

BETWEEN

████████████████████

Claimant

and

(1) BOROUGH GREEN PARISH COUNCIL
(2) FRANCIS MICHAEL TAYLOR

Defendants

DEFENCE

1. In this Defence:
 - a. certain definitions used in the Particulars of Claim are adopted below without admission of any matters set out therein;
 - b. all paragraph references herein are to the Particulars of Claim, unless indicated otherwise.

Context of the Works

2. Paragraph 1 is admitted. The ownership of the land has only been known to the Defendants since the dispute the subject of these proceedings. The Defendants are similarly now aware that Claimant is resident in London but has owned the land since 2014. To the best of the Defendants' knowledge the land has been intermittently subject to equine grazing licences. The land abuts the A25 between which is a footpath ("the Footpath"), which the Defendants understand forms part of the publicly maintainable highway.
3. At all material times:
 - a. since around May 2011 the Second Defendant has been Chairman of the First Defendant, a member since June 2000, and has acted as its authorised agent in relation to the matters the subject of these proceedings;

- b. the First Defendant has been expressly appointed agent of Kent County Council Highways Authority (“KCC”) to act on its behalf in such matters as hedge and grass cutting, roadside fencing and repair, PROW clearance, gateway installation and maintenance in liaison with its Local Highway Manager, and specifically maintenance of vegetation.
4. Until around July 2020 there was, situated largely upon the edge of the Claimants’ land, and marked on the attached plan (at Annexure A) between points A and B, a significant amount of unkempt vegetation (“the Vegetation”) along the Footpath. The Vegetation consisted of dead hawthorn, adventitious damsons, brambles, nettles, ragwort and other weeds, together with a significant amount of accumulated rubbish.
5. For at least a decade prior to the events the subject of these proceedings, the Vegetation had not been adequately maintained by the Claimant, with the result that it substantially overhung the Footpath, posing a threat to pedestrian safety, and obscuring a 30mph speed limit sign, leading to speeding problems. After such a period of neglect, years of decomposed matter had caused the spread of soil from the land beneath the Vegetation across the Footpath. This had resulted in the usable width of the Footpath diminishing by a third in places, forcing pedestrians closer to the road, along which vehicles frequently travel in excess of 60mph. The Footpath is regularly used by schoolchildren travelling to school. The First Defendant has received a number of complaints over the years in relation to its state.
6. In the circumstances the Vegetation amounted to a public nuisance and obstruction of the highway.
7. On a number of occasions, dating back to at least 2010, KCC has served notice on the Claimant requiring her to cut back the Vegetation pursuant to, *inter alia*, s 154 Highways Act 1980, on the basis that it constituted a danger to pedestrians and traffic alike. To the best of the Defendants’ knowledge:
 - a. the Claimant has never complied with such notices;

- b. the only maintenance that has ever been undertaken to the Vegetation has been undertaken by the First Defendant acting on its own behalf or on behalf of KCC, or by KCC itself (the last occasion prior to July 2020 was in 2017).
8. Prior to the events the subject of these proceedings First Defendant attempted to establish who owned the land for the purposes of serving notices demanding the abatement of the aforesaid nuisance, but was unable to do so. The First Defendant also wished to discuss the installation of traditional white picket gates (“the Gateways”) over part of a small part of the land on which the Vegetation grew, as part of a project to enhance the approach to Borough Green Village, to indicate to motorists that they were approaching a village from a stretch of road to which the national speed limit applied and that they should reduce their speed accordingly.
9. Accordingly, between 26 June and 18 July 2020, the Defendants attended the land on “volunteer days” in order to abate the said nuisance by cutting back the overgrowth which concealed the 30 mph sign and clearing the Footpath of the accumulated vegetation, soil and rubbish, and to clear a small gap in the Vegetation for the purposes of the erection of the proposed Gateways in due course. The Defendants worked on an area of land from the edge of number 67 Sevenoaks Road to the land on which the Vegetation grew. It was not appropriate or safe to continue work because it became apparent that, on the land on which the Vegetation grew:
 - a. the old stock fence behind the Vegetation had collapsed due to rotten posts;
 - b. the Vegetation largely comprised dead hawthorn, adventitious damson and similar species;
 - c. once they had trimmed back the dead matter the earth bank (of 2 feet or more) was at risk of collapse into the Footpath;
 - d. the root system of the Vegetation had spread to the entirety of the bank and the earth which had accumulated and encroached upon the Footpath.
10. Accordingly, between 26 June and 18 July 2020, the Defendants removed the Vegetation (as shown on the plan). On 22 July 2020, the Second Defendant reprofiled the affected parts of the bank with a digger because this was the safest way to carry out

