IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
COMPETITION LIST (ChD)
[2018] EWHC 4019 (Ch)

No. E30LS079

Leeds Combined Court Centre
The Courthouse
1 Oxford Row
Leeds LS1 3BG

Wednesday, 21 November 2018

Before:

THE HONOURABLE MR JUSTICE BARLING

B E T W E E N :

UNIQUE PUB PROPERTIES LTD — Claimant

- and -

(1) MICHAEL JAMES RODDY
(2) BRENDA RODDY
(3) REBECCA RODDY — Defendants

MR ADAM ALDRED (instructed by **) appeared on behalf of the CLAIMANT

THE FIRST DEFENDANT appeared in Person.

THE SECOND AND THIRD DEFENDANTS were not present and were not represented.

J U D G M E N T

MR JUSTICE BARLING:

Introduction

1 This is an application by the claimant, Unique Pub Properties Limited, represented by Mr Adam Aldred of counsel, against the defendants: Michael James Roddy, Brenda Roddy, and Rebecca Roddy. None of the defendants is legally represented. Mr Michael Roddy has appeared and represented himself. The second defendant, Brenda Roddy, is his wife; and the third defendant, Rebecca Roddy, is his daughter. The second and third defendants have not appeared. I have not been asked to give permission for Mr Roddy to represent them as well as himself. In any event, in the absence of any confirmation from the second and third defendants that this is in fact the position, I would find it somewhat difficult to grant such permission.

2 The application is for an interim injunction to require the defendants to comply with the terms of a clause in the lease granted by the claimant. That lease is dated 22 September 2014. It is called a retail partnership lease, and relates to a public house known as "The Crusader" which is situated in Long Meadow Gate, off Ninelands Lane, Leeds. The term of the lease is ten years, commencing on 8 September 2014.

The background

3 At clause 17 the lease provides:

> "17.1 This lease contains obligations upon you to buy goods exclusively from us, which are intended to comply with article 101 of the Treaty of Rome, and the conditions contained in EEC Regulation (EC) 330/2010.
> 17.2: We both agree that the rent fairly represents the rent which would be expected to be paid for this lease in the open market, taking into account your obligations to purchase goods from us."

4 At clause 18, under the heading "Purchase of goods", the lease provides:

> "18.1: You must buy from us (or our nominated supplier) all tied drinks that you wish to sell as part of the business, and you must not bring onto the property for any reason any tied drinks that have not been supplied by us or our nominated supplier.
> 18.2: The prices payable by you for the tied drinks will be the prices and any applicable discount set out in our price list."

5 It is conceded by the first defendant, Mr Roddy, that as from about the last week of November 2017 he has been purchasing what would otherwise be tied products (which under the terms of this lease comprise virtually every drink that is supplied in the public house) from suppliers other than the claimant or its nominee. In other words, subject to the case which he makes by way of defence to the claim, it is accepted that he has been purchasing tied products in breach of that clause since that time, and that he has continued to do so up to the present time.

6 The claim form, issued on 7 February 2018, seeks an injunction to enforce the provisions of the lease to which I have referred, and damages for breach thereof. So far as one can glean it from the documents produced by Mr Roddy (perhaps with some assistance from others), the defence is, in summary, that the provision breach of which is alleged, is void and unenforceable as being in contravention of what is known as the Chapter 1 Prohibition in s.2 (1) of the Competition Act 1998.

7 The basis for that contention, set out in a number of witness statements of Mr Roddy, is that as from about May 2017 the claimant's nominee has been supplying a competing public

house in that nominee's ownership with drinks at a sufficiently favourable price level to disadvantage Mr Roddy in his business at The Crusader. The nominee, now known as EI Group Plc, was formerly called Enterprise Inns Plc. The competing pub is the Bird in Hand, which I am told is in the middle of a housing estate, roughly half a mile from The Crusader.

8 The circumstances surrounding the opening of the Bird in Hand are described in a witness statement by Ms Pippa Edwards, a legal manager at the claimant company. She states that the Bird in Hand, having declined in its business throughout the course of 2016, was closed in January 2017 until May 2017. From May it was let on a number of tenancies at will, the most recent commencing in November 2017. It is accepted by the claimant that when the pub re-opened in May, certain efforts were made to get its business "off the ground".

