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

Defendants

STATEMENT OF JESSICA BRANCH

I, **Jessica Branch** of 13 Buckhorn Road, London SE4 2DG **WILL SAY AS FOLLOWS:-**

1. I make this second statement in support of my challenge to the Claimants' applications to extend three injunctions.
2. The statements I make are from my own knowledge or belief unless otherwise stated. If not from my own knowledge I will identify the source. My solicitor drafted this statement having spoken to me on the phone and then emailed it to me for signature.
3. This statement addresses three issues:

- a) Mrs Justice Hill's request that I set out in more detail why I consider that I should be granted Interested Party status under CPR 40.9 with reference to the criteria set out at paragraphs 43 to 45 of Mr Justice Ritchie's judgment in *Esso v Breen* [2022] EWHC 2600 (KB).
- b) Mrs Justice Hill's request that I address the Claimant's assertion that I have delayed in bringing this challenge.
- c) The Claimant's indication at the end of court yesterday that I had already put in a skeleton argument in relation to the Shell Haven injunction.

Interested Party status under CPR 40.9

4. I have been shown paragraph 43 of the judgment. It sets out the "gateway test" as follows:

"Directly affected

43.1 Is the person applying directly affected by the injunction? A person can be directly affected in many ways. The order may affect the person financially. It may affect the person's property rights or possession of property. It may affect the person's investments or pension. The order may affect a person's ability to travel or to use a public highway. The order may affect the person's ability to work or enjoy private life or social life or to obtain work and in so many other ways. It may affect rights enshrined in the Human Rights Act 1988.

Good point

43.2 Does the IP have a good point to raise? If the point raised is weak or irrelevant there is no need for the CPR rule 40.9 permission."

Directly affected

5. I have also intervened in this way before. In *NHL v Persons Unknown* [2022] EWHC 1105 (QB) Mr Justice Bennathan commented on my evidence about the effect of the order on me as follows:

"Ms Branch's witness statement expresses a general view that the terms of the order sought are so wide as to prevent protests that were lawful and, more specifically, sets out her concern that they might catch people such as her who, while not involved in [Insulate Britain] or any of its protests, might protest near some of the many roads specified in NHL's draft order and find herself inadvertently caught up in contempt proceedings."

6. In that case, Bennathan J found that the scenario suggested by me was not fanciful and would amount to a sensible basis to regard me as “directly affected”.

7. Bennathan J also found that:

“(2) Even absent that most direct connection, in a case where an order is sought for unnamed and unknown defendants, and where [as here] Convention rights are engaged, it is proper for the Court to adopt a flexible approach and a general concern by a person concerned with the political cause involved could, perhaps only just, fit within the term. To take an example far removed from the facts of this case, a member of a proselytising religious group who only attended their local place of worship might nonetheless be seen as directly affected by an order banning his co-religionists from travelling to seek converts.

(3) In a case where the Court is being asked to make wide ranging orders and, but for a successful rule 40.9 application, would not hear any submissions in opposition it seemed to me desirable to take a generous view of such applications.”

8. In *Esso v Breen* Ritchie J found that the protestors who wished to challenge the injunction in that case, Suzanne Everest and Hannah Shelley, were directly affected because:

“They are longer term conscientious objects against fossil fuel use. They seek to protest lawfully but actively. The injunction would have bound them and could have put them in breach by both the “public path” protest that they carried out on the 15th of February and the “car park” entrance protest that Hannah Shelley carried out on the 2nd of February and in addition could have put both in breach for the funeral protest they carried out on the 26th of June 2022 on DCO land.”

9. I consider that I am in a similar position. I set out in my first statement how I am deeply concerned by the climate change emergency and how we need to drastically reduce our use of fossil fuels in order to sustain life on this planet. I set out how I regularly participate in environmental protests, sometimes with my children. I also set out my specific objections to Shell as a fossil fuel corporation which plans to grow its fossil gas business by 20% in the coming years and which is engaged in a greenwashing campaign. It is fair to say that I, too, like Ms Everest and Ms Shelley, am a long term conscientious objector against fossil fuel use and Shell in particular.

10. Unlike Ms Everest and Ms Shelley I have not participated in protests at Shell Petrol Stations so I cannot point to any specific instances in the past when I would have been bound by and possibly in breach of the order. However I would like to participate in such protests in the future because, as I explained in my first statement, protesting at petrol stations is an effective way to gain the attention of people who drive cars and encourage them to think about their choices.
11. However I am concerned about the risks to me and my children in doing so, in light of these injunction Orders. This is because, as I explained in my first statement, I would be happy if protest that I participated in persuaded people to use their cars less and/or if petrol sales were to drastically reduce. This means that by participating in a protest in a Shell Petrol Station it is arguable that I would be doing so “*with the intention of disrupting the sale or supply of fuel to or from the said station*”. I understand that if, during such a protest, the entrance to the petrol station was blocked, even for a short while, I could fall within the definition of Persons Unknown and, subject to service, simultaneously be in breach of it. I set out in my statements examples of other ways I could be found to be in breach of the Order by participating in a peaceful protest at a Shell Petrol Station, including by encouraging other people to do a prohibited act.
12. I set out in my first statement similar concerns in relation to the Shell Centre Tower and Shell Haven Orders.
13. I do not wish to be arrested, particularly with my children present. I do not want to have to defend committal proceedings and I do not want to be made a defendant to a civil claim. If I was to be found liable for contempt of court, or for the tort of conspiracy to injury by unlawful means, the consequences for me and my children, including my ability to work, would be grave. This means that I cannot take the risk of participating in protests at Shell Petrol Stations, the Shell Centre Tower or Shell Haven while these Orders remain in place. In short, the Orders directly affect me because they restrict my right to peacefully protest in the manner and location of my choosing.