this work in order to prevent collapse of the bank and to remove the said encroachment on the Footpath.

11. As part of the Works:

- a. temporary rope barriers were immediately erected following removal of parts of the Vegetation to prevent the escape of livestock;
- b. healthy hawthorns were left on the southern bounds of the land intact;
- c. some of the surviving root stocks were re-planted.

12. The Works were substantially undertaken pursuant to the First Defendant's powers conferred by *inter alia* ss 43 Highways Act 1980 (in its capacity as Parish Council) and common law right (both as principal and agent for KCC) to remove obstructions to or encroachments on the highway (without taking proceedings). The view was taken that it was necessary in all the circumstances to remove the Vegetation which, if left unchecked, would regrow over the Footpath and / or which were either dead or diseased and for these purposes, it that it was necessary to enter upon the land to remove them. To the extent that any trespass was committed by the First Defendant, it was for the reasons set out in the foregoing paragraphs and with the sole objective of making safe the Footpath, highway and in due course improving the surrounds of the approach to the village.

13. The First Defendant was further entitled to defray the expenses of so doing by reclaiming them from the Claimant, but has not sought to do so hitherto. Nothing in this statement of case waives such a right, and the position is reserved in this respect.

The Claimant's Complaints

14. By a letter dated 23 July 2020 the Claimant wrote to the First Defendant to complain about the Works. On the same day the Second Defendant responded explaining the reasons for their necessity, the proposed new fence and offering to meet the Claimant on site to discuss matters.

15. On around 5 August 2020, the First Defendant duly installed a new stock proof fence (“the Fence”), entirely at its own expense.

16. As to paragraph 2:

- a. it is admitted that on 22 July 2020 the First Defendant caused the removal of approximately 45 metres of the Vegetation along the A25, as set out above and on the plan;
- b. it is denied that the Vegetation was “mature hedgerow”, but rather a combination of the adventitious species referred to above;
- c. not only was the Vegetation growing on the Claimant’s land, it caused a substantial obstruction to the highway;
- d. it is denied that any acts of the Second Defendant undertaken in connection with the removal of the Vegetation were undertaken otherwise than as agent for the First Defendant and or sub-agent for KCC.

17. As to paragraph 3, the first sentence is admitted to the extent the First Defendant had made unsuccessful attempts to identify the owner of the land before embarking upon the Works, which it did for the reasons set out herein. It is admitted that aspects of the Works amounted to a prima facie trespass in light of its inability to contact the Claimant, but the same was not committed contumeliously and the Defendants contend it was justified in the circumstances set out above. It is noted however that even on the occasions where statutory notices of abatement were served by KCC, the Claimant did not, to the best of the Defendants’ knowledge, comply with or respond to the same. As aforesaid the Second Defendant acted on behalf of the First Defendant at all material times.

18. As to paragraph 4, the Defendants are unable to plead to when the Claimant became aware of the Works.

19. Paragraph 5 is admitted.

20. As to paragraph 6, it is admitted that the email was sent, and that there were no communications between the Claimant and Defendants on the subject of the Vegetation prior to the 22 July 2020, for the reason set out above.