9 These efforts are described by Ms Edwards. She describes the pub as having benefited from an arrangement known as the "Beacon model", whereby pubs received "more intensive management assistance, technical and financial support". She states that under that arrangement the price list for a Beacon tenant is negotiated individually, with a view to ensuring a minimum level of return for the operator of the pub. However, she states that those terms are not intended to push other operators out of business, and that the claimant has every reason to keep its own tenants in business, given that it takes on average six months to let a pub on a substantive lease, with all the associated costs of that process.

10 There is uncontradicted evidence that from May 2017 until July 2018, the Bird in Hand remained in business on those intensive management terms. Mr Roddy states that it is because of that period and those terms that he took the decision to cease to buy from the claimant or its nominee, and to buy elsewhere. He has addressed me with considerable passion as to the consequences for the business at his own pub if the injunction sought by the claimant is granted. I will return in due course to the points that he makes.

11 In July 2018, several months ago, the Bird in Hand ceased to operate as a public house. The claimant's evidence is that it has failed again, and that there will have to be a decision at some point as to whether it should be sold, or let as a free house, those apparently being the basic options under consideration.

12 Mr Roddy, in support of the allegation that his pub, The Crusader, was placed at a competitive disadvantage at the outset of the trading period of the Bird in Hand, and would have so continued had he not taken steps to mitigate the position, draws attention in particular to certain exhibits to Ms Edwards's witness statement. In these exhibits she compares the sales in gallons of a range of different beverages sold in the two public houses. These include beers, Guinness, lagers, and ciders. Bottled as well as draft beverages may also be covered. The exhibits contain a comparison between the respective performances of these two public houses over a number of years. The figures reveal that for the year 2014, The Crusader sold 9,555 gallons, as compared with the Bird in Hand's (which was operating in that period) sale of 6,103 gallons.

13 For the following year, the corresponding figures were 9,942 gallons for The Crusader, and 5,258 for the Bird in Hand. Therefore, for those two years so far as one can see each establishment was operating at a level that was roughly consistent with its performance in the previous year, although The Crusader was obviously more productive than the Bird in Hand. When one comes to 2016, the performance of The Crusader was maintained, indeed slightly increased, at 10,225 gallons. However, there was a very marked drop in the performance of the Bird in Hand, which sold only 3,745 gallons.

14 That fall in performance may have been the catalyst for what then happened. The figures show there were no retail sales in the Bird in Hand from January to May 2017, that being the period when it was closed because, as I have indicated, it was said to have failed. Its performance for the remainder of 2017, which comprised the period May to December, was back up to 4,114. This annualised amount shows some improvement for the Bird in Hand over the somewhat dismal year of 2016. But it was still by no means up at the level it was attaining in 2014 and 2015 when it was selling 5,000 or 6,000 gallons.

15 Those, then, are the basic facts relating to the performance of these two public houses.

16 I should also indicate by way of background to this application that both these pubs are in an area of Leeds called Garforth. In its evidence the claimant has exhibited a number of maps. One map represents a 2-mile isochrone, i.e. a 2-mile area surrounding The Crusader pub. This shows that there are some fifteen public houses (excluding a pub called The Royal Oak which closed a number of years ago) within that catchment area. Two pubs, namely the Bird in Hand and the Newmarket Inn, are owned by EI Group Plc. Only The Crusader is owned by the claimant.

17 A second map, shows a somewhat wider area, known as the Pubs Watch Area, which is a security concept. This map indicates a number of additional public houses, three of which are owned by the claimant, and one of which is owned by EI Group Plc. Therefore, in the Pubs Watch Area there appear to be in the order of twenty-five public houses, give or take one or two. A relatively small number of these are owned either by EI Group Plc or by the claimant.

The procedural background

18 The proceedings were begun, as I have said, in February 2018. The present application for an interim injunction to secure compliance with the purchasing obligations, and also with certain disclosure obligations in the lease, was issued at about the same time. There have been about three earlier hearings in relation to the application. The first, in February 2018, was before Mr Anthony Ellery QC sitting as a Deputy High Court Judge. He adjourned the matter to the applications list in March 2018, when it came before His Honour Judge Raeside QC. HH Judge Raeside QC made an order requiring certain disclosure sought by the claimant of documents and information relating to the lease. However, he did not deal with the matter which is before me today, namely the enforcement of the purchasing obligation. Nor, I understand, did he deal with the claimant's application for access to The Crusader premises in order to review flow monitoring equipment. (That is mechanism attached to barrels in order to judge the throughput of the public house.) Those two matters were, pursuant to the order of Judge Raeside, adjourned. They came before the court again in June 2018 when His Honour Judge Davis-White QC adjourned them again, transferring the case to the Competition List of the Business and Property Courts in Leeds, with an indication that this application should be heard by me. Hence, I am hearing it today.

