

BETWEEN:

BRITISH WATERWAYS BOARD

Claimants

-and-

MR GEORGE WARD

Defendant

JUDGMENT

Preamble

1. This case was listed on Tuesday 2nd October 2012 with a time estimate of three days. The Claimants were represented by Mr Stoner QC. The Defendant appeared in person. However he was assisted by two McKenzie friends. I should say that those McKenzie friends have been helpful and polite and they have filed many of the documents on behalf of the Defendant in this case. At lunch time on Tuesday, 2nd October the Defendant decided that he did not wish to stay in court any longer. He wrote four letters to me over the short adjournment which indicated that he was in a state of some agitation. Those letters have been kept by the court. Nevertheless it was decided that we should carry on. The evidence of the Claimants was to be given that afternoon. It was. I asked a certain number of questions of the Defendant's witness on the basis of a series of written questions given to me by the Defendant's helpers. We agreed that once that evidence was over we should adjourn (in fact until the Thursday it having always been agreed that we should not sit on the Wednesday) in order to see whether the Defendant would have a change of mind and choose to attend court. On Thursday he did not attend. He had however written a very polite letter which I read into the record. Although technically this meant that there could be no evidence from him I took the view and the Claimants very helpfully concurring in that view that I should regard his pleadings and his proof of evidence as his evidence in the case albeit of course that it would

remain untested and that a number of questions that the Claimants would legitimately have wished to ask could not be asked.

Background

2. Some relevant history as to the Kennet and Avon Canal is set out in the witness statement of Mr Nigel Johnson which is set out at paragraphs 12 to 19 of that witness statement. The whole statement is to be found between pages 218 and 236. The canal was finally opened in 1810. Accordingly a waterway navigation was then available between the River Avon at Bath and the River Thames at Newbury. In 1852 the Great Western Railway took over the running of the canal. In 1947 pursuant to the Transport Act of that year the canal was nationalised along with the other inland waterways. It became vested in the British Transport Commission. By this time the canal was in a bad way and of course commercial traffic had largely ceased. On its transfer to British Waterways in 1963 the canal was largely derelict. Since that time with the help of enthusiastic volunteers and a very large grant from the Heritage Lottery Fund the canal has now been very largely restored. That restoration having been completed in 2003. The canal is now largely used for leisure purposes.

The Claim

3. The proceedings were issued out of the Bath County Court on 27th September 2010. The claim form being in Part 8 form. In that claim the Claimant sought a declaration that they were entitled to remove the Defendant's boat known as Hannelore from the canal pursuant to statutory powers namely Section 8 of the British Waterways Act 1983 and Section 13 of the British Waterways Act 1971. They also sought an injunction preventing the Defendant from mooring the boat Hannelore on any part of the Kennet and Avon Canal and in addition preventing him from entering any of the other waterways in the system under the control of the Claimants and requiring him to remove his boat Hannelore from the canal forthwith. This provoked a lengthy defence and indeed counterclaim from the Defendant. That was fairly obviously drafted by his helpers. It is set out at pages 8 to 25 of the bundle. In his defence –
 - (a) He accepts the need to obtain a licence.
 - (b) Disputes the right of the Claimants to make a late payment charge.
 - (c) Alleges that his inability and or failure to apply for a licence in good time was due to the fault of the Claimants.
 - (d) The Claimant's actions were motivated by prejudice against "live aboard boaters". This involved a breach of Section 10 of the Equalities Act and Section 29 of that Act.
 - (e) Raised Article 8 of the Convention and counterclaimed for a breach of his Article 8 rights.

He annexed to his defence certain minutes of a House of Commons Select Committee in 1993 and 1994 dealing with the Waterways Bill which subsequently became the 1995 Act.

In a rejoinder and amendment of his case dated 28th September 2011, the Defendant asserted that the late payment charge was punitive and discriminatory. In addition he annexed further minutes from Select Committee Hearings of June 1993. These are to be found between pages 57 to 152 of the bundle.

In the Claimant's amended reply and defence to counterclaim which is at page 186 of the bundle they set out in paragraphs 9, 10 and 11 their justification for the late payment charge and deny that the Article 8 rights of the Claimant are threatened.

In his various defence document the Defendant somewhat muddies the waters by introducing references to another boat owned by him called March Hare. The argument seemed to revolve around whether this boat was to be paid for separately or whether in fact it was to be regarded as a "butty" of Hannelore. In my view this is a side issue which has little or nothing to do with the main matters which I have to resolve and I have no intention of spending any further time dealing with the matter.

The Issues

4. As it seems to me therefore the issues that I have to resolve are as follows –
 - (a) Are the Claimants entitled to make a late payment charge?
 - (b) Was the fact that a late payment charge was incurred in this case due to the fault of the Claimant?
 - (c) Is the relief claimed by the Claimants a breach of the Defendant's rights pursuant to Article 8 and or whether such relief and the actions of the Claimants in someway contravene provisions of the Equality Act 2010?

The Late Payment Charge

5. At page 507 in the bundle there is a document which is annexed to the witness statement of the Claimant's main witness Mr Nigel Johnson. It is headed Important Information for Licence Holders January 2009. It says that

"A late payment charge will be introduced shortly. If your licence is more than one month out of date on 1st April 2009 you will have to pay an additional £150 for the renewal."