21. It is admitted that the emails referred to at paragraph 7 and 8 were sent and received.
22. As to paragraph 9, it is admitted that solicitors for the Defendants made the assertion stated, and did so properly; however (adopting the Claimant's sub-paragraphs):
- a. it is admitted that no notice was served pursuant to s 154 immediately prior to the Works. Notice was served by KCC under that provision on various preceding occasions, to no apparent avail;
 - b. it was necessary to undertake the full extent of the Works for the reasons stated above, in particular the maintenance of the structural integrity/stability of the bank;
 - c. the Claimant has failed to particularise the basis on which she asserts the actions of the Defendants were inconsistent with reliance upon s 154 (save in relation to the absence of notice).
23. Further and in any event:
- a. the First Defendant undertook the Works pursuant to s 43, together with other common law powers, and
 - b. as agent for KCC, the relevant highways authority.
24. Paragraph 10 is denied and the foregoing paragraphs are repeated.
25. The social media posts referred to at paragraph 11 are admitted but their relevance to instant matters denied. The comments were those of Mr Timothy Shaw, deputy chairman of the First Defendant, but did not reflect the settled intentions of the First Defendant. There have been discussions among the Parish members about the possibility of a bench, but at no material time was it the intention of the First Defendant to install a bench when attending the Footpath to undertake the Works.
26. As to paragraph 12, it is admitted that the Defendants became aware following receipt of her email of complaint in July 2020 that the land was owned by the Claimant. The Second Defendant, on behalf of the First Defendant, had made efforts to identify the

owner of the land prior thereto but had been unable to do so. The Defendants do now appreciate that the information could have been discovered earlier from the Land Registry.

27. As to paragraph 13 and the complaint that the land has been exposed to public view, it is denied that this has caused the Claimant any loss; the land is exclusively grazing land upon which no dwellings are situated.

28. Paragraph 14 is denied. At all material times the Defendants have endeavoured to act in the best interests of the Parish and public safety. At no material time did the Defendants wish to invade the Claimant's property or rights unnecessarily and it is regrettable that she perceives its actions in such a manner. Such trespass and wrongful damage as the First Defendant is proven to have committed was committed unintentionally and not recklessly for the reasons set out above. The Claimant has no legitimate or pleaded basis for asserting that the Defendants acted with actual knowledge as to any unlawfulness she establishes.

29. The allegation that either Defendant has committed a misfeasance is denied and is further baseless. Any acts undertaken in excess of the First Defendant's powers and / or rights or infringement of the rights of the Claimant were undertaken without malice and innocently and understood at all material times to be pursued in the public interest in lawful exercise of the First Defendant's powers, delegated and primary. The allegation that the Defendants deliberately sought to injure the Claimant is denied.

30. As to the particulars of misfeasance, the Defendants adopt the Claimant's sub-paragraph numbering:

- a. it is assumed that the Claimant alleges the vicarious liability of the First Defendant in this respect. It is admitted that in relation to the Works, the First Defendant was vicariously liable for the acts of the Second Defendant;
- b. the First Defendant on behalf of the Second Defendant made enquiries both of the Claimant's licensee/tenant and KCC as to the identity of the owner of the land, to no avail. As noted above, the Defendants now appreciate that her identity could have been discovered from the Land Registry, but that was not appreciated at the material time;

- c. it is denied that the Defendants or either one of them were aware (in so far as they did not possess such power at the material time) that they had no power to enter upon the Claimant's land or were recklessly indifferent to the same. The Defendants believed the First Defendant to be justified in undertaking the Works for the reasons set out hereinabove;
- d. the reasons for undertaking the Works are set out above. Evidently, the Defendants were aware that by removing parts of the Vegetation some exposure of the land to public view would follow. However it is denied that any financial loss and damage sustained by the Claimant was in any respect intended by the Defendants. As noted above, neither the Claimant, nor anyone else, reside upon the land, which is used to graze horses and donkeys.