The issues for determination

19 Mr Aldred has stated that his present purpose is simply to enforce the purchasing obligation. As he said at the outset of his opening, the court is not concerned with any alleged non-compliance by the defendant with the terms of Judge Raeside's order for disclosure of documents. There is evidence in the hearing bundles about those allegations, but I am not required to deal with that matter. Mr Aldred did, however, indicate that he was minded to pursue the access aspect of the application. As to that, Mr Roddy interjected that, for his part, there was no objection to access provided it was carried out by a third party contractor, and not by the claimant itself. Therefore, that matter is still alive.

20 I emphasise that at this stage it is not for me to determine the merits of Mr Roddy's defence. The question is what should happen during an interim period. Although it is some time since February, not much progress has been made in the proceedings, and in procedural terms we are still at a very early stage. There appear to be no particulars of claim. There is no properly pleaded defence, but simply a document headed, "Defence" which refers to the matters I have identified.

21 On several occasions the defendants have been advised by Judges before whom the proceedings have come that, in a matter of this kind, professional legal assistance is very much required. Despite the beguilingly straightforward words of s.2 of the Competition Act 1998, the issue that Mr Roddy has raised is a complex and difficult one for any litigant, and particularly for a litigant in person. One has only to look at some of the cases brought in reliance upon the competition rules (whether in their EU law manifestation or in the mirror image in UK domestic law under the 1998 Act) to realise the formidable obstacles in the road that litigants seek to travel when they rely upon these provisions in the context of exclusive purchasing arrangements such as these. Licensees and tenants of public houses have sought to rely upon the competition rules in a range of contexts, and although much treasure has been earned by lawyers in the process, I cannot recall a case where a tenant or a licensee has obtained a satisfactory outcome. Those are some precautionary marks. I expect they will fall on stony ground, but the fact remains that these cases are phenomenally difficult, and almost invariably require the assistance of an expert economist and/or an expert who can assess and define the relevant market. There will almost certainly be an economist on the other side, who will quite possibly be saying something different about the relevant market, and about the effect of the relevant restraint on competition. This adds up to an uncertain outcome and considerable expense.

The legal principles

22 So, with those initial remarks, I turn to the application for an interim injunction. In such a case the court must apply the well-known *American Cyanamid* test. This requires the court to consider first whether there is a serious issue to be tried. If that hurdle is surmounted the court will consider whether damages would be an adequate remedy for either side; that is, an adequate remedy for the claimant if an interim injunction were to be refused wrongly, and, conversely, an adequate remedy for the defendant (pursuant to the cross-undertaking in damages which is normally required where an interim injunction is granted) if an interim injunction were granted wrongly. Finally, in necessary the court will have regard to the balance of convenience or the balance of injustice, in assessing which course of action, namely to grant the injunction or to refuse it, would carry the greater risk of injustice if it should turn out to be the wrong decision.

23 Mr Aldred has properly acknowledged that the injunction that he seeks in the present case is in the nature of a mandatory order, in the sense that, if granted, it would require, the defendants to *do* something, rather than simply to *refrain* from doing something. The terms in which it is sought are as follows:

> "The defendants shall (1.1) buy from the claimant (or their nominated supplier) all tied drinks that they wish to sell as part of the business, and do not bring onto the property for any reason any tied drinks that have not been supplied by the claimant or their nominated supplier."

24 Thus, it has mandatory aspects as well as prohibitory aspects. In that regard Mr Aldred has drawn my attention to a helpful statement of principle in the case of *Quinn v Kohanzad* [2018] EWHC 2455 (QB), a decision of Mr Jeremy Johnson QC, sitting as a Deputy Judge

of the High Court. Having set out the *American Cyanamid* principles, the learned Deputy Judge went on to say this, at paragraph 22:

> "Thirdly, it is legitimate where a mandatory injunction is sought, to consider whether the court does feel a high degree of assurance that the plaintiff will be able to establish his right at trial. That is because the greater the degree of assurance the plaintiff will ultimately establish his right, the less will be the risk of injustice if the injunction is granted. But finally, even where the court is unable to feel any high degree of assurance that the plaintiff will establish his right, there may still be circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage. Those circumstances will exist where the risk of injustice, if this injunction is refused, sufficiently outweigh the risk of injustice if it is granted."

