

Party Walls: Injunctions and damages

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Claims in a no Award scenario

- Trespass
- Negligence
- Nuisance - but NB Andreae v Selfridge & Co. [1938] Ch 1
 - No cause of action re: demolition of building if they are:
 - Reasonably carried on
 - All reasonable and proper steps are taken to ensure no undue inconvenience to neighbours
- Interference with rights to light
- Interference with rights to support
 - Actionable only if damage

Injunctions: interim prohibitory

American Cyanamid v Ethicon Limited [1975] AC 396

- Is there a serious question to be tried?
- Is damages an adequate remedy?
- Is a cross-undertaking in damages an adequate remedy for the Defendant?
- What is the balance of convenience?

Injunctions: interim mandatory

- More intrusive
- Greater risk of contempt proceedings
- Greater waster of time and money if 'wrong'
- More likely to affect the status quo
- Difficult to formulate with precision
- Usually met with reluctance by the court

Injunctions: interim mandatory

Zockoll Group Limited v Mercury Communications Limited [1998] FSR 354

- Take the course which involves the least risk of injustice if it turns out to be 'wrong'
- Ordering a party to take a positive steps may increase the risk of injustice
- Court should feel a 'high degree of assurance' that C will succeed at trial
- But, if not, a mandatory injunction may be justified in an exceptional case

Examples:

- PWA notice served
 - No PWA award
 - Works commenced
 - Party wall exposed
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- Return date:
 - D did not participate
 - Evidence of ‘damage’

- PWA notice served
- PWA award
- Works commenced
- Trespasses outside of the Award:
 - Scaffolding oversailed by one metre
 - Debris left and hoardings erected
- Return date
 - Scaffolding removed
 - C had refused to allow D to remove debris

Peabody Trust v Brecher (QBD – TCC) (2017)

- D had shown total disregard for the PWA and its procedures
- D had failed to provide any information to C's surveyor
- D had continued notifiable works despite's C's objections
- Works fully exposed party wall and had caused substantial cracking
- Damage had worsened
- D had not responded to the claim

Apexmaster Limited v URC Thames North Trust (ChD) (2018)



- No real risk of any future trespass
- The injury to C's rights was minor and could be compensated in damages
- Injunction would be oppressive because of minor infringements
- C's highly aggressive approach disentitled it to an injunction in any event.

Apexmaster



Context:

*“The application arises in the course of ... ordinary development works. ... As is normal in such cases, the detailed mechanism of Party Wall awards, negotiated plans, appointed surveyors, and engineering experts is in operation. ... In my judgment, there has been nothing extraordinary or unusual about these works: movement and/or subsidence in older London properties is not unknown, the accumulation of some debris over a party wall, or on the property of another, **is part of the warp and woof of development life.**”*

“That is not to say that an approach which ignores the requirement for a licence or even innocently allows work to start before a Party Wall Award is signed is to be encouraged.”



Quia timet injunctions

Vastint Leeds BV v Persons Unknown [2018] EWHC 2456 (Ch):

- Is there a strong probability that, unless restrained by injunction, D will act in breach of C's rights?
- Would the harm resulting be so grave and irreparable that a remedy of damages would be inadequate?

Problems after an Award is made

- Claim for damages or specific relief if Award is breached
- Section 7(1): building owner shall not cause '*unnecessary inconvenience*'
- Section 7(2): building owner shall compensate for loss or damage
- Measure of such loss or damage is in accordance with common law principles:
Lea Valley Developments Limited v Derbyshire [2017] EWHC 1353 (TCC)

Thank you!

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