Good point

14. Ritchie J also found that Ms Everest and Ms Shelley’s skeleton argument made some potentially good points in relation to the scope of that injunction. I am encouraged in this respect that Hill J commented that my counsel’s skeleton argument was well developed and ran to some 35 pages. I would respectfully suggest that that indicates that good points have been made on my behalf.

Factors

15. Ritchie J found that if an Interested Person gets through the two parts of the gateway the next issue is whether they should be required to be a party to take part of permitted to remain an IP with permission. Ritchie J found that the closer the connection between the IP and the claim or the defence the more likely the Court will require them to join the action to take part. He set out the factors that are relevant when considering the nature and degree of a non party's connection with proceedings. I set those factors out below, along with their application to my case.

(1) Whether the interested person will profit from the litigation financially or otherwise.

I will not profit from the litigation financially or otherwise.

(2) Whether the interested person is controlling the whole or a substantial part of the litigation.

I do not seek to control the litigation but I do seek to restrict the breadth of the injunction granted or indeed to prevent it being granted so that I can protest lawfully and exercise my rights under the European Convention on Human Rights especially Arts 10 and 11.

(3) Whether the final decision in the litigation will adversely affect the interested person, whether by way of civil rights, financial interests, property rights or otherwise.

I accept that the decision simply to grant the injunction would not affect my property rights or financial interests. However, it does affect, and has affected, my civil rights. Furthermore, were I to breach this injunction, any proceedings would affect my financial interests and expose me to prison.

(4) Whether the interested person is funding the litigation or the defence thereof.

I am not funding the litigation or the defence. I am only funding my own submissions.

(5) Whether there is a substantial public interest point or a civil liberties point being raised by the interested person.

The points that I raise are very similar to those raised by Ms Everest and Ms Shelley, which are the subject of Ritchie J's substantive judgment in that case ([2022] EWHC 2601). In particular, Ms Everest and Ms Shelley challenged the Claimant's reliance on economic torts and the application of s.12(3) Human Rights Act, as in this case. Ritchie J found the points raised by the IPs to be of wide public interest and to relate to fundamental civil liberties, namely Articles 10 and 11 of the European Convention on Human Rights.

- (6) *The court should take into account the wide or draconian nature of injunctions against unknown persons which may be geographically large or temporarily large or both. There should be a low threshold for interested persons to be able to take part in such broad and or wide orders.*

Ritchie J commented that "*the draconian nature and the breadth of large injunctions against persons unknown (PUs) leads me to consider that there is relatively low threshold to allow Interested Persons to make representations on a return date*". This was generically worded. The Orders in this case are also against PUs, and relate to some 1,065 petrol stations, as well as the Shell Centre Tower and Shell Haven oil refinery. It seems to me that these Orders are as broad and draconian in nature as in *Esso v Breen*, which related to the land surrounding a pipeline carrying aviation fuel, which is being built from Southampton to London.

- (7) *The costs risks and difficulties faced by interested persons who are affected by orders which they did not instigate.*

Ritchie J indicated in his judgment that there was no legal aid provided for civil liberties Interested Persons or conscientious objectors who wish to be involved and so Ms Everest and Ms Shelley had to fund their representations themselves. He concluded: "*In my judgment it is not unreasonable for them to do so with a reduced (but not extinguished) cost risk, on the contrary it is just and fair.*" The same applies to me.

- (8) *Any prejudice which would be suffered by the Claimant in granting the Interested Persons their request and refusing to require them to become parties.*

- a) As in *Esso v Breen* the Claimant in this case has not put forward any evidence of prejudice. Indeed its counsel expressly stated on several occasions that Shell did not wish to shut me out, and accepted that the issues raised on my behalf needed to be looked at.

- b) The Claimant would not necessarily have had any greater notice of my submissions had I applied to be a named defendant, as the Orders only require 24 hours' notice to be given by any defendant wishing to vary or discharge them. I understand that my skeleton argument and my first statement were served on the Claimant at 10.01 on Monday 24 April 2023, so over 24 hours before the hearing at 10.30 on Tuesday 25 April 2023.
- c) I understand that it may be more difficult for the Claimant to achieve a costs order against me as an IP rather than a named defendant. However Ritchie J expressly did not characterise this as prejudice, on the grounds that (1) costs orders are a result of the courts exercising discretion under the CPR, and (2) the Claimant could have joined Ms Everest and Ms Shelley as defendants had they wanted to. The same applies to me, not least because counsel for Shell confirmed in court yesterday that her client did not consider that I was suitable to be added as a named defendant.