25 Those are the principles which I must apply. As far as the serious issue to be tried is concerned, Mr Roddy has indicated that he does not wish to contend otherwise than that hurdle is overcome by the claimant. That, if I may say so, is an extremely realistic concession, and one which does great credit to Mr Roddy's intelligence and common sense. I should also say that he has conducted his case before me, at times with considerable feeling and passion, but always with courtesy and restraint.

"Serious issue to be tried"

26 Notwithstanding the concession, I should consider the nature of the case upon which the application is based. It relates to the clause that imposes the purchasing obligation. That clause is contained in the agreement. The agreement on the face of it binds the parties to it, and is sufficient to get the claimant at least to first base in satisfying *American Cyanamid*. However, as we have seen, a mandatory injunction is sought. The defence relied upon relates to s.2(1) of the Competition Act. Given that I must feel a high degree of assurance of the claimant's success at trial, it is appropriate to consider the merits of that defence in a little more detail.

27 Section 2(1) provides:

> "Subject to section 3, agreements between undertakings, decisions by associations of undertakings, or concerted practices, which (a) may affect trade within the United Kingdom, and (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom are prohibited, unless they are exempt in accordance with the provisions of this Part."

28 Subsection (2) goes on to provide:

> "Subsection (1) applies in particular to agreements, decisions or practices which … (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage".

29 Subsection (4) states,

> "Any agreement or decision which is prohibited by subsection (1) is void".

30 As I have already explained, subsection (2) describes a situation which Mr Roddy submits exists in the present case. He relies, in particular, upon (d) of that subsection. The argument, as I understand it, is that insofar as lower prices for tied drinks were charged to the tenant of the Bird in Hand, that constituted the application of dissimilar conditions to equivalent transactions with other trading parties, which placed the defendants at a competitive disadvantage at The Crusader.

31 Mr Aldred has submitted that there are a great many problems with the reliance by the defendants upon the prohibition contained in s.2. He refers first to the fact that the Crusader

premises are owned and let by the claimant but the claimant does not own the Bird in Hand. The Bird in Hand is owned by EI Group plc, its parent company. That is a problem. Whether it is an unsurmountable problem for the defendants is another matter. It is normally the person who is said to be in breach of the prohibition in s.2 who is applying the dissimilar conditions, whereas here it is not the claimant who is applying the dissimilar conditions in respect of the two public houses because the claimant is not applying any conditions to any transaction so far as the Bird in Hand is concerned; it is EI Group plc which is applying them.

32 I have no doubt that Mr Roddy would say that is just a device which should make no difference. However, we do have the separate corporate personalities, and the circumstances in which one is entitled, as it were, to lift the corporate veil and consider two companies to be effectively one, are circumscribed in law. There are, of course, circumstances in which that can happen, and European Union law does recognise the concept of a single "undertaking" comprising several persons, whether legal persons or individuals. It may well be open to the defendants reasonably to argue that the claimant and its parent company should be regarded as one for the purposes of s.2, on the basis that they are part of a single "undertaking" or single economic unit. Nevertheless, there is still an issue.

33 Another threshold point made by Mr Aldred on behalf of the claimant is that here one is simply not dealing with equivalent transactions. He submits that in the light of the evidence, the respective circumstances of the Bird in Hand and of the Crusader are very different. According to the claimant's evidence, the Bird in Hand is in a less advantageous position, situated as it is in the middle of a housing estate, far away from main roads, and with effectively only access by foot. On the other hand, he points out that, albeit the Crusader is situated off the main arterial road, the A63, the pub is easily accessible from it by making two left-hand turns. These are not issues on which I can or need to express any conclusions at this stage. I simply record the points that are made.

34 More importantly, perhaps, is the fact that the Bird in Hand was, on the evidence, a failing pub. It had failed and been closed for a period in early 2017. The evidence is that it required considerable managerial and financial assistance to give it a chance of succeeding, and this was done at a time when it was tenanted by tenants at will. In the light of that, one of the points that will need to be considered carefully at trial is whether the transactions whereby drinks were sold wholesale to the tenants of the two public houses were "equivalent". That question may well involve consideration of a much wider set of circumstances than simply looking at the bare prices. Discrimination can arise where equivalent situations are treated differently, but also where non-equivalent situations are treated in the same way. It may therefore be appropriate to treat different situations differently.

