

General Form of Judgment or Order

In the	
Bristol	
County Court	
Claim Number	9BA00333
Date	18 April 2011



BRITISH WATERWAYS BOARD	1 st Claimant Ref AA 191.849 (BIDDY)
MR. PAUL DAVIES	1 st Defendant Ref JB/GW/PP/096756/2
MR. PAUL DAVIES	2 nd Defendant Ref JBB/GW/PP/096756/2

Before His Honour Deputy Judge O'Malley D L sitting at Bristol County Court, Bristol Civil Justice Centre, 2 Redcliff Street, Bristol, BS1 6GR.

Upon hearing Counsel for both parties

IT IS ORDERED THAT

See attached Judgment and Minute of Order

Dated 13 April 2011

BRITISH WATERWAYS BOARD

Claimant

and

PAUL DAVIES

Defendant

J U D G M E N T



1. This judgment follows a further hearing in these proceedings which took place on 31st March 2011 at which my earlier judgment dated 30th November 2010 was formally pronounced. This had followed the hearing on 23rd and 24th September 2010 at which the court was invited to decide whether or not the defendant was entitled to be granted a licence by the British Waterways Board to use his narrow boat on the Kennet and Avon Canal. This depended on whether the defendant, who was clearly living on the boat, could successfully claim that he was using it “bona fide for navigation” by moving it every so often up and down a short stretch of the canal, so as to qualify for a licence under s.17 of the British Waterways Act 1995. I found that his use of the boat was as his home and was not “bona fide for navigation” within the meaning of the legislation. The practical consequence of this decision was that as the defendant had no permanent mooring for the boat he was not entitled to a licence and the British Waterways Board were able to require the removal of the boat from the waterways system or to effect the removal themselves. This was the relief which they sought by means of a declaration and an injunction. Both counsel had submitted skeleton arguments and they addressed me further on behalf of the parties as to these matters. At the conclusion of the hearing I announced my decision, in effect, that unless in the meantime the defendant could regularise his position he would have to remove from the boat from the waterways system by 30th June 2011.

2. I was told by counsel for the Board, Mr Christopher Stoner QC, that since the earlier hearing in September 2010 the defendant had continued to

keep his boat on the canal as before. Some five permanent mooring sites on the canal had become available to purchase at auction. There was a further available site for which the defendant had made a bid shortly before the present hearing, but his bid had been far below the reserve price and had not been accepted. Mr Stoner said that the Board was seeking an order to enforce the claim in 28 days, given that the defendant had known the result of the earlier hearing since December 2010. He submitted a draft order which set out the proposed terms of a declaration and an injunction. He told me that the question of proportionality had been the subject of two recent decisions in the Supreme Court, *Manchester City Council v. Pinnock* [2010] UKSC 45, and *Hounslow London Borough Council v. Powell* [2010] UKSC 8. They were both housing possession cases and they set out how the courts should approach proportionality. He said that it was agreed in the present case that as the relief sought was discretionary the court would in any event need to consider proportionality in its balancing exercise. He submitted that, given that the defendant had no right to keep his boat on the canal, the burden was on him to establish that his circumstances outweighed the Board's rights to enforce removal, so as either to deny them relief or to allow a postponement of the boat's removal. The Board's many grounds for removal were set out in the skeleton argument. Mr Stoner submitted that an injunction was necessary because the defendant could not be relied on to comply with the Board's legal requirements.

3. The defendant's counsel, Mr Martin Westgate QC, had submitted in his skeleton argument that the defendant should be allowed a period of six further months to secure a permanent mooring or, if he was unsuccessful, to demonstrate a change of use of the boat by navigating it on the canal system. In his oral submissions he renewed this argument. He said that the Board's ownership of the waterway system was qualified by the obligation to allow it to be used by any person who applied for and was entitled to a licence. He said that the defendant was not a "bad" user of the waterways and had caused no management difficulties for the Board and no direct harm that required urgent action. He suggested that the court should postpone the coming into effect of any order so as to allow time for the defendant to obtain a permanent mooring or demonstrate a change of use. Housing benefit was available to assist the defendant in respect of both a mooring fee and a licence fee. It might be possible for him to obtain a leisure mooring and to apply for planning permission for residential use, or to limit his use so that planning permission was not required. An order that took effect in 28 days would not allow him sufficient time to explore all the alternative options.

4. The view that I have formed, and which I expressed at the hearing, is that the defendant should be allowed until 30th June 2011 either to remove the boat or to comply with the Board's licensing requirements. I consider that an order is required as the defendant's relative inactivity over the last

three months demonstrates the need for an incentive. The time which is allowed strikes a proper balance between the defendant's rights and the claimants' statutory duty to manage the waterways for the benefit of all users. This period of three months, following the period of over three months since my primary decision was announced, provides the defendant with long enough to explore a range of possible alternative locations for his boat and his home and to make the necessary practical arrangements.

5. The terms of the order itself were subject to submissions by the respective counsel. Many of the provisions of the claimants' draft were challenged by Mr Westgate as being too broad, and Mr Stoner indicated the claimants' preparedness to place reliance on the judgment rather than on the order. Accordingly I set out in the attached draft the order which I propose and which should be drawn up by the court unless further written representations are received by the court from the parties by 30th April 2011. Any representations received should be forwarded to me by the court for my final consideration.

6. Copies of this judgment are to be circulated by the court office to the parties' representatives. The parties are invited to draw the court's attention to any typographical or other obvious errors. Unless there is some urgent matter that requires the parties and the court to reconvene I do not propose formally to pronounce the present judgment in open court.

HH Deputy Judge O'Malley DL - Bristol County Court - 13th April 2011.