Claim No. BL-2022-001396

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

In the matter of an Injunction sought pursuant to CPR 25

B E T W E E N :

(1) ARLA FOODS LIMITED

(2) ARLA FOODS HATFIELD LIMITED

Claimants

-and-

(1) PERSONS UNKNOWN WHO ARE, WITHOUT THE CONSENT OF THE CLAIMANTS, ENTERING OR REMAINING ON LAND AND IN BUILDINGS ON ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM ("the Sites"), THOSE BEING:

a. "THE AYLESBURY SITE" MEANING ARLA FOODS LIMITED'S SITE AT AYLESBURY DAIRY, SAMIAN WAY, ASTON CLINTON, AYLESBURY HP22 5EZ, AS MARKED IN RED ON THE PLANS AT ANNEXE 1 TO THE CLAIM FORM;

b. "THE OAKTHORPE SITE" MEANING ARLA FOODS LIMITED'S SITE AT OAKTHORPE DAIRY, CHEQUERS WAY, PALMERS GREEN, LONDON N13 6BU, AS MARKED IN RED ON THE PLANS AT ANNEXE 2 TO THE CLAIM FORM;

c. "THE HATFIELD SITE" MEANING ARLA FOODS HATFIELD LIMITED'S SITE AT HATFIELD DISTRIBUTION WAREHOUSE, 4000 MOSQUITO WAY, HATFIELD BUSINESS PARK, HATFIELD, HERTFORDSHIRE AL10 9US, AS MARKED IN RED ON THE PLANS AT ANNEXE 3 TO THE CLAIM FORM; AND

d. "THE STOURTON SITE" MEANING ARLA FOODS LIMITED'S DAIRY AT PONTEFRACT ROAD, LEEDS LS10 1AX AND NATIONAL DISTRIBUTION CENTRE AT LEODIS WAY, LEEDS LS10 1NN AS MARKED IN RED ON THE PLANS AT ANNEXE 4 TO THE CLAIM FORM

(2) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING FROM THE HIGHWAY THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(3) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING THE HIGHWAY FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(4) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING CAUSING THE BLOCKING, SLOWING DOWN, OBSTRUCTING, OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF, OR ALONG THE ROADS LISTED AT ANNEXE 1A, 2A, 3A, AND 4A TO THE CLAIM FORM

(5) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO ANY VEHICLE WHICH IS ACCESSING OR EXITING THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(6) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO, ANY VEHICLE WHICH IS TRAVELLING TO OR FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM)

(7) 34 OTHER NAMED DEFENDANTS LISTED AT SCHEDULE 1 OF THE INJUNCTION ORDER

Defendants

CLAIMANTS' NOTE ON THE ADJOURNMENT APPLICATION

Introduction

1. The Claimants, on 12 January 2023, made an Application seeking to adjourn the final hearing of this Claim that was listed for 8 February 2023 (the **'adjournment Application'**), pending the outcome of the appeal to the Supreme Court in *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* (UKSC 2022/0046) (**'*Wolverhampton*'**), which appeal is also listed to be heard on an expedited basis on 8 and 9 February 2023.

2. The Claimants seek to adjourn the final hearing of this Claim on the basis that:

    i. The appeal in *Wolverhampton* (formerly known as *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors*), if determined in favour of the Appellants, will be determinative of the claim against Persons Unknown in these proceedings;

ii. Counsel for the Claimants are representing eight of the Respondent local authorities in the *Wolverhampton* appeal, such that there is now a diary clash. The Supreme Court was not willing to fix the appeal according to Counsel's availability, and advised that the appeal should take precedence over this final hearing.

3. The Claimants understand that the adjournment Application was placed before Fancourt J (who has dealt with this Claim since the return date hearing on 4 October 2022). The following email was sent by the Judge's Clerk and received by the Claimants on 17 January 2023:

> *I am not willing to adjourn the hearing on a without notice basis on paper, as the hearing is also the return date for the interim injunction, and interim relief was only granted up to the identified return date. In any event, I am not sure that the fact of an appeal to the Supreme Court is a good reason to decline to hear the summary judgment application, given the decision of the CA. If the respondents have a representative now and they agree an adjournment on terms, continuing the interim relief, then that would be different.*

4. The Claimants respectfully ask that this short note is to be considered as the response invited by the Judge's Clerk.

Without notice

5. The adjournment Application has been made **on notice** to the Defendants; the Claimants apologise if it was not clear from the Application itself. The Claimants file with these submissions a certificate of service confirming the service of the Application.

