Neutral Citation Number: [2007] EWHC 948 (QB)

Case No: HQ07X01122

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/04/2007

Before :

MR. JUSTICE TEARE

- -

Between :

SMITHKLINE BEECHAM PLC **BEECHAM GROUP PLC** **THE WELLCOME FOUNDATION LIMITED** **GLAXO OPERATIONS UK LIMITED** **GLAXO GROUP LIMITED** **GLAXOSMITHKLINE RESEARCH & DEVELOPMENT LIMITED** **GLAXO PROPERTIES LIMITED** **SMITH KLINE & FRENCH LABORATORIES LIMITED** **DEALCYBER LIMITED** **GLAXO FINANCE BERMUDA LIMITED** **GLAXO WELLCOME UK LIMITED** **WILLIAM FREDERICK TRUNDLEY for and on behalf of the Protected Persons (as defined)**	**Claimants**
and	
GREG AVERY as representing all persons acting as members, participants or supporters or in the name of the unincorporated association known as Stop Huntingdon Cruelty ("SHAC") **ROBIN WEBB as representing all persons acting as members, participants or supporters or in the name of the unincorporated association known as the Animal Liberation Front ("ALF")**	**Defendants**

Paul Girolami QC (instructed by **GlaxoSmithKline Legal Department**) for the **Claimants**
Greg Avery in person and by his litigation friend **Dr.Max Gastone**

Hearing dates: 18 April 2007

Mr. Justice Teare:

1. The Claimants are customers of Huntingdon Life Sciences (HLS). They fear that unless restrained those who protest against the work done by HLS and their customers will harass their employees. On this application the Claimants seek an order continuing a restraining order granted by Beatson J. on 4 April 2007 without notice. The First Defendant represented himself with the assistance of Dr. Max Gastone. The Second Defendant did not appear and was not represented. However, he telephoned the Court and apologised for the fact that he was not able to attend Court. He said he was seeking legal advice.

2. The injunction which was sought and obtained without notice restrains the "protestors" (as defined) from harassing the protected persons (as defined). Particular examples of harassment are specifically restrained, one of which is "coming into or remaining in the Exclusion Zones" (as defined). However, the right to demonstrate at certain times and places is preserved. The exclusion zones cover 18 sites adjacent to premises of the Claimants. The aim of such provisions is to protect the right of legitimate protest whilst avoiding the risk of uncontrolled protest which might lead to harassment.

Threat of harassment

3. The first issue is whether the Claimants have made out a sufficient case to justify the grant of an injunction. Dr. Max Gastone and the First Defendant say that the Claimants have singularly failed to do so, relying upon historical evidence rather then contemporary evidence. In the light of this contention counsel for the Claimants drew my attention specifically to recent events.

4. The Defendants have in the past protested in a variety of ways against experimentation on live animals. These protests were directed at HLS who successfully took action to restrain harassment of their employees and families. The Claimants in this action are customers of HLS and so the protests of the Defendants have been directed at them.

5. The statement of the 12th Claimant, who is head of corporate security for the GlaxoSmithKline group of companies, details events from January 2006.

6. On 19 January 2006 the home of a senior member of staff employed by the Claimants was daubed with graffiti reading "Paedo scum drop HLS or go bang." Other slogans and the fact that this incident was reported in Bite Back magazine, a publication of the Animal Liberation Front (ALF), suggested that this incident was the work of the ALF. On 7 February 2006 it was reported that the ALF had sent letters to executives of the Claimants accusing them of being rapists. On 10 May 2006 the home of another senior employee of the Claimants was sprayed with graffiti. This was reported in Bite Back and so appears to have been an ALF incident.

7. On 16 June 2006 a series of demonstrations entitled "Meet the Murderers" was organised. The demonstrations took place at the Claimants' premises at Stevenage, Ware and Crawley. Photographs of the incident at Crawley suggest that these incidents were organised by Stop Huntingdon Animal Cruelty ("SHAC"). As a result of the incident at Ware Dr. Max Gastone was found guilty at Hertfordshire

Magistrates Court of breaching section 14 of the Public Order Act. That also suggests that SHAC was involved in these incidents. On 18 or 20 October SHAC organised demonstrations at the Claimant's premises in Essex and Hertfordshire. According to SHAC's own report of the incident air horns sirens and megaphones were used causing the employees to be "undoubtedly unnerved".