31. As to paragraph 15, it is denied that the Claimant has suffered any loss and to the extent she has, the quantification of her claim is excessive and unreasonable in all the circumstances:

- a. the cost of the restoration of a mature garden-appropriate hedgerow and irrigation system is out of all proportion to the injury (if proven) sustained by the Claimant;
- b. the pre-existing Vegetation was just that, and its replacement with nursery-sourced planting represents a radical improvement the cost of which is unfair/exploitative to require the Parish to bear;
- c. as a result of the Works:
 - i. the part of the land affected was significantly aesthetically improved;
 - ii. healthy root bulbs of hedge plants were retained and other seeds sown;
 - iii. the Fence in situ is stock proof (and the Claimant conspicuously pleads no complaint in relation thereto);
 - iv. the Vegetation no longer constitutes a nuisance and/or obstruction to the highway;
 - v. the Claimant's criminal and civil liabilities as a result of the unchecked encroachment onto the Footpath were (at least temporarily) mitigated;
- d. by reason of the fact that, *inter alia* the Claimant was not at any material time in physical possession of the land, she has not suffered any interference with her peaceful and quiet enjoyment of the same. The pleaded loss of privacy is

untenable as a matter of fact and law, and in particular in light of the fact the area in question adjoins grazing land;

e. the Claimant is not entitled to be recompensed for visiting her own land.

32. In the circumstances, the Claimant has suffered no diminution to the value of the land or loss otherwise.

33. In the event the Claimant is entitled to the cost representing reinstatement of the Vegetation, a reasonable replacement in all the circumstance would be the cost of young whips (particulars of which shall be produced in due course).

34. As to paragraph 16, for the reasons set out herein, it is denied that the conduct of the Defendants amounted to an abuse of power. There is no basis in fact or law for an award of aggravated/exemplary damages. The First Defendant has endeavoured to act in the best interests of the Parish at all material times as set out above. In so far as the Claimant relies on certain “motives” of the Defendants for the purposes of such an award, she has failed to particularise precisely what they are. None of the particulars set out at paragraph 16 properly support a pleading of an abuse of power. Further:

a. as to subparagraphs a) – e):

i. the First Defendant on behalf of the Second Defendant made enquiries as to the identity of the owner of the land as set out above;

ii. the Works were commensurate with what the Defendants believed they were justified in doing at the material time; to the extent they exceeded that authority or any lawful purpose, the Defendants had no intention of so doing;

b. as to subparagraphs f) and g), a lack of apology is neither probative nor suggestive of an abuse of power. The Claimant has similarly failed to recognise the harm caused by her neglect of the Vegetation caused over the years, the maintenance of which the First Defendant has borne responsibility. It is manifestly regrettable that the First Defendant’s efforts have been met with these proceedings;

c. as to subparagraphs h) it is admitted that the Defendants have sought to explain and justify their actions. It is denied that they have made “disingenuous attempts to conceal the true intentions behind the actions”. The Claimant has

failed to particularise the “true intentions” upon which he relies in this respect and / or the dishonesty she has alleged.

d. similarly, for the reasons set out above, subparagraph i) is denied.

35. In the premises, the First Defendant understood itself to be entitled to undertake the Works in the circumstances set out above. However, to the extent that it committed a trespass by the actions complained of by the Claimant, it did so unwittingly and with the consequence that the Claimant has suffered no loss or alternatively a loss substantially less than the damages she claims in these proceedings.

36. The First Defendant admits, with hindsight, that its enquiries as to the ownership of the land fell short. Even if, which is denied, the Claimant establishes a trespass and / or foreseeable damage in the order she pleads, the same does not amount to the serious misconduct alleged by the Claimant. The Claimant is accordingly put on notice that indemnity costs will be sought in relation to the unsubstantiated and grave allegations made by her paragraphs 14 and 16 in the event of their dismissal.

37. As to paragraph 17, all claims for interest is denied accordingly.

38. In the circumstances the Claimant is not entitled to the relief sought or any relief. In particular, the claim for an injunction is superfluous and adds nothing to the existing law affecting the Defendants; at all material times the Defendants have sought to act in a lawful manner in accordance with the First Defendant’s powers and does not require restraint by injunction to prohibit them from acting otherwise than lawfully.

CAMILLA CHORFI

Statement of truth

I believe that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Full name: [REDACTED]

Signed:

Position or office held: Clerk to the First Defendant

Statement of truth

I believe that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Full name: Francis Michael Taylor

Signed:

Position or office held: Second Defendant and Chairman of the First Defendant

Warners
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Served this 9th day of April 2021 by Warners, the Defendants' solicitors