35 It is well known in the pub trade that the returns to a pub landlord comprise both dry and wet rents. The dry rent, namely the actual rental paid under the lease, is usually much more favourable where a tenant is tied to purchase drinks from the landlord or its nominee than would be the case if the pub was a free house. Other factors, too, may affect the terms upon which it would be appropriate for a particular public house to be let. Such factors may include the inherent disadvantages of the situation of the public house, its internal nature and condition, the quality of accommodation for the tenant, and so forth. Such factors may have to be assessed in some detail before one could say that there was anything unfair about the terms of the lease, and whether a competitive disadvantage had been created.

36 In addition to such points as these, the law in relation to breaches of the competition rules requires an even more detailed economic analysis. The question was discussed by the European Court of Justice in detail in its well-known decision in Case C-234/89 *Stergios Delimitis v Henninger Brau AG* [1991] ECR I 935. The Court, in discussing the provisions of what was then Article 85 of the EEC Treaty (the equivalent of s.2 of the Competition Act 1998) said this:

> "A beer supply agreement is prohibited by Article 85(1) of the EEC Treaty if two cumulative conditions are met. The first is that, having regard to the economic and legal context of the agreement at issue, it is difficult for competitors who could enter the market or increase their market share to gain access to the national market for the distribution of beer in premises for the sale and consumption of drinks. The fact that, in that market, the agreement in issue is one of a number of similar agreements having a cumulative effect on competition constitutes only one factor amongst others in assessing whether access to that market is indeed difficult.
>
> The second condition is that the agreement in question must make a significant contribution to the sealing-off effect brought about by the totality of those agreements in their economic and legal context. The extent of the contribution made by the individual agreement depends on the position of the contracting parties in the relevant market and on the duration of the agreement."

37 One can see, therefore, that consistently with the purpose of the competition rules being not so much to protect individual competitors as to protect the process of competition within a relevant market, a more complex economic analysis is usually required, than simply to look at the competitive position of two public houses. It is possible that for the purposes of s.2 of the 1998 Act the relevant market here could be as limited as Garforth itself, with its twenty or twenty-five pubs. But the focus of an assessment of the effect on competition of the tie for the purposes of the s.2 prohibition is unlikely to be just the competitive relationship between the Crusader and the Bird in Hand. A much more detailed market and competitive assessment is likely to be needed before it could sensibly be submitted that the tie clause in this lease contravened s.2.

38 That, in very brief terms, is an outline of the nature of the case that might need to be developed by the defendants if they are to make headway in their defence of attacking the enforceability of the tie clause. It would be remiss of me not to say that I foresee considerable obstacles in the way of their succeeding. The case, as it currently stands, is restricted to a comparison with the Bird in Hand, owned by a different company, albeit in the same group. The two pubs are about half a mile apart. There are many other pubs in the area. There appear *prima facie* to be good reasons why it was necessary to provide particular financial support to the Bird in Hand. At trial all these factors will go into the melting pot, along with a lot of other data. I feel far from optimistic that the defendants will ultimately succeed. Conversely, I feel a high degree of assurance that the claimants will ultimately succeed. That, of course, can only be a very provisional view. But the difficulties in the defendants' way in this case are not reduced by the fact that according to the evidence the Bird in Hand has failed again and closed in July 2018.

39 For those reasons, I am satisfied that the hurdles of a serious issue to be tried and a high degree of assurance that the claimant will succeed, are surmounted by the claimant.

Adequacy of a remedy in damages

40 I turn to the question of adequacy of damages as a remedy for either side. The evidence on that issue is fairly exiguous. There is no real evidence of the defendants' means. Mr Roddy has stated to me that he does have means, but I have no evidence before me of what they

are, notwithstanding that this application has been outstanding for several months. What is plain is that on several occasions during the course of the proceedings, Mr Roddy has told the court that he does *not* have funds available. I refer, in particular, to his statement before Deputy Judge Ellery QC on 16 February 2018. In response to a suggestion that he should obtain legal assistance, Mr Roddy indicated that he was not at that stage in a position to afford it.