8. This type of incident has continued into 2007. On 26 February 2007 there was a demonstration at the Claimants' premises at Weybridge (attributed to SHAC by the schedule appended to the 12th Claimant's statement) during which demonstrators took photographs of cars entering and leaving the premises causing one employee to tape over her number plate before leaving the premises at speed. On 9 March 2007 there was a demonstration at the Claimant's premises in Brentford (which the same schedule attributes to SHAC) during which one female employee complained of a demonstrator rushing towards her car, placing his body against the car and then, with a megaphone, shouting "animal murderer" and other similar comments.

9. ALF have not been inactive this year. On 14 March 2007 the home of an employee of the Claimants was sprayed with graffiti. Words such as "scum", "animal murderer", "abuser" and "ALF" were sprayed on his house. The report in Bite Back described the employee as a "pervert" and "slimy filth". A similar attack on the home of another employee was carried out on 17 March 2007. On this occasion, in addition, paint stripper was sprayed onto two vehicles outside the employee's home and the tyres of the vehicles were slashed. On 26 March 2007 a public wall in Buckinghamshire was sprayed with the words "Glaxo killer in your village". Bite Back identified the Claimant's ex-employee against whom this attack was directed.

10. On 23 March 2007 there was another demonstration at Brentford attributed to SHAC. It lasted from 1302 until 1423. The demonstrators used megaphones to shout abuse at the 3000 employees of the Claimants using words such as "people killers", "animal murderers" and "scum". On 30 March demonstrators, again attributed to SHAC, used megaphones to shout abuse at employees leaving the Claimants' site at Stockley Park. Words such as "child killers" were used.

11. This catalogue of recent events is cogent evidence that there exists a serious threat of harassment to employees of the Claimants from SHAC and ALF. In so far as it is necessary for the Claimants to show that they are likely to establish at trial that "publication" of the beliefs of SHAC and ALF in such terms should not be allowed (see section 12 of the Human Rights Act, as explained by the House of Lords in Cream Holdings v Banerjee [2005] 1 AC 253) I consider that they have done so.

12. Both Dr. Max Gastone and the First Defendant submitted that the Claimants had not made good their case that there is a threat that SHAC will unlawfully harass the employees of the Claimants. This submission was not supported by challenging the detail of the evidence relied upon by the Claimants but by attributing all of the harassment to ALF, by saying that all of SHAC's protests are organised in conjunction with the police and by observing that there was no corroborative evidence from the police. In addition it was stressed that SHAC, which had been in existence since 1999, had learnt lessons and was careful to act lawfully. There was, it was said, clear blue water between SHAC and ALF.

13. The careful and moderate submissions of both Dr. Max Gastone and the First Defendant suggest that SHAC indeed recognises that there are limits to legitimate protest and the statement of Natasha Avery shows that there is considerable liaison with the police. However, it appears that not all of SHAC's supporters can be relied upon to act lawfully. Thus, although Natasha Avery advised the police that the demonstration on 9 March 2007 at Brentford would be "orderly, lawful and peaceful" at least one supporter of SHAC did not act in such a manner.

14. I can well understand the frustration of the First Defendant, Dr. Max Gastone and Natasha Avery that, despite their efforts to organise lawful and peaceful demonstrations in the name of SHAC, they face this application for an injunction. However, the evidence which has been put before the Court shows that they have not yet succeeded in convincing their supporters that their demonstrations should be lawful and peaceful.

15. I have also noted the submission of the First Defendant that SHAC have not demonstrated at over half of the Claimant's sites. However, there has been such a number of demonstrations at such a variety of sites that I consider the Claimants reasonably fear that unless restrained from harassing the Claimants' employees at all their sites SHAC (and ALF) will do so at one or more of their sites.

16. For these reasons I consider that the Claimants have adduced sufficient evidence to justify the continuation of the injunction against both ALF and SHAC.

The terms of the order

17. The dispute essentially concerned the opportunity for peaceful protests provided by the order.

18. It was suggested that before reaching a decision on this matter I should visit the sites in question. It was pointed out that Holland J., when dealing with the claim for a permanent injunction at trial in *Huntingdon Life Sciences Group PLC and others v Stop Huntingdon Animal Cruelty* [2007] EWHC 522 QB, visited the various sites in question. I was also told that he did so in another matter on an interlocutory application. However, I do not consider that on this interlocutory application, which involves no less than 18 sites, it would be appropriate for me to embark upon an extended of the tour of the country from the South Coast to the Lake District.