6. In particular:

i. On 13 January, the sealed Application was posted to 28 of the named Defendants for whom an address is known;

ii. On 13 January, the sealed Application was emailed to the 22nd Defendant (Vaclav Opatril), that being the preferred method of communication of which he has previously notified the Claimants' solicitors;

iii. On 16 January, the sealed Application was posted to the 24th Defendant (Marina Ballestra Candel). Counsel is instructed that this package was posted at a later date than the others as it was posted to a Spanish address, and Royal Mail had been the subject of a cyber-attack/hack that impacted international mail;

iv. On 13 January, the sealed Application was placed on the same weblink on which all other documents served in accordance with the various alternative service orders in these proceedings are placed (see: https://www.walkermorris.co.uk/arla-injunction); and

v. On 13 January, the sealed Application was sent to the 12 email addresses at which all other documents served in accordance with the various alternative service orders in these proceedings are to be sent.

7. At the date of these submissions, no Respondent has engaged on the adjournment Application.

Adjournment pending the decision in *Wolverhampton*

8. The Claimants primary position when making the adjournment Application was, and remains, that the final hearing of the Claim ought to be adjourned pending the decision in the *Wolverhampton* appeal. If the Supreme Court decide the appeal in the Appellants' favour, the Court in these proceedings will not be able to grant the Claimants the final injunctive relief sought against the six categories of Persons Unknown.

9. The Claimants are mindful that the Defendants are unrepresented, and that there are six categories of Persons Unknown Defendants to the Claim, such that it was appropriate for the Claimants to make this Application and bring the expedited appeal in *Wolverhampton* to the Court's attention.

10. The Claimants of course accept that general rule is that the doctrine of precedent dictates that a first instance judge is bound to apply the law as laid down in a decision of the Court of Appeal. In the present case, that would require this Court to apply the law as stated in *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] EWCA Civ 13; [2022] 2 WLR 946 (**'*Barking and Dagenham*'**).

11. That said, in ***Re Yates' Settlement Trusts*** **[1954] 1 WLR 564** at 567, Evershed MR said:

> *It may well be that if an important case is known to be subject to appeal to the House of Lords, or to appeal from a judge of first instance to the Court of Appeal, a judge may reasonably and properly think that it is in the public interest not to decide another similar case until the result of the case under appeal had become known: whether he should so decide depends very much on all the circumstances of the particular cases; and if the judges of the Chancery Division have reached the conclusion that it would be in the public interest, generally speaking, to postpone considering applications of this kind until the decision in* [the relevant appeal] *is known, then I should feel that it was, prima facie at any rate, a matter for the Chancery judges to decide.*

12. As to the circumstances of a case that are relevant when considering the question of adjournment, the case law makes clear that the Court will have regard to:

    i. Prejudice to the parties. In ***Re Yates' Settlement Trusts,*** it was held that there would be injustice if the case were adjourned, perhaps for some months. In that case, the Court's approval for a scheme of family arrangement was required whilst the settlor was living, and there was a significant risk that the settlor would die prior to the Court's approval of the arrangement should the hearing be adjourned. Accordingly, the Court declined to adjourn the proceedings, and held that the matter should be determined according to the Court of Appeal authority as it then stood, notwithstanding an outstanding appeal to the House of Lords (see also ***Lancaster v Peacock*** **[2022] EWHC 2662 (Ch)**, a decision of Fancourt J, which especially considers the prejudicial effect of delay, and costs incurred by reason of adjourning or otherwise);

ii. How determinative the pending appellate decision is likely to be on the matters in issue (see for example ***Lancaster v Peacock*** and ***Arora Management Services Ltd v Hillingdon LBC*** **[2020] EWHC 79 (Ch)** at [21] per Stuart Isaacs QC (sitting as a Deputy Judge of the High Court));

iii. Whether the hearing sought to be adjourned is the hearing of a summary judgment and/or strike out application before a trial. Where it is a summary judgment application, the Judge can take into account the possibility that the Court of Appeal's decision may be reversed on appeal, and may decline to deal with the matter summarily as a result (***Daimler AG v Walleniusrederierna Aktiebolag*** **[2020] 4 CMLR 15** at [104]-[104] per Bryan J);

iv. The imminence of the appellate decision and likelihood of its receipt before trial (a factor in both ***Arora Management Services Ltd v Hillingdon LBC*** *and* ***Daimler AG v Walleniusrederierna Aktiebolag*****)**.

13. Further, in light of the statement of Evershed MR extracted above, the Claimants submit that it is also a material consideration that the judges of the King's Bench Division take the view that adjournment and/or a stay of proceedings is appropriate where the *Wolverhampton* appeal may be determinative of a Persons Unknown claim (see paragraphs 14 and 15 of the sixth witness statement of Nicholas McQueen, and the Orders in the *Rochdale* and *Nuneaton* proceedings referred to therein). Indeed, as is clear from the *Rochdale* Order, and as Counsel here confirms, the adjournment of the *Rochdale* proceedings occurred on the motion of the Court, not the parties to the proceedings.

