Neutral Citation Number: [2008] EWHC 75 (QB)

Case No: HQ4X02793

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/01/2008

Before:

THE HON MR JUSTICE TREACY

– –

Between:

UNIVERSITY OF OXFORD and ORS	**Claimant**
− and −	
BROUGHTON and ORS	**Respondent**

– –
– –

Mr B Kennelly (instructed by **Simmons Sols**) for the **Claimant**
Mr S Simblet (instructed by **Hickman & Rose, Sols**) for the **Respondent**

Hearing dates: 17 & 18 January 2008

– –

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HON MR JUSTICE TREACY

The Honourable Mr Justice Treacy :

1. This matter has a long history. Various Judges before me have granted and/or modified injunctions. The case arises out of a long campaign by Animal Rights activists whose object is to prevent the building and operation of a Research Laboratory in South Parks Road, Oxford.

2. Oxford University as the 1st Claimant seeks to restrain various Defendants and those whom they represent from activities alleged to include intimidation, harassment and damage. It is not necessary for me to lengthen this judgment by reciting the background. The earlier judgments of Holland J, (30 May 2006), Irwin J (13 October 2006) and Butterfield J, (19 July 2007), all set out the general history and background of this matter. I adopt their analyses.

3. There are various applications before me to modify existing orders. Three of them are non−controversial, two of them are controversial.

4. I will deal with the non−controversial applications first. Firstly, the Defendants apply to strike out paragraph 9 of the Order of Holland J of 30 May 2006 as amended. It seems to be common ground that paragraph 9 has the effect of depriving the Defendants of the protection of CPR 19.6 (4)(b). The Claimant does not object to the deletion of paragraph 9 which will have the effect of reinstating the need for the Claimant to obtain permission to enforce the Order against those bound by an Order but who are not parties to this action. By consent I grant that application.

5. Next, the Claimants seek to amend the existing Order so as to clarify the Order or clear up the potential anomalies. The position now is that the parties are in agreement although in one area they had, for part of the hearing, been in dispute. Therefore, at paragraph 9 of the Definition section, the only alteration to be made will be to capitalise the initial letters of the words "Buildings" and "Grounds". Paragraphs 11, 17(b) and 18(i) of the Definition section will be amended in the way that is set out in the Draft Order.

6. Then turning to the section of the Order entitled "The Order", paragraphs 1 and 2(b) will be amended in the way indicated in the draft. Paragraph 2(d) will read as follows:

> "Knowingly trespassing on any of the University Buildings and Grounds or the Residents of any Protected Person."

This provision was the subject of argument but after debate and consideration the parties agree to a variation in the terms just indicated.

7. Paragraphs 2(e), 2(g), 2(h), and 2(k) are now agreed in the form set out in the draft. Paragraphs 8, 9, 10 and Schedule 2 are agreed in the terms set out in the draft.

Accordingly, by agreement I order that those amendments be made to the existing Order.

8. The final non−controversial application relates to the Order made by Irwin J. It is agreed that that be discharged and that its relevant parts be consolidated into the main Order. I so order.

9. I now turn to the first of the two controversial applications. This relates to a proposed extension to the Exclusion Zone previously made. The application is based on the premise that the work which has been going on at the Research Laboratory site is shortly to be completed with the result that the laboratory will become operational. I am told that this will occur prior to the Trial date which I understand to be fixed for after Easter 2008.

10. At present there is an Order constituting an Exclusion Zone which is depicted on plan E. The purpose of that is to protect workers at the site from harassment as they use what is shown as an entrance at point A. In addition to the protection of the Order those workers have protected themselves by wearing balaclavas to maintain their anonymity, the identity of their employer is not known and the site is protected by large surrounding hoardings.

11. When the job is finished the hoardings will be removed and students, academics and other workers having business at the new laboratory will enter at the point shown as Point Y on Plan E. Point Y is a little beyond the present Exclusion Zone. The Claimants say that unless protection is given in the form of an Exclusion Zone, those entering the site at Point Y to work will be subjected to the same campaign of harassment and intimidation as others have been in the past. Those entering the site will not have the benefit of the hoardings and are unlikely to wear balaclavas and adopt measures to avoid identification of their vehicles in the same way that the building site workers have. A southward extension of the Exclusion Zone down Mansfield Road for about 100 metres to a point marked B on Plan E is proposed. The justification for this is that without the extension those using the site as it becomes operational will be subjected to a campaign of harassment. Those campaigning have made plain that the campaign will not cease when the site becomes operational.

