

Litigating against Persons Unknown

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18 November 2021



Overview

- When might you litigate against 'Persons Unknown'?
- The limits of litigation against Persons Unknown
- Practical tips for litigating against Persons Unknown

When might you litigate against persons unknown?

- Possession proceedings (Part 55)
- Injunction proceedings. Topical examples:
 - protestor injunctions
 - 'traveller' injunctions (Town and Country Planning Act 1990, s187B)
 - Protecting confidential information

The limits of litigating against PU

Cameron v Liverpool Victoria Insurance Co Ltd [2019] UKSC 6 (Lord Sumption)

There are two kinds of case in which a defendant cannot be named:

- (i) Anonymous defendants who are identifiable but whose names are unknown (eg. squatters) ('category 1' defendants);
- (i) Anonymous defendants who cannot even be identified (eg. a hit and run driver) ('category 2' defendants).

A category 1 defendant can be located and communicated with, and it is possible to know whether a particular person is the person referred to in the Claim Form

The limits of litigating against PU

Cameron v Liverpool Victoria Insurance Co Ltd [2019] UKSC 6 (Lord Sumption)

[17] *...It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings that will enable him to be heard.*

Conclusion: only those defendants that fall within category 1 may be defendants to a claim. Only the first category can be served with the Claim Form, if necessary with the assistance of an alternative service order made pursuant to CPR 6.15

The limits of litigating against PU

Canada Goose UK Retail Ltd v Persons Unknown & Ors [2020] EWCA Civ 303 at [89]

A final injunction cannot be granted in a protestor case against 'persons unknown' who are not parties at the date of the final order, that is to say Newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the 'persons unknown' and who have not been served with the claim form.

The limits of litigating against PU

Canada Goose UK Retail Ltd v Persons Unknown & Ors [2020] EWCA Civ 303 at [89]

There are some very limited circumstances, such as in Venables v News Group Newspapers Ltd [2001] Fam 430 , in which a final injunction may be granted against the whole world. Protester actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: Attorney-General v Times Newspapers Ltd [1992] 1 AC 191 , 224. That is consistent with the fundamental principle in Cameron (at [17]) that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard.

Summary: Persons Unknown

- Only category 1 defendants may be defendants to proceedings;
- Interim orders may be granted against persons unknown, giving the Claimant time between interim and final order to identify defendants;
- Final orders may be granted against only identified defendants (whether identified by name or other identifying information, such as by photograph) who have been served with the claim form.

Practical tips: commencing proceedings

See: ***Canada Goose*** [2020] EWCA Civ 303 at [82]; ***LB Barking & Dagenham*** [2021] EWHC 1201 (QB) at [248] (Nicklin J); ***MBR Acres Limited*** [2021] EWHC 2996 (QB) at [78] (Nicklin J):

- If you have identified a defendant at the time the proceedings are commenced, they should be joined as an individual defendant to the proceedings
- If you are including a category or categories of Persons Unknown:
 - Describe the category with sufficient certainty to enable identification of those who are defendants to the claim and those who are not, and describe by reference to the conduct alleged to be unlawful;

Practical tips: commencing proceedings

- The Persons Unknown against whom relief is sought must be people who have not yet been identified but which are capable of identification, and who can be served with the Claim Form (if necessary, by way of alternative service)
- Alternative service orders – must be a method which can reasonably be expected to bring the proceedings to the attention of *all* persons who fall within the definition of Persons Unknown
- With vs. without notice (interim injunctions)
- Part 7 vs. Part 8

Practical tips: the interim hearing

- Expect the need to explain why an order against Persons Unknown is required, and what steps have been taken to name defendants
- As to any order granted:
 - The prohibited act must correspond to the threatened tort - may include lawful acts to the extent necessary to protect the Claimant's rights;
 - The terms must be sufficiently clear and precise so as to enable persons potentially affected to know what they must not do. Prohibited acts must not be defined in terms of a legal cause of action, but reference to subjective intention may be made if necessary to correspond to the threatened tort;
 - The order must have clear geographical and temporal limits.

Practical tips: the interim hearing

- The Claimant will be required to give an undertaking to endeavour to identify Persons Unknown (whether by name or other identifying information, such as by photograph) and serve them personally with the Claim Form
- The Court will actively case manage your claim and list a further hearing (usually within 1 month) to consider the efforts made to identify Persons Unknown

Practical tips: continued case management

- You will need to provide evidence of the efforts to identify Persons Unknown;
- Expect directions requiring the Claimant to, within a defined period:
 - 'complete' the identification process and apply to discontinue and discharge against Persons Unknown;
 - Apply for default or summary judgment, or a date to be fixed for the final hearing of the claim.

Headline points

- Persons Unknown orders are only available at interim stage
- Final orders are available against only identified defendants (whether identified by name or other identifying information), and a final order will not bind 'newcomers'
- Start the process of identifying your defendants early, and expect active case management by the Court
- Once an interim order is obtained, the Court will case manage the proceedings to final hearing as expeditiously as possible

Cases to watch

- *LB Barking & Dagenham & Ors v Persons Unknown & Ors* [2021] EWHC 1201 (QB) – appeal to be heard on 30 November to 2 December 2021
- *MBR Acres Limited v Persons Unknown & Ors* [2021] EWHC 2996 (QB) – Persons Unknown interim injunction being actively case managed to final hearing

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