14. In light of the foregoing, the Claimants submit:

i. The appeal in *Wolverhampton* may be determinative of the Claim against Persons Unknown in these present proceedings. If the Supreme Court allow the appeal as the Appellants invite it to, the Court in this Claim will not be able to grant to the Claimants the relief sought against the six categories of Persons Unknown, as the Court will simply not have the jurisdiction to do so. The importance of this issue in relation to protestor injunctions has been acknowledged by the Supreme Court, which has allowed both the Secretary of State for Transport and High Speed Two

(HS2) Limited to intervene in the appeal (as indeed they did in the Court of Appeal). Further, the point on appeal to the Supreme Court is solely a matter of principle, and the factual background of the proceedings that constitute the *Wolverhampton* appeal have little, if any, relevance to the appeal. If the Supreme Court should dismiss the appeal, the law will remain as that stated in ***Barking and Dagenham***, and the Court in this Claim can then proceed to hear the Claim on the basis that it does have jurisdiction to grant the relief sought by the Claimants;

ii. The Claimants are mindful that the Defendants are unrepresented and accordingly draw the Court's attention to the prejudice that may be suffered by the six categories of Persons Unknown should the final relief sought by the Claimants be granted, with the Supreme Court finding shortly thereafter that the Court does not have jurisdiction to grant such relief. To mitigate the possible prejudice that may be caused to the Defendants, adjournment of the final hearing pending the decision in the *Wolverhampton* appeal would appear appropriate; relatedly

iii. The Claimants suffer no prejudice from the adjournment. The Claimants would continue to benefit from the protection of the interim injunctive relief, which would continue to hold the ring util final hearing;

iv. Whilst the Claimants did not consider the hearing listed for 8 February 2023 to be the hearing of a summary judgment application, and instead understood the hearing to be the final hearing of an undefended Part 8 Claim, the Claimants do acknowledge that the matter was being dealt with summarily in the sense that it was being held swiftly and without protracted trial directions. Accordingly, the Claimant's submit that the considerations in ***Daimler AG v Walleniusrederierna Aktiebolag*** are engaged, and the court should be cautious before dealing summarily with a matter when there is an outstanding point of principle on appeal that may be determinative of the proceedings;

v. In light of the clear position being taken by the King's Bench Division, it would be desirable for the Chancery Division to follow suit and adjourn these proceedings, rather than create a divergence of approach to cases that raise the same points of principle; and

vi. It is impossible that the decision of the Supreme Court will be available to the parties and Court in these proceedings prior to the hearing on 8 February 2023. In circumstances where the decision of the Supreme Court simply cannot be known, and there will not be the opportunity to take stock of the same, these proceedings should be adjourned.

15. Accordingly, the Claimants continue to submit that the only right and proper way to proceed in these proceedings is to adjourn the final hearing of the Claim listed for 8 February 2023, pending the outcome of the appeal in *Wolverhampton.*

Counsel availability

16. As raised at paragraph 13 of the sixth witness statement of Nicholas McQueen that supports the adjournment Application, the Claimants are represented by Counsel who represent eight of the Respondents in the *Wolverhampton* appeal. As the *Wolverhampton* appeal has been listed for 8 and 9 February 2023, the Claimants are now experiencing an issue with Counsel availability. Counsel raised with the Supreme Court this diary clash, and the Supreme Court Registry stated that it would not fix the appeal according to Counsel availability and that the appeal should take precedence in Counsel's diary.

17. Therefore, it is respectfully asked that, if the final hearing of this Claim is not to be adjourned pending the outcome of the *Wolverhampton* appeal, as sought in the adjournment Application, the final hearing should at least be moved to the first available date after 9 February 2023 to allow Counsel to attend both the *Wolverhampton* appeal and this final hearing.

18. It is submitted that moving the final hearing as suggested would be in accordance with, and would further, the overriding objective. In particular:

i. The Claimants would be prejudiced by the final hearing being heard on 8 February 2023. The Claimants would be forced to instruct alternative Counsel who have not been involved in the Claim to date, which would cause additional expense to the

Claimants (as Counsel will need time to read into the matter before preparing for the final hearing);

ii. A short delay of just a few days to the final hearing would not cause the Defendants prejudice, especially in circumstances where no Defendant has ever participated in the Claim, or sought to defend the Claim;

iii. Whilst it is regrettable to move the final hearing, it is hoped that the vacation and re-listing of a one-day hearing could be accommodated in both the Court and Counsel's diary. The final hearing is not scheduled for a window or to last multiple days, such that re-listing should hopefully not cause excessive logistical and practical difficulties.

Conclusion

19. The Claimants respectfully submit:

i. The adjournment Application should be granted on the papers, and the Order accompanying the Application made;

ii. If the Court considers an oral hearing of the adjournment Application to be appropriate, the Claimants respectfully ask for the same to take place by way of MS Teams in the week commencing 23 January 2023;

iii. If the Court is not minded to grant the adjournment Application at all, the Claimants respectfully ask that the final hearing is re-listed for the first available date after 9 February 2023 to enable Counsel to attend both the *Wolverhampton* appeal and this final hearing.

CAROLINE BOLTON
NATALIE PRATT
RADCLIFFE CHAMBERS
19 January 2023