12. On 25 October 2007 Mr Broughton and Mr Webb, both Defendants in this action, and representing the 4th and 10th Defendants respectively, were quoted in an article in the Oxford Student, a newspaper, in a way which demonstrated that the protests will go on after the laboratory commences operation. Mr Webb spoke in terms of criminal activity taking place to stop the laboratory's operation. Mr Broughton spoke as follows:

> "In the days and weeks after the lab opens there will be a battle that we will take to the University and the lab. Our tactics are evolving. Only one thing is clear: we won't go away. As far as we are concerned, we've only just started".

He went on to say that SPEAK (the 4th Defendant) would:

> "× make their presence felt". "We are more than ready for the future. We will be there when it opens - we will be there fighting".

13. On the 4 November, there were two arson attacks at night in which the cars of former members of the Department of Experimental Psychology were destroyed at the homes of their owners. The 10th Defendant subsequently claimed responsibility for the attacks. One of the victims, Professor Allport, had had his name and address published on a webpage. The Animal Liberation Front (ALF) described him and others as "Active vivi−sector scum who should be dealt with severely". It is pointed out that in 2004, SPEAK had published names and addresses in a similar way on the Internet. Although SPEAK disavowed the encouragement of illegal activities, the webpage spoke in these terms:

> "The message cannot be stated any clearer - stop or we will do all in our power to stop you". ××"It is of vital importance to the Animal Rights movement that we ensure this laboratory fails in order to stop the expansion of vivisection in the UK. Please subscribe and take action to stop this hell−hole for animals".

14. The Claimants submit that with the completion of building words and the beginning of operations at the laboratory, a new phase is being entered. They say the Defendants who had common aim of preventing this laboratory working will intensify their campaign, particularly when potentially more vulnerable individuals, namely the workers, will be entering the laboratory. The new entrance at Point Y will not, unless this court intervenes, have the protection afforded to the site workers who enter now at Point A.

15. The Defendants resist the application. They say that the existing Order has worked tolerably well so far and does not need to be varied. They submit that as we are approaching the point of trial, the Court should be reluctant to alter the existing arrangements. Mr Simblet, who represented Mr Broughton (the 1st Defendant) and SPEAK (the 4th Defendant) submitted that a distinction should be drawn between the words and actions of the 10th Defendant, that is the Animal Liberation Front (ALF), and Mr Webb. I should record that Mr Simblet was the only legal representative of any party to appear before the Court and make representations against the Claimants' application. Mr Simblet submitted that having regard to the decision in *Burris v Azadani* (1995) 4 All E R 802, an Exclusion Zone Order should not be made without very good reason. He took me, in particular, to a passage in that decision at p.810 in the judgment of Bingham MR (as he then was). This is conveniently quoted at paragraph 18 of Holland J's judgment of 26 May 2006.

16. I was rightly reminded of the care which needs to be taken before imposing any Exclusion Zone Order. My attention was drawn to the size of the zone and it was submitted that if I was minded to grant an extension, I should consider granting a new designated protest area similar to that which currently exists in South Park Road. I

was urged to consider whether an extension of the zone as far South down as Point B on Mansfield Road was appropriate. These arguments however came second to the central thrust of the submissions which was that there was no justification for any alteration to the existing position. Laboratory workers and students would not be intimidated and certainly not by Mr Simblet's clients.

17. In my judgment the case for variation of the existing Order is amply made out. The completion of the building works and the starting of operations are in my judgment highly likely to lead to a revitalisation of the campaign being waged against this laboratory. Those who will be the primary targets of the desire to prevent this laboratory working will be the students, academics and laboratory workers. They are unlikely to avail themselves of the protections currently enjoyed by building workers. Unless protected I am satisfied to a high degree of probability that intimidatory conduct would result from the unrestrained gathering of protesters. The new entrance at Point Y is a natural focus for demonstrations, once the building work is complete and once that entrance is being used.

