

**Witness statement of the
defendant to oppose the making of
an interim possession order**

Witness statement of _____
(defendant)
made on _____
completed by defendant

Between JOHN RICHARD BEAUMONT Claimant
and PERSONS UNKNOWN Defendant
the occupier(s) of

55 GREAT SUFFOLK STREET
LONDON SE1 0BS

Claim No.	Always quote this number
	2LB01220
In the LAMBETH County Court	

For completion by the court

Appointment on
at _____ **am/pm**

20

(1) Insert
full name,
address
and
occupation
of witness

I, ⁽¹⁾ ERIC VANDERLAY an architect of 55 Great Southwark Street, London SE1

make oath and say as follows:

(2) Insert
address of
premises

1. I consider that I have the right to occupy the premises at ⁽²⁾

55 GREAT SUFFOLK STREET
LONDON SE1 0BS

2. I have been in occupation since

Give date

13th June 2012

3. The applicant (name)

was aware of my occupation of the premises. I know this because

(3) Give name,
address and date

4. I was told by ⁽³⁾
of

on that I could occupy the premises named in paragraph 1.
I believe that he/she had the right to allow me to occupy because ⁽⁴⁾

(4) Say who this
person is and
describe any
documents they
showed you

5. I have written evidence to show my right of occupation. It is in the form of
(eg rent book, tenancy agreement) and a copy is attached and
marked "A" ⁽⁵⁾

6. The claimant is **not** entitled to an interim possession order because

(5) Delete if you
have no written
evidence

i) The Claimant is not entitled to the land claimed. 55 Great Suffolk Street is the property which has been shaded in green on the Land Registry plan exhibited by the Claimant. The property, and the wall around the yard behind it, extend beyond the red line showing the extent of the title. The rest of the property is covered by Title No. 174933 which is held by the London Borough of Southwark. I attach marked "EV1" a copy of this title.

ii) Also attached is a photograph showing how the property extends beyond the land covered by the title plan.

iii) The Claimant has failed to properly complete paragraph 7 of the statement in support of the application, as he has failed to explain the situation, and that the London Borough of Southwark is entitled to possession of a part of the building.

iv) In addition, the yard, which is part of 55 Great Suffolk Street, is occupied, with the agreement of the Claimant, by Metro Broadcasting, the occupiers of 53 Great Suffolk Street. This application is therefore not solely against trespassers and fails to satisfy the conditions for an Application for an IPO as shown at **CPR 55.21(2)**.

v) It would not be possible for an Order to be enforced against only part of the property, and the Court does not have the power to grant the Claimant possession of someone else's property.

vi) The Defendants refer to **R (on the application of McCann & Ors.) –vs- Crown Court of Manchester: Clingham –vs- RLBC Kensington and Chelsea** [2002] 4 All ER 593 (HL) and submit that, since an Interim Possession Order is enforceable by criminal sanctions, it belongs to the class of civil actions which is subject to a heightened civil standard of proof equivalent to the criminal standard of proof. The Defendants particularly refer to the judgement of Lord STEYN at paragraphs 17, 18, and 37 and to the judgement of Lord HOPE at paragraphs 81-83.

7. I understand that if I have made a false or misleading statement in this affirmation
I will be guilty of a criminal offence and on conviction may be sent to prison or fined or both.

Statement of Truth

I believe that the facts stated in this witness statement (and any continuation sheets) are true.

signed Eric Vanderlay date 21st of June, 2012
Full name Eric Vanderlay

Defendant's address
to which documents
should be sent

55 GREAT SUFFOLK STREET
LONDON

Postcode SE1 0BS

IN THE LAMBETH COUNTY COURT

BETWEEN

JOHN RICHARD BEAUMONT

Claimant

-and-

PERSONS UNKNOWN

Defendants

EXHIBIT

This is the exhibit marked "EV1" referred to in the Statement of ERIC VANDERLAY herein.

SIGNED: Eric Vanderlay

DATE: 21st of June, 2012



Rear facade, looking from Loman St. towards Great Suffolk St. The property line of Southwark Council runs along the facade of the building to the left in the photo.