19. The method of using exclusion zones and permitting demonstrations within them at certain intervals of time has been used before in this type of application. There was no objection that it was appropriate in the present case (if, as I have held, the Claimants have made out a sufficient case for an injunction restraining harassment). The exclusion zones are defined by reference to plans for each of the 18 sites. Similarly, the demonstration zones are marked within the Exclusion Zones. Several points were taken as to the provisions for protest.

20. Firstly, it was said that there should be no time limits within which a demonstration might take place. The order provided for 10am until 4 pm. I was told that many of the Claimants' sites operated on a 24 hour basis and others operates with flexi time so that during this period some employees might be entering or leaving. In any event it

seems to me appropriate to limit the demonstration window to ease any necessary planning by the Claimants and possibly the police.

21. Secondly, it was said that megaphones should be permitted. Holland J had done so in *Huntingdon Life Sciences Group PLC and others v Stop Huntingdon Animal Cruelty* [2007] EWHC 522 QB. However, there is cogent evidence in the present case that megaphones have been used to harass employees. I consider it appropriate that megaphones should not be used.

22. Thirdly, it was said that demonstrations should be permitted at lesser intervals than 28 days at each site. Every 7 days was suggested. Account has to be taken of there being 18 sites. If there were a demonstration at each site every 28 days there would be 216 demonstrations a year. This seems to me more than adequate.

23. Fourthly, it was said that, as in *Huntingdon Life Sciences Group PLC and others v Stop Huntingdon Animal Cruelty* [2007] EWHC 522 QB, there should be provision for a procession or assembly not more than once every three months. There was no evidence as to why there was a requirement for such a procession in addition to the demonstrations at each site at intervals of not less than 28 days. I therefore do not consider that provision needs to be made for such a procession.

24. Fifthly, it was said that the demonstration areas should be on the pavement immediately outside the entrance to the Claimants' premises. The plans in relation to each of the 18 sites indicated that the demonstration sites were in several areas, for example, on the same side of the road as the entrance, opposite the entrance or adjacent to the entrance. In all cases the demonstration areas appeared close to the Claimant's premises. I was not persuaded that the places marked on the plans were inappropriate or unreasonable.

25. It therefore seems to me that no modifications are required to the draft order placed before me concerning the provisions for peaceful demonstrations.

CPR 19.6(4)(b)

26. The final point with which I must deal concerns paragraph 19 of the draft order:

> "The Claimants be permitted to enforce this order against the Protestors pursuant to CPR 19.6(4)(b)."

27. Counsel required this in order that the police might be able to exercise their powers of arrest where a protestor broke the terms of the injunction and so, it was said, committed an offence contrary to section 3(6) of the Protection from Harassment Act 1997. Whether CPR 19.6(4)(b) can properly be used in this way raises a question which also arose before me in a case which I heard immediately before this case and which arose before Holland J. in *Huntingdon Life Sciences Group PLC and others v Stop Huntingdon Animal Cruelty* [2007] EWHC 522 QB. Holland J. did not allow the rule to be used in this way and I was urged by Dr.Max Gastone to follow that decision.

28. CPR 19.6(4) provides:

"Unless the Court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule-

(a) is binding on all persons represented in the claim; but

(b) may only be enforced by or against a person who is not party to the claim with the permission of the court."

29. Section 3(3) and (6) of the Protection from Harassment Act 1997 provides:

"(3) Where-

(a) in such proceedings the High Court or a county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and

(b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,

the plaintiff may apply for the issue of a warrant for the arrest of the defendant.

……

(6) Where-

(a) the High Court or a county court grants an injunction for the purpose mentioned in subsection (3)(a) and

(b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,

he is guilty of an offence"

30. Injunctions made under the Act may thus be enforced, not only by the usual civil remedies of contempt but also by the criminal law.

31. Representative parties are creatures of CPR 19.6. Sub-rule (4) expressly deals with the question whether an order is binding upon a person "represented in the claim" and whether an order may be enforced against a person "who is not a party to the claim." This rule has, as I have indicated, recently been considered by Holland J. in *Huntingdon Life Sciences Group PLC and others v Stop Huntingdon Animal Cruelty* [2007] EWHC 522 QB when an enforcement provision similar to the one made without notice in the present case was sought but not pursued after Holland J. raised a question as to the propriety of the provision. Holland J. was asked to record his reasoning. He said as follows:

"42. Turning to the proposed Final Order it serves expressly to restrain conduct which amounts to harassment within the meaning of the Act. The issue that does arise is as to who is or could be a Defendant for the purpose of enforcement,