18. I find that it is highly likely that unless restrained the actions of protesters will go significantly beyond a communication of views and would result in the causing of harassment and fear in the minds of those using this entrance. This would not, after all, be some isolated event but would be the continuation of a long standing and determined campaign, some of which has involved unlawful elements and actions over a period of years. This campaign has become notorious. Those who use the site will be only too well aware of the diligence with which the campaign has been pursued. It seems to me to be highly probable that anyone who is the target of the expression of demonstrators' views would take into account the past history and actions and that the cumulative impact of past and present activity would cause alarm, distress and intimidation. There is a high probability that unlawful harassment within the meaning of the Protection from Harassment Act 1997, will take place unless restraints are put in place.

19. In my judgment there is no basis for distinguishing between Defendants and in particular for distinguishing for these purposes between the SPEAK and the ALF organisations. Although SPEAK asserts that it represents the lawful face of animal rights protests, I cannot overlook the expressed convergence of aim of the two organisations. Their joint aim is to shut down this laboratory. I note the similar terms in which Mr Broughton and Mr Webb spoke to the Oxford Student newspaper, albeit that Mr Webb spoke explicitly in terms of unlawful activity. I note the adoption of similar methodologies in pursing their aims in the past. I consider Mr Simblet's submission, that there would be no intimidation of workers, as unrealistic. It is necessary, in my judgment, to modify the Order, notwithstanding that this will affect the Defendants' right to assemble and protest lawfully, since the high probability is that unless restraint is put in place, unlawful intimidation would in fact occur.

20. I must next consider the form of restraint. I am satisfied that for the purposes of the present application, it must take the form of an extension of the Exclusion Zone. I

consider that the circumstances envisaged by Bingham MR in *Burris v Azadani* are satisfied.

21. The next question is the extent of the extension to the Exclusion Zone. I must take care to make an Order which is proportionate to the needs of the situation and which does not make unnecessary inroads upon the rights of the Defendants. Having considered Plan E and the photographs provided by the Defendants, I can conclude that the point identified as Point B, approximately 100 metres beyond the current Exclusion Zone, represents the necessary and proportionate extension of that Zone. Any lesser extension is, in reality, precluded by the presence of the University club and its entrances on Mansfield Road. Those premises are themselves likely to be used by personnel using the laboratory so that, unless restraint is in place, they would be vulnerable, if the zone was not extended, to the very intimidation the Court seeks to prevent occurring at Point Y. Experience has shown that what are referred to as "Pop−Up" demonstrations are likely to occur with frequency at the very borders of the Exclusion Zone. These demonstrate the need for clear definition of the Zone and for siting it in such a way as will obviate the risk of intimidation occurring.

22. I hope that the extension of the Zone to Point B, which I order and approve as necessary in the circumstances, will be physically marked on the ground by red paint in the way that other Exclusion Zone boundaries have been indicated.

23. The Defendants' counsel also submitted to me that I should be prepared to create, as a quid pro quo, a second designated protest area, this one to be in Mansfield Road. The suggestion was that it could be adjacent to Point Y but available only to a limited number of protesters for limited periods. I reject this submission. In my judgment any demonstration or protest permitted at Point Y or on the pavement opposite Point Y would be likely to have the effect of harassing those entering the site. As paragraphs 7 and 9 of Mr Broughton's 6th witness statement make plain, the purpose of having a presence near or at Point Y would be so that the protesters could "interact with those using and visiting the laboratory". In my judgment, interaction, even by a limited number of people, is likely to have the effect of amounting to intimidation and harassment.

24. It was also suggested in argument, although not in any formal application, that if I were minded to extend the Exclusion Zone down Mansfield Road, I should diminish the existing Exclusion Zone at the eastern end of South Park Road. Again as some form of quid pro quo. No evidential material has been put forward to justify such a variation and in the circumstances I would loath to alter the carefully considered decision of Holland J unless there was some sensible basis for doing so. None has been advanced. Indeed it appears that the two retired academics whose vehicles were burnt out as part of the continuing campaign worked in the Tinbergen Building which is directly adjacent to the eastern end of the Exclusion Zone in South Park Road, from which the Defendants would now wish me to withdraw protection. I decline to do so.

