

NEUTRAL CITATION NUMBER:[2007] EWHC 2846 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 9 November 2007

BEFORE:

HIS HONOUR JUDGE SEYMOUR

BETWEEN:

FRANK MORGAN and CATHERINE BAKER

Claimant/Respondent

- and -

HINTON ORGANICS (WESSEX) LIMITED

Defendant/Appellant

MR J HYAM (instructed by Richard Buxton Environmental and Public Law) appeared on behalf of the Claimant

MR R WALD (instructed by Osborne Clarke) appeared on behalf of the Defendant

Judgment

(As Approved by the Court)

Crown Copyright©

Digital Transcript of Wordwave International, a Merrill Communications Company
PO Box 1336 Kingston-Upon-Thames Surrey KT1 1QT
Tel No: 020 8974 7300 Fax No: 020 8974 7301
(Official Shorthand Writers to the Court)

1. JUDGE SEYMOUR: The defendant in this connection is the operator of a recycling and composting facility at Queen Charlton Quarry, Charlton Field Lane near Keynsham, Bristol. The first claimant is the joint owner and occupier of a property known as Rosewood Lodge, Woollard Lane, Publow, Bristol. The second claimant is the owner and occupier of the Cleracres Cattery, Woollard Lane, Publow.
2. The properties occupied by the first and second claimants are within a matter of a few hundred metres of the premises occupied by the defendant. In this action the claimants seek relief against the defendant in respect of nuisance. The particular nuisance with which I am concerned is nuisance caused by odours emanating from the processes undertaken by the defendant.
3. The application before me is for an order that the defendant be prohibited from causing odour or other nuisances to emanate from its premises as a result of its waste operations at the site. The application is for an interim injunction.
4. The draft order which was attached to the application notice was framed in terms which rather focused upon the obligations of the defendant pursuant to a licence to operate granted by the Environment Agency. One of the requirements of the licence was set out at paragraph 5.2.2:

“All emissions to air from the specified waste management operations on the site shall be free from odours at levels as are likely to cause pollution of the environment or harm to human health or serious detriment to the amenity of the locality outside the site boundary, as perceived by an authorised officer of the Agency.”

5. As matters have unfolded before me Mr Jeremy Hyam, who appears on behalf of the claimant, has pursued an application for an injunction substantially in the terms of paragraph 5.2.2 of the licence but making it specific to the properties owned and occupied by the claimants, and also seeking to include as a possible monitor of the activities of the defendant, and the odours caused by those activities, an authorised officer of Bath and North East Somerset District Council.
6. It was suggested by Mr Angus Cunningham, the managing director of the defendant, in his third witness statement, dated 7 November of this year, in paragraph 11:

“If the court were to allow the Claimants’ application for an interim injunction, this would lead to at least temporary and possibly permanent closure of HO’s [that is a reference to the defendant] site. If HO’s site were to be closed, even for a matter of weeks, I believe HO would be out of business as the suppliers of the green waste to HO’s site (which include Bath & North East Somerset Council, Viridor and SITA) would be forced to enter in to new arrangements with other waste recycling / composting companies in the West Country as they could not just allow their waste to accumulate whilst we took whatever action were necessary to ensure the site could re-open. The waste comes from civic amenity sites and from collections at residential properties

and is therefore created on a continuous basis. Therefore, even if we were successful in overturning the injunction in due course, I do not believe that a payment of damages by the claimants would be an adequate remedy for HO as by that time all of HO's relationships would have deteriorated to the point where HO had no viable business."

7. Now, Mr Cunningham, in his first and third witness statements, disputes the contention of the claimants that odours are generated by the activities of the defendant which interfere with the enjoyment by the claimants of their respective properties. It is plain, in my judgment, that there are serious issues to be tried as to whether offensive odours affecting the enjoyment of the claimant's properties are generated by the defendant or not. Whether the claim is made good will be determined at the trial, which it is anticipated will take place in the early part of next year.
8. It is, I think, obvious from the nature of the complaints of the claimants that damages would not be an adequate remedy in the event that they continued to be subjected to offensive odours, as they contend, from the defendant's activities. The issue really then is a question of what is the balance of convenience as between the parties if I grant the injunction sought by Mr Hyam or decline to do so. It was accepted on behalf of the defendant, by Mr Richard Wald, that if the injunction were tailored along the lines that Mr Hyam suggested during his submissions to me, that would not have the effect which Mr Cunningham feared and described in paragraph 11 of his third witness statement.
9. However, Mr Wald submitted that if an injunction in the terms that Mr Hyam was seeking were made it would achieve nothing worthwhile because the Environment Agency already has abundant powers to enforce the compliance by the defendant with the conditions which are contained in the licence. Mr Wald also relied, in opposition to the grant of the injunction, upon the facts that the history of alleged offensive odours goes back certainly to 2004 and it is only now in November 2007 that an interim injunction is being sought. He also relied upon the fact that it is anticipated, as I have said, that the full trial of the action will take place in a matter of months, in the early part of 2008.
10. I take all of these matters into account. However I am persuaded that the balance of convenience favours the claimants in relation to the form of order which Mr Hyam has sought before me this morning.
11. The evidence on behalf of the defendant does not indicate that the defendant would be inconvenienced or inhibited in any way by the making of the order which Mr Hyam seeks. That is because, in effect, it is a site specific variation of the Environment Agency's existing conditions.
12. While Mr Hyam accepted that it was appropriate that there should be some independent assessment of whether there had been any breach (if there is said to be a breach) following the making of the order, Mr Hyam recognised that the court has no power and the claimants have no power to require either the Environment Agency or Bath and North East Somerset District Council to make available authorised officers

for the purpose of making the assessments which the injunction that Mr Hyam seeks postulates.

13. That is a factor which I have taken into account. I have also taken into account the submission of Mr Wald as to the existing powers of the Environment Agency. However, it seems to me that making an injunction in the terms sought by Mr Hyam would have these benefits: (1) it would focus attention on the particular properties of the claimants; (2) it would add to the panoply of remedies available in the event of breach of the formidable powers of the court in relation to contempt of court. While it is to be hoped that the issue will not arise hereafter before the trial, of whether there has been any breach of the injunctions of which I am going to grant, nonetheless it does seem to me that is an appropriate step to take and potentially of value to the claimants to grant the injunctions sought. So that is what I am going to do.
14. The usual order on the hearing of an application for an interim injunction is that the costs of the hearing should be reserved to the trial and it seems to me that it is appropriate in the circumstances of this case to make the usual order.
15. In making that order I do not intend to preclude a full argument as to costs of this application before the trial judge. It does seem to me that the injunction which the claimants have sought before me is a considerable refinement of the terms of the draft order and that is a proper matter to be brought to the attention of the trial judge when the issue of costs is argued before him. It is also right to say that although Mr Wald in his submissions on costs has indicated that the order which I have made would not have been opposed, in fact that was not the course which Mr Wald adopted during the argument about whether the injunction should be granted or not.
16. Mr Wald argued that it was unnecessary or inappropriate because it was adding nothing to the existing Environment Agency licence. Again, it seems to me that it would be appropriate for that aspect of the matter to be brought to the attention of the judge dealing with the reserved costs following the trial.