Annexed to that document was an explanation. This is in these terms.

"British Waterways relies on boat licence income to maintain and repair the waterways – for every £1,000 we spend on this, we need about £140 from licence sales. Every expired licence that we have to chase up represents a cost to the boating community. This is because we have to spend scarce cash on chasing payment – cash that we would much prefer to spend on keeping the locks, towpaths and facilities in a better state of repair. The charge therefore is intended as an incentive to all boaters to renew their licence promptly. The income that we raise from those who don't do this will be used to cover our enforcement costs."

At page 454 of the bundle there is set out the general terms and conditions in respect of boat licences which set out the conditions applicable to the use of any boat on any waterway managed by the Claimants. In Clause 6 at page 455 we find the following –

- 6.1 The price of the licence is published and revised each year on 1st April and you agreed to pay the amount due including if appropriate any late payment charge.
- 6.2 ...
- 6.3 A late payment charge applies for any boat which stays on the waterway unlicensed for more than one calendar month without a valid licence. The late payment charge will be payable in addition to the licence fee which must be appropriately backdated.

On 11th November 2009 the Claimants wrote to the Defendant. The letter is at page 170. It is headed "reminder to renew your licence". It points out that his current licence expires on 31st December 2009 and enclosed a renewal notice. It says in terms that in respect of any application received more than one month after 1st January 2010 a late payment charge would be levied in the sum of £150. It also points out that if renewal were made before 1st January 2010 there would be a reduction of £50 to reflect prompt payment. The Defendant did not renew his licence by 31st January 2010. Accordingly, on 1st March 2010 the Claimants wrote to the Defendant. This letter is known as an LA1. It is to be found at page 294 of the bundle. The relevant part reads as follows –

"Since your boat does not have a valid licence your boat is trespassing on our property and has been for some time. Therefore you have the following options. (1) contact us within the next 28 days with a view to obtaining a licence... (2) remove your boat from our property and water within the next 28 days. Please contact me within 28 days from the date of this letter with your decision. If you fail to do so I will have no alternative but to serve notices under Section 8 and Section 13 of the British Waterways Acts 1983 and 1971 respectively. If you fail to comply with the statutory notices we may start court proceedings."

It then goes on to spell out the nature of such proceedings. The Defendant did not apply for a licence so on 28th April 2010 a further letter was written. This is known as an LA2. It is set out at page 297 of the bundle and is dated 28th April 2010. It says that unless contact is made within fourteen days notices pursuant to Section 8 and Section 13 will be served and that if the boat was not removed within the time specified in the Section 13 notice the Claimants might thereafter remove or demolish the boat. On 9th June 2010 a further letter was written. This is known as an LA3. It is set out at page 298 of the bundle. It enclosed notices pursuant to Sections 8 and 13 of the British Waterways Act 1983 and 1971. Those notices are to be found at pages 299 through to page 303.

6. Ignoring for a moment the Defendants objections to paying the late payment charge, the other reason why he was not able to apply for a renewal of his licence in timely fashion was the fact that he did not have a boat safety certificate. On 2nd June 2010 the Defendant did obtain his boat safety certificate. And on 31st August 2010 the Claimant sent him again the relevant forms in order for him to apply for his boat licence. Again though that letter which is at page 310 of the bundle makes it plain that the licence fee is to be paid as well as the late payment charge of £150.

Some Law

7. It is now necessary to examine the statutory provisions pursuant to which the Claimants function.

Transport Act 1962

Section 1 – sets up the British Waterways Board.

Section 10 – the Board are to provide their services having due regard to “efficiency, economy and safety.”

Section 27 – the relevant minister has power to give general directions.

Section 31(5) – deals with the transfer of assets to the Board.

Section 43 – it is headed “charges and facilities”.

Section 43(3) – the Board

to demand, take and recover their services and facilities and to make the use of those services and facilities subject to such terms and conditions as they see fit.”

Section 43(8) the services and facilities provided include the use of any inland waterway owned or managed by the Board.

Transport Act 1968

Section 104 – the Inland Waterways shall be divided into –

- (a) commercial waterways.
- (b) cruising waterways – principally available for cruising, fishing and other recreational purposes.

Section 105(1)(b) – the Board has a duty to maintain the cruising waterways in a suitable condition for use by cruising craft.

Section 105(5) – previous private legislation or enactments in respect of particular waterways “shall cease to have effect.”

British Waterways Act 1971

Section 3(1) – this defines “houseboat” as meaning any boat save one which is “bona fide used for navigation.”

Section 13

- (1) – it shall not be lawful to moor, place, keep or maintain a houseboat on an internal waterway unless there is in force in relation to it “a houseboat certificate”;
- (2) if any houseboat is moored, placed, kept or maintained contrary to the provisions of Section 13(1) or in contravention of any of the conditions attached to a houseboat certificate, the Board may by notice in writing require the person having control of the houseboat to remove it. Any such notice to be by post addressed to the person having control of the houseboat or by exhibiting it on the houseboat;
- (3) if a person fails without reasonable cause to comply with a notice, the Board may after the expiry of the time limit mentioned in the notice “remove or demolish the houseboat” mentioned in the notice.