25. The second controversial application concerns university degree ceremonies. What is sought is an Order creating an Exclusion Zone in the vicinity of the Sheldonian

Theatre and elsewhere at times when graduation ceremonies are taking place. Apparently protesters gather in the vicinity of such ceremonies and chant their slogans, allegedly with disruptive effect. One such ceremony is the solemn Encaenia ceremony, held in the summer, but there are also other graduation ceremonies held throughout the year, some of which will occur prior to the projected trial date. The Claimants' argument is that these ceremonies are an important part of university life and that they are analogous to university examinations, those examinations already having been granted protection by Order of Holland J in April 2006.

26. The application seeks an Exclusion Zone which is said to be limited to the duration of the ceremony inside the Sheldonian Theatre. The protection sought is limited to ensuring that what occurs inside the Sheldonian Theatre may occur in appropriate peace and quiet. It is submitted that the evidence sufficiently showed that what occurred at the time of graduation ceremonies constitutes harassment within the Act, or in the alternative, comes within the ambit of a conspiracy to injure. It is pointed out that in Mr Broughton's 6th Witness Statement, at paragraph 39, he states that the intended and likely result of any demonstration is to cause those present to feel uncomfortable or embarrassed or annoyed by the demonstration.

27. Mr Simblet submits that there is no basis for making this additional Order. He firstly points out that we are a long way down the road towards trial and submits that there is no proven necessity at this stage for such an Order. I say at once that I do not find that to be a particularly convincing argument any more than I did in relation to the application for the extension of the Exclusion Zone in Mansfield Road. This is a developing situation. It may be necessary for the Court to meet new circumstances from time to time. It has already done so - for example in relation to examinations, and Holland J, in his main judgment of 26 May 2006, expressly recognised for reasons with which I am in complete agreement, that a review of the terms of the injunction was necessary and desirable from time to time (see paragraphs 15 and 36). I am not therefore persuaded, simply by reason of proximity to the time of trial, that the Court ought to be reluctant in the present circumstances to consider a variation. The important thing is to consider the merits. In a case which is not clear cut then proximity to trial may be a factor of greater weight.

28. Counsel went on to argue that the evidence of what had taken place at the time of the Graduation ceremonies did not amount to harassment within the meaning of the 1997 Act. He drew my attention to the need for the Claimant to show a course of conduct amounting to harassment. He reminded me of the provisions of Section 7(2) of the Act which show that references to harassing a person include alarming the person or causing the person distress and he took me to a passage in the speech of Lord Nichols of Birkenhead in *Marjowski v Guy's and St Thomas's NHS Trust* (2007) 1 AC 224. In particular he took me to paragraph 30 where Lord Nichols said this:

> "Where ××. the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset arise at times in everybody's day to day dealings with other people. Courts are well able to recognise the boundary between conduct which

> is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable, the gravity of the misconduct must be of an order which would sustain criminal liability under Section 2."

29. As to the Claimant's alternative formulation that in the event that there is insufficient in the evidence to show harassment, they can rely on conspiracy to injure, he submits that the evidence does not sustain this either.

30. In the event that I am against his arguments and minded to impose some restriction, it is argued firstly that no Exclusion Zone is necessary; secondly, that the one sought is too large and is inappropriate to the locality; and thirdly, that some measure falling short of an Exclusion Zone should be considered as suitable.

31. This application has been put solely on the basis of protecting the actual ceremony proceedings taking place inside the Sheldonian Theatre. Mr Kennelly disavowed an intention to seek an Order which related to those entering or leaving any Graduation ceremony. The evidence has covered the Encaenia ceremony of 20 June 2007 and three graduation ceremonies - those of 20 October, 3 November and 24 November 2007. I have also viewed two DVD recordings of the ceremonies of 3 and 24 November 2007.

32. None of the evidence shows that the shouting or chanting taking place intermittently during the various ceremonies was of itself threatening or menacing. The evidence shows that chants of "Stop the Oxford animal lab" or "Oxford University - a place that tortures animals", were typical of the sort of chants being used. The University's witnesses speak of the effect of the chanting being to reduce the enjoyment of, and the sense of, a solemn occasion. They speak of irritating and distasteful noise. They speak of an unjustifiable intrusion by noise which ruined or spoilt the ceremony. Professor A who was present on 3 November, says that the chanting was upsetting and distressing and ruined his day. After the ceremony he remonstrated with some of the demonstrators.