Looking from Great Suffolk St. down Loman St.

**IN THE MATTER OF 55 GREAT
SUTTON STREET, LONDON SE1**

RE: JOHN RICHARD BEAUMONT

NOTE

1. I set out below a summary of the advice that I gave in a conference at my Chambers on 11 April 2012 concerning the nature of John Beaumont's interest in part of a warehouse situated at 55 Great Suffolk Street, London SE1 ("the Warehouse").

FACTUAL BACKGROUND

2. By a conveyance dated 19 January 1911 ("the Conveyance"), the Ecclesiastical Commissioners ("the Commissioners") conveyed some land to Southwark Council ("the Council"). The Conveyance provided that the land was "*conveyed for the purpose of widening Loman Street and Lemon Street*". The Warehouse is situated: (i) partly on land that was retained by the Commissioners; and (ii) partly on the land transferred by the Conveyance (being land coloured green on the Conveyance's plan ("the Green Land")).
3. At the date of the Conveyance, the Warehouse was let to Spicer Brothers under a periodic tenancy. The Conveyance contained a declaration that "*the*

Council shall not be entitled to any proportion of the rent payable to the Commissioners under [that tenancy]”.

4. Moreover, the Conveyance provided that:

“...the Council shall not be entitled to nor shall they demand possession of the [land coloured green on the plan] until such time as the Commissioners shall rebuild [the Warehouse]”.

5. Mr Beaumont is the Commissioners’ successor in title of that part of the Warehouse which, at the date of the Conveyance, was situated on the Commissioners’ land. The chain of conveyances (and related assignments) also transferred (in essence) the Commissioners’ rights and interest in the Green Land.

LEGAL ANALYSIS

6. Given that the Conveyance provides that the Commissioners would remain entitled to possession of the Green Land until such time as they rebuilt the Warehouse (and would also be entitled to retain all rents from the Warehouse under the periodic tenancy), the parties to the Conveyance appear to have intended that, until such time as the Warehouse was rebuilt, the Commissioners would have a lease of the Green Land.
7. However, that intention was defeated by the ancient rule that a lease must have a term whose maximum duration is certain at the lease’s inception. The Supreme Court criticized, but declined to overturn, that rule in Mexfield Housing Ltd v Berrisford [2011] 3 WLR 1100.

8. However, in Berrisford, some of their Lordships expressed the view (albeit obiter) that, if an attempted lease fails due to any non-compliance with that ancient rule, the lease would, nevertheless, remain enforceable between the original parties as a matter of contract. Lord Neuberger MR said at page 1105 that: *"If the agreement does not create a tenancy for technical reasons, namely because it purports to create an uncertain term, it is hard to see why, as a matter of principle, it should not be capable of taking effect as a contract, enforceable as between the parties personally..."*. In other words, the provision entitling the Commissioners' to possession of the Green Land took effect as a licence; albeit a type of licence which, unusually, conferred an entitlement to possession of the Green Land (not merely a right of occupation falling short of possession).
9. It seems to me that, by the chain of conveyances and assignments, the benefit of the Commissioners' contractual entitlement to possession of the Warehouse is now vested in Mr Beaumont.
10. At paragraph 34-014 of Meggery & Wade's The Law of Real Property (2012), 8th edition, the authors state that: *"Whether or not the benefit of a licence is assignable must depend upon the circumstances of the grant. If the licence was intended to be personal to the licensor it will not be assignable."* Given the (failed) intention to create a lease (being an interest capable of being assigned), the parties to the Conveyance did not, in my view, intend

that the benefit of the entitlement to possession of the Green Land should be personal to the Commissioners.

11. From the matter set out above, it follows that, as against the Council, Mr Beaumont, although not holding the Green Land under a lease, is entitled to possession of that land (at least until such time as he sells, or rebuilds, the Warehouse).

TOM WEEKES

LANDMARK CHAMBERS

180 Fleet Street

11 April 2012