

ATTENDANCE NOTE

High Court of Justice

Queen's Bench Division

Claim No. QB – 2022 – 001259

Shell International Petroleum Company Limited v Persons Unknown

Hearing (remote) before Mr Justice Sweeting, 15 April 2022, starting at 16:00

ATTENDEES

- 1) Mr Justice Sweeting (the “**Judge**”)
- 2) Saira Shani – Court Associate
- 3) Tim Morshead QC of Landmark Chambers, representing the Claimant (“**TMQC**”)
- 4) Sarah Judd and Natasha McCarthy (attended part of the hearing) of the Claimant
- 5) Emma Pinkerton, Anthea Adair and Sally Tang of CMS Cameron McKenna Nabarro Olswang LLP (“**CMS**”), the Claimant’s Solicitors

This is a note of a hearing, in the above matter, of an application for an injunction (the “**Application**”) in relation to the Shell Centre Tower, Belvedere Road, London (the “**Shell Centre Tower**”).

References in this note to the “**Shell Haven Application**” are references to an application heard by the Judge on 14 April 2022 and brought by Shell UK Limited. The Shell Haven Application was issued in the High Court, Queens Bench Division on 14 April 2022 (Claim no QB – 2022 – 001241). Shell UK Limited were also represented by CMS and TMQC at the said hearing on 14 April 2021.

References to “**Shell Haven**” in this note are to a terminal at The Manorway, Stanford-Le-Hope, Essex and which was the subject of the Shell Haven Application.

1. THE INJUNCTION APPLICATION

- 1.1 TMQC thanked the Judge for hearing the Application so late and as an out of hours application.
- 1.2 TMQC asked whether the Judge had had the opportunity to look at the evidence of Ms Pinkerton and Mr Garwood. The Judge confirmed he had.
- 1.3 TMQC submitted that the legal framework for the Application was the same as that for the Shell Haven Application but the concerns in this case were different.
- 1.4 With the Shell Centre Tower there was, unlike Shell Haven, no risk of explosion but nevertheless there are very serious risks involved:
 - 1.4.1 Blocking the means of getting in and out of the Shell Centre Tower
 - 1.4.2 Risk of canopies collapsing and injuring people
 - 1.4.3 Intruders entering the Shell Centre Tower

- 1.4.4 Deliberate damage being caused
- 1.4.5 Heightened difficulty should emergency vehicles be required to access the Shell Centre Tower
- 1.5 TMQC submitted that in 2019 protestors had deliberately inflicted damage above £5,000 so that their trials would be by jury.
- 1.6 TMQC acknowledged that the form of relief sought by way of this Application provided no guarantee that the crowds/crowd of protestors would disperse but it would deter some people from turning up and making life difficult for the Claimant's staff.
- 1.7 TMQC submitted that no case based on harassment or conspiracy was being advanced but the conduct of the protestors is intimidating and the Claimant has a right to enter its building (being the Shell Centre Tower) without such behaviour.
- 1.8 The Judge confirmed that he had read the witness statements submitted and acknowledged that what the Claimant is trying to prevent by way of the Application is plainly potentially tortious, including causing damage to the building and obstructing the entrances and exits.
- 1.9 The Judge confirmed that he had read the draft order filed with the Application and that it is targeted and doesn't seem therefore to impact upon peaceful protest.

2. THE DRAFT ORDER

Recitals & Definitions

- 2.1 Recitals and definitions within the draft order were considered and the Judge noted from the plan (which outlines the area over which the relief is sought) that the area was basically the perimeter of the building and that the plan was clear.
- 2.2 TMQC made the point that the Claimant isn't seeking relief in respect of areas outside of the Shell Tower Centre, i.e. no exclusion zone.