British Waterways Act 1973

Section 2 – vessel includes any ship, boat or barge.

Section 8

- (1) – “relevant craft” is any vessel which is left or moored without lawful authority;
- (2) the Board may remove any relevant craft after giving not less than 28 days notice to the owner.

British Waterways Act 1995

Section 17

- (1) – For the purposes of this Section, “houseboat certificate” means a certificate issued under the 1971 Act and “relevant consent” means a houseboat certificate;
- (3) the Board may refuse a relevant consent in respect of any vessel unless –
 - (a) the applicant for consent satisfies the Board that the vessel complies with the standards applicable to that vessel and
 - (b) an insurance policy is in force in respect of that vessel;
 - (c) the Board are satisfied that a lawful mooring is available or that the boat will be used for continuous cruising.

Miscellaneous

It is also worth mentioning the framework document which is to be found at page 363. It was issued by the Minister in February 1999. I note that Minister intends that British Waterways should maximise its revenue.

On 2nd July 2012 the British Waterways Board (Transfer of Functions) Order 2012 came into force. This transferred the functions exercised by the British Waterways Board to a new body known as the Canal and River Trust. Technically therefore since July of 2012 they are to be regarded as the Claimants. As it seems to me nothing turns on this transfer.

Justification for the Late Payment Charge

8. The Defendant's case is that the Claimants have no power to levy a late payment charge. They say that the statute does not justify the Board in making this charge. The Defendant relies upon cases such as **McCarthy v Richmond [1992] 2 AC 60**. That case simply re-establishes the basic Rule that where a public body wishes to charge for a service they have to be able to point to some statutory authority enabling them so to do. The Defendant wishes to rely upon the various proceedings in Select Committees in both the House of Commons and the House of Lords which I have referred to when outlining his defence. As a matter of fact I have looked at some of those documents but in my view as I shall explain they are of no assistance at all. It is worth reminding oneself of the Rule in **Pepper v Hart [1993] AC 593**. It is only permissible to look at parliamentary material if (a) the legislation is ambiguous, obscure or leads to absurdity; (b) the statement is that of the Minister or the promoter of the Bill plus such other material as is necessary to understand ministerial statements (c) the statements are clear. The first and most obvious point to make is that it is quite impossible that proceedings in front of Select Committees in the early 1990s could be of any assistance in construing the Transport Act of 1962. Next, the matter or matters being dealt with by the Select Committee do not at any point contain any statement from a Minister

setting out a ministerial position in relation to a particular piece of legislation. Third, and in any event, in my view the legislation is in no way ambiguous or obscure. The Claimants say that Section 43 of the Transport Act 1962 is clear and unambiguous. The Board

“Shall have power to demand, take and receive such charges for their services and facilities and to make the use of those services and facilities subject to such terms and conditions as they see fit.”

In my view this clearly empowers them to make a late service charge in respect of their granting a licence which in turn permits the licence holder to use the services and facilities provided by the Board. Further as the Board point out the late payment charge promotes a useful end. Administrative time and therefore money has to be spent on chasing up late payers. That money is better spent on the primary purposes of the Board. To promote efficiency they give a discount for early payment – I doubt whether anyone would criticise that. In my view therefore the Board are entitled to make a late payment charge – it is justified by the Act and promotes a legitimate objective of the Board namely the efficient economical and rational collection of monies.

Are the Claimants Responsible for the Fact that the Defendant was Not in a Position to Apply for a Licence in Good Time?

9. This is an allegation which clearly the Defendant would have to prove. The evidence from the Claimants in respect of day-to-day dealings with the Defendant derived from the witness statement of Stephen Lewis dated September 2010 and which is set out at page 207 and following of the bundle. I fully take on board the point that the Defendant makes in respect of Mr Lewis. The evidence is covered by a hearsay notice (albeit one given somewhat out of time). I quite accept that there may well have been questions that the Defendant wished to ask Mr Lewis. However it is also the fact that the Defendant himself has not given evidence to support this allegation. However we do have his witness statement of 28th August 2011 which is set out at page 239 and following of the bundle. I note that at paragraph 4.3 of that document he indicates that he knew that he would have to get a licence by 1st January 2010 and that in order to get a licence he would have to possess a valid boat safety certificate. In the paragraphs that follow he indicates some of the efforts that he made to find a boat safety examiner. In paragraph 4.11 he accepts that as at 1st January 2010 in the absence of a boat safety certificate he was unable to obtain a licence. On 7th January he asked the Claimants for assistance in finding a boat safety examiner. On 14th January 2010 he made a complaint. However it is apparent from paragraph 4.15 that on 15th January 2010 the Claimants provided him with a telephone number for the Boat Safety Help Desk. The Defendant then sets out his difficulties with finding an examiner during this time and getting an examiner to inspect the boat. As already indicated on 2nd June 2010 he did obtain the boat safety certificate. None of these matters really suggest that the Claimants were at any way at fault in and about the failure of the Defendant to obtain a boat safety certificate.