Delay

- 16. I am told by my solicitors that Ms Justice Hill also asked that I give further evidence in relation to the Claimant's assertion that I have delayed in making submissions challenging these Orders.
- 17. I explained in my first statement that I was aware that a fellow protestor associated with XR, Nancy Friel, attended the return hearing for the Shell Petrol Stations injunction before Mr Justice Johnson on 13 May 2022 and was denied the adjournment she requested in order to obtain legal representation to challenge it.
- 18. I understand the Claimant to be saying that because I was aware of that injunction being granted (without hearing any opposition) that I should have applied to set it aside at a later date.
- 19. The Order that Johnson J granted to Shell on 13 May 2022 is due to expire on 12 May 2023. The claimants now apply for that Order (and the Shell Haven and Shell Centre Tower Orders) to continue for a further 12 months with an amendment, namely the removal of the word "environmental" from the definition of Persons Unknown, which would mean that the Orders apply to many more people. There are still no named defendants.

20. I wish to be heard on the issue of whether these Orders should be re-granted in circumstances where there are still no named defendants and the Claimants expressly contemplate a further delay in progressing the litigation. I am directly affected by whatever Orders the court makes, on this occasion.
21. I was similarly concerned by the Order that Johnson made a year ago and the restrictions it represented to my right of protest. However I was content to wait until the Order expired, to see whether Shell proposed to extend it, in the knowledge that if they did there would be another return hearing which would be the best and most efficient way to bring a challenge, rather than by generating an additional, costly hearing purely for my own application. Such a hearing would also place me at considerable cost risk, as it would have been solely initiated by me, rather than a return hearing which would have to take place in any event.
22. The Claimant refers to a certificate of service that indicates that my solicitors were served with a sealed Order on 1 March 2023. The Claimant also points out that there is express provision in the Orders for notice to be given by persons wishing to apply to vary or discharge their terms.
23. I understand that my solicitors were served with an application and draft Order (not sealed Order as indicated in the certificate of service) on 1 March 2023. However that application was for the review hearing in the three proceedings to be listed and heard together at the same time. It did not give any details of the nature of the Orders sought on this occasion.
24. I understand that it was not until 6 April 2023 that my solicitors were served with the applications to extend the Injunction Orders. The draft Orders appended to those applications required named defendants to make submissions at least 24 hours before the hearing. I complied with that requirement, even though I am not a named defendant.
25. My solicitors were not served with the Claimant's skeleton argument until 17.26 on Thursday 20 April 2023. I instructed my solicitors to proceed with a challenge at 14.51 on Friday 21 April 2023. My solicitors were provided with access to the Supplemental Bundle at 15.29 on Friday 21 April 2023 and the Hearing Bundle at 15.30 on Friday 21

April 2023. As above, my solicitors then served a skeleton argument on my behalf at 10.01 on Monday 24 April 2023, just over 24 hours before the hearing.

Previous skeleton argument

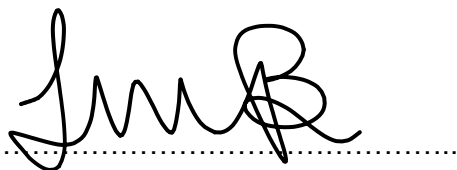
26. It was said in court that I had put in a skeleton argument in the Shell Haven injunctions. It is correct that I put in a skeleton argument in respect of the Shell Haven and Shell Centre Tower injunctions in advance of the joint review hearing that took place on 28 April 2022. That document is in the Claimant's Second Supplementary Bundle at p.14. However, there was a subsequent development in the case, in that I became aware of another person who wished to make representations along the lines of those that I wished to make, and who was in fact made a party to the proceedings.

27. What happened was that Andrew Smith instructed my solicitors to apply for him to be named as a defendant in order to bring the challenge on his behalf. I was aware of that, and that he was making similar points to those I would wish to make. Accordingly, there was no need, at that point, for me to be involved and I did not seek to remain involved. I understand that Mr Smith later provided an undertaking and was removed as a named defendant by consent by Order of Mr Justice Knowles dated 21 November 2022.

28. In any event, I expected that the injunction as then granted would last for a year. I decided after that, and after Mr Smith had made his representations, that I could live with those restrictions and did not need to challenge the order made further. I am dismayed to learn that the Claimants now seek potentially another year in relation to each of the three injunctions before the court, and I am told that they said to the court that the injunction might need further extension, were named defendants to resist the claim and seek to file evidence. In those circumstances, bearing in mind that the injunctions include the headquarters of Shell, so of great symbolic importance, and also lawful activities at petrol stations, such as placing a leaflet on a car, that my arguments be heard now. If that involves making an application under CPR Part 40.9, that is what I wish to do.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNED



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JESSICA BRANCH

DATED

.....26 April 2023.....