41 It is also of significance that the claimant's evidence states there are arrears of payments due to them. Further, there is evidence that a company through which the defendants operate the public house owes VAT in the order of £10,000. Mr Roddy has not indicated that that evidence is not correct. In addition, the claimant estimates that its losses have been accruing since last year at the rate of about £5,000 per month, by reason of the defendants' admitted failure to buy their purchase of the tied products from other suppliers. Therefore, it appears that the defendants would not be in a position to pay appropriate damages to the claimant should they fail in their defence.

42 Turning to the claimant's financial standing, the evidence is not particularly detailed. However, it is common ground that it owns upwards of 5,000 public houses in the United Kingdom. On any view, the group is a very significant entity. There is no evidence that the claimant is about to go out of business or is in any particular financial difficulty, such as might lead the court to conclude that it could not pay the kind of damages or compensation that the defendants might obtain or need to have provided to them under the claimant's cross-undertaking in damages, if the interim injunction were to be granted. The scale of the compensation that would be required in that event is not, in my view, such as to cast any real doubt on the value of that cross-undertaking. In so finding, I take account (although this is not a point made by Mr Roddy) of the fact that the defendants' losses might ultimately be more than simply the difference in beer prices, or the diminution in revenue resulting from their having to increase prices, and might encompass even the risk of the defendants going out of business. In my view it is probable that the claimant would be able to compensate even that scale of loss.

43 Therefore, I do not see any obstacle to the grant of an injunction on the basis that damages under the cross-undertaking would not be an adequate remedy for the defendants. On the other hand, if the defendants continue to purchase elsewhere and ultimately lose the case, I do see a severe risk that the claimant would not be able to recover from the defendants any damages due to it in those circumstances. These conclusions militate in favour of the grant of the injunction, as the risk of injustice to the claimant is greater if the injunction is wrongly refused, than the risk of injustice to the defendants if it is wrongly granted.

Other factors

44 It is clear that Mr Roddy feels a very strong sense that he has been treated unfairly and unlawfully by the claimant. He believes that the claimant wishes to put him and his public house out of business, and that their actions in this matter have been aimed at achieving that. He is sceptical about reasons for the closure of the Bird in Hand, although I note in that regard that the Bird in Hand was closed for a considerable time well before the dispute arose. Therefore, though he suspects that its closure in July of this year is tactical, and designed to put the claimant in a good position so far as this application is concerned, in my view that is extremely unlikely to be the case on the evidence. However, I do not doubt that Mr Roddy genuinely believes that, as he genuinely believes that he has been treated very unfairly. His submissions to me were made feelingly and strongly. No one could feel that he was lacking in real belief in them. At the end he said that the court should have regard to the spirit of the law, and that the law was not there to protect big business.

45 As so often in such cases, the battle here is not an equal one. A small business is faced with a big company with much deeper pockets. The courts are well aware of that imbalance. Mr Roddy is correct in saying that the law is not there to protect big business. The law is there to be applied by the courts impartially, regardless of whether a litigant is a big company or a little business. Judges take an oath when they are appointed that they will deal with cases without fear or favour, affection or ill will and according to law. Judges have be fair to all parties.

46 Mr Roddy and his wife and daughter entered into a lease in 2014 under which they undertook to purchase the tied products only from the claimant or its nominee, and not to purchase them from anyone else. Mr Roddy states that if he has to purchase them from the claimant once more, then he will effectively not be able to trade; that he will go out of business; that his pub will be closed, and in his eyes the claimant will have achieved what it has set out to achieve.

47 If the court were to accede to the defendants' arguments, then it would be doing so out of sympathy for their position. Whatever the difficulties of that position, as far as the law is concerned I am afraid that there is little merit in the defence of this application. Mr Roddy considers that he was justified in purchasing elsewhere contrary to the terms of the lease because the Bird in Hand was operated unfairly, and otherwise he would not have survived. However, since July this year the Bird in Hand has not been trading at all. So the source of what he contends to be the unlawful competitive disadvantage has now gone. If he continues to ignore the defendants' *prima facie* obligations until this matter is ready to be tried (potentially for a considerable period), then he will be benefiting doubly: the source of his complaint will have disappeared, and he will effectively be trading as a free house. In my view that factor also must go into the balance of convenience, which I consider is strongly in favour of granting the injunction in the terms sought.

Conclusion

48 I am satisfied that it is just and convenient for the interim injunction to be granted.

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CERTIFICATE

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