The Terms of the Injunction

- 2.3 There was then discussion between the Judge and TMQC regarding the draft terms of the injunction at paragraph 2 of the draft order submitted within the Application.
- 2.4 In the interests of specificity, a revised definition of the Shell Centre Tower was discussed and agreed to be reflected in the final order.
- 2.5 With reference to paragraph 2.5 of the draft order, the Judge queried whether there was any evidence of structures being erected on Shell Centre Tower by protestors. TMQC confirmed that there was no evidence however the Claimant was trying to think around the corners about what might happen, perhaps having in mind its experience of structures being used to conceal tunnelling works.
- 2.6 The Judge considered that paragraphs 2.6 and 3 of the draft were not as clear as they could be and so revised wording was discussed and agreed to be reflected in the final order.
- 2.7 The Judge noted that there was nothing preventing climbing in the draft order. TMQC considered that to be covered by paragraph 2.1 of the draft order but acknowledged that canopies may extend beyond the area delineated in the plan annexed to the order (and which

delineates the area over which injunctive relief is sought). For the avoidance of doubt TMQC suggested that some wording should be included to cover canopies. The Judge agreed. That wording is to be incorporated into the final order.

Variation & Discharge

2.8 The Judge acknowledged this section of the draft order (paragraph 4) was effectively boilerplate.

Return Date

2.9 TMQC suggested 28 April 2022 as the return date, this being the return date provided for the Shell Haven Application. This was agreed and the Judge proposed a time of 10:30am.

Service

2.10 There was a discussion regarding the placement of warning notices and, to ensure that they were placed around the perimeter of the Shell Centre Tower, revised wording was agreed to the effect that the notices would be placed on each aspect of the building.

2.11 With reference to paragraph 10 of the draft order, the Judge added reference to the usual CPR service provisions which are to apply to any defendant who is subsequently named (i.e. usual service provisions stipulated in the CPR will apply in that scenario).

2.12 With reference to the First Schedule of the draft order, and which provides that the Court has considered documents including the Particulars of Claim, the Judge stated that he had not seen the particulars of claim in respect of this Application.

2.13 The Judge noted that he was not concerned about whether the relief was an appropriate remedy but, as a court document, the particulars of claim could not be removed from the list of documents considered in the final order. TMQC acknowledged that and it was agreed that the simplest solution was to provide the Judge with the particulars of claim. TMQC forwarded the particulars of claim to Ms Shani who provided them to the Judge and who then read them.

3. PRACTICALITIES

3.1 The practicalities were then discussed – TMQC said that he had been typing the amendments to the draft order as they had gone through them during the hearing and, if the Judge was content with that, he would remove the word “draft” from the order and provide to the Judge’s clerk so that the Judge could consider and send back in the usual way.

3.2 The Judge agreed. He also said he was not sure if any of the injunction orders made yesterday had been sealed yet.

4. FURTHER APPLICATION IN RESPECT OF THE SHELL HAVEN APPLICATION

4.1 TMQC then made an application in respect of the Shell Haven Application. He reminded the Court that, at the hearing of the Shell Haven Application, revised wording was agreed (in respect of the definition of defendants). That wording was in the Order made but was unfortunately not tracked through to the other court documents which had been served in accordance with the terms of the order made.

- 4.2 TMQC requested:
- 4.2.1 Permission to amend the claim form, particulars of claim and application notice in the Shell Haven Application;
 - 4.2.2 An order to substitute those documents using the same means of service as set out in the order, dated 14 April 2022, made in respect of the Shell Haven Application;
 - 4.2.3 Subject to the above, an order pursuant to CPR 6.15(2) on the basis that a supporting witness statement would be provided by 4pm on 18 April 2022.
- 4.3 TMQC submitted that it was unlikely anyone would have been misled by the definition of defendants within the claim form as served.
- 4.4 There was then a discussion as to CPR6.15(2) and the requirement to provide witness evidence in support. TMQC considered that it may be difficult to submit a witness statement today but on his reading of the rule, it was required in order to support the application and so would have to be submitted later.
- 4.5 The Judge agreed that TMQC's proposals were appropriate and invited him to provide a draft Order to that effect and for a short witness statement to be provided by 4pm on 18 April 2022.

Hearing ends 16:39