> whether civilly or criminally, given reliance upon representation as provided for by CPR 19.6. The answer lies in CPR 19.6(4):
>
> "Unless the Court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule –
>
> (a) is binding on all persons represented in the claim; but
>
> (b) may only be enforced … against a person who is not a party to the claim with the permission of the Court."
>
> 43. In the result, first, this Final Order will be binding upon "protestors", that is upon those within the wider ambit of Dr. Gastone's representation. That said, second, it is not enforceable, certainly civilly, against any individual without the express permission of the Court. This reflects a safeguard introduced into CPR 19.6 to counter risks implicit in having a wide and ill defined catchment area in terms of affected persons. The discretion is specifically drawn in this context between 'binding' and 'enforcing': HLS have the benefit of a binding Order but if they wish to enforce it against any individual then they must seek ad hoc permission from the Court, presumably based upon proof of such factual circumstances as to would serve to justify enforcement as for a contempt. By purporting to accord CPR 19.6(4)(b) permission in advance the Court would in effect be circumventing the CPR 19.6 concerns by predicting circumstances serving to justify enforcement when such must as to any individual case be a matter for speculation as at the making of the Order."

32. I respectfully agree with the approach of Holland J. CPR 19.6 expressly addresses the question as to when an order may be enforced against a person who is not a party to a claim. The answer is that an order may be enforced against such a person "with the permission of the Court." In the case of orders made under the Protection from Harassment Act 1997 the order may be enforced either civilly or criminally. But there is no reason why the need for the permission of the Court should not be required equally whether the claimant wishes to enforce an order by civil means or wishes to have it enforced criminally.

33. Until permission to enforce against a person represented in the claim is granted I do not consider that a person represented in the claim can properly be regarded as a party to the claim. An illustration of the use of CPR 19.6 and its predecessors is to enable proceedings to be brought against unincorporated associations. An unincorporated association has no legal personality and so cannot be a party to a claim. It can therefore only be sued so long as there is a person who can represent the association as a defendant; see *Oxford University v Webb* [2006] EWHC 2490 per Irwin J., paras.42-62.

34. Once the claimant identifies a natural person who is a member of the unincorporated association or is otherwise within the class of persons represented by a named defendant and obtains permission from the Court to enforce the order of the court against that person the latter is in my judgment party to the claim. The order is binding upon him and the Court, having addressed his individual circumstances and afforded him an opportunity to make representations, has ordered that the injunction

may be enforced against him. Until the claimant sought permission to enforce the injunction against him (or her) the latter was not before the Court.

35. In the present case the Claimants seek permission to enforce the injunctions granted by this court in advance and without identifying the natural persons against whom, in addition to the named defendants, the order may be enforced. If this were a legitimate use of CPR 19.6(4)(b) it would mean that the court would have no opportunity to consider whether the circumstances of any particular individual (not being a named defendant) justified enforcing the court's against him before it was enforced against him. CPR 19.6(4)(b) ensures that such an individual will have an opportunity to make submissions as to whether the court's order should be enforced against him before it is so enforced. The Claimants' approach would deny him that opportunity.

36. I have therefore decided not to accede to the Claimants' request and to delete paragraph 19 from the order.

37. I recognise that the Claimants desire to achieve certainty so that the police know whom they may arrest upon the grounds that there has been a breach of the injunction; see section 3(6) of the Act. However, for the reasons I have given, I do not consider that that concern can be met by declaring that the injunction may be enforced pursuant to CPR 19.6 against unnamed persons without their individual circumstances being addressed by the Court. (It is to be noted that the problem does not arise where a person pursues a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment of the other. That is an offence independently of the injunction; see section 2 of the Act. The problem only arises in the context of activities lawful in themselves but which are restrained by injunction.)

38. There may be other ways in which the Claimants' concerns (which I suspect are shared by the police) can be met. The injunction is certainly binding on those who fall within the class of person represented by the First Defendant. It may be that that enables such persons to be regarded as "defendants" for the purposes of the Act (applying a broad and purposive construction of the Act) and that an arrest may be regarded not as part of the process of enforcement (prosecution and conviction) but as a preparation for that process. But is not appropriate for me to determine whether or not the Claimants' concerns can be met in this way assuming a hypothetical case and without hearing submissions from the prosecuting authority and the defendant in that prosecution.

39. I will therefore continue the injunctions granted in the form of the draft order placed before me but with paragraph 19 deleted. The witness statements of the First Defendant and Natasha Avery should be added to Schedule A.