33. Nowhere in the University's evidence does any witness speak of feeling harassed, alarmed or threatened. The language is all in terms of irritation and the loss of enjoyment. My own viewing of the DVDs showed that the noise on the 3 November was considerably more audible than that on 24 November. This is apparently because a megaphone was in use on 3 November. The noise was not continuous but was intermittent. On both occasions the Vice−Chancellor raised with the audience the question of how they were being affected by the noise. On each occasion about one third of those present, as it appeared to me, raised a hand to indicate that their enjoyment of the occasion was being spoilt. On both occasions the members of the audience appeared to be attentive to the ceremony. They did not appear to be alarmed, distressed, threatened or frightened by what was going on intermittently outside.

34. Despite what Mr Broughton says at paragraph 43 of his 6th Witness Statement, it seems to me that a purpose of the protest outside the various ceremonies was to disrupt the ceremony and embarrass the University as a means of driving forward the campaign against the new laboratory. The situation of those inside the Sheldonian Theatre is that they are in no sense physically threatened. The overwhelming majority of those present will be people attending for the single occasion of their graduation. The protests outside the building were subject to police presence.

35. It is common ground that I should apply the higher threshold for the grant of an Interlocutory Injunction as identified in *Cream Holdings Ltd v Bannerjee* (2005) 1AC 253. I remind myself of what Lord Nichols said at paragraph 30 in *Marjowski* . I have also been reminded of Sedley LJ's comment in *Redmund−Bate v DPP* (1999) Crim LR 998:

> "Free speech includes not only the inoffensive but the irritating, the contentious, the heretical, the unwelcome and the provocative, provided it does not tend to provoke violence".

36. Finally I have regard to the need for the most careful scrutiny on any prior restraint in relation to freedom of expression and the principles discussed by Lord Bingham in *R (Laporte) v Chief Constable of Gloucestershire* (2006) UKHL 55 at paragraphs 35-37. The conclusion to which I have come after reviewing the evidence is that it fails sufficiently for the purposes of this application to show that what has occurred amounts to harassment within the meaning of the 1997 Act. In my judgment the claimants have failed to adduce evidence capable of showing that on balance these protests are sufficiently distressing or alarming as to amount to harassment. Not only is there an absence of evidence to show alarm, fear or distress, but the demeanour of those present at the ceremony did not appear to bear out the assertion that they were people undergoing harassment.

37. One of the features which persuaded Holland J and Butterfield J to grant injunctive relief in relation to noise was the long term and repetitive element suffered, for example, by those who were at a place of work, or the highly intrusive element suffered by persons attempting to achieve sustained intellectual concentration in the course of an examination. On the evidence before me I am not persuaded that the noise outside these graduation ceremonies was of similar nature or effect. Nothing I have said should be taken as giving licence or invitation to the protesters to carry out disruptive demonstrations in the vicinity of graduation ceremonies in the future. I have merely made a decision on the basis of the evidence so far presented to the court. That is not to preclude some application in the future based on different evidence. One relevant feature may be use of megaphones. These were in use for some of the time on 3 November 2007 and the disruptive effect was undoubtedly greater when they were in use. Mr Broughton apparently lowered the volume when requested by the Police. It seems to me that use of such instruments in the future might be a factor which could change the view I have taken of the evidence presented.

38. Perhaps recognising that the application based on an assertion of harassment was not strong, the claimant advanced the application on an alternative ground. It relied on the head of claim that there had been a conspiracy to injure by interference with the business of the university. It is common ground that the claimant must prove that it has suffered loss or damage as a result of the Defendants actions under this head of claim.

39. Although paragraph 79 of the Re−amended Particulars of Claim refers to the Claimants having suffered damage represented by the financial cost of enhanced security required to be employed by the University as a result of the allegedly unlawful campaign, there is no evidence laid before me in the material supporting the present application to show that the protests at graduation ceremonies have occasioned any loss or damage to the University or that it is likely to do so. This seems to me to be fatal to the application as put forward on the alternative ground. For these reasons I decline to make an Order in relation to the graduation ceremonies. I will ask Counsel for the Claimant to draw up an Order in the form ordered by this judgment.