



No. S224947
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MARY REYNOLDS

PLAINTIFF

AND:

DEEP WATER RECOVERY LTD., MARK JURISICH, JOHN DOE #1,
JOHN DOE #2, JOHN DOE #3 and JOHN DOE #4

DEFENDANTS

NOTICE OF APPLICATION

Name of applicant: The Plaintiff, Mary Reynolds

To: The Defendants, Deep Water Recovery Ltd. and Mark
Jurisich

TAKE NOTICE that an application will be made by the applicant Mary Reynolds to the presiding judge at the courthouse at 800 Smithe St., Vancouver, B.C. on September 13, 2022, at 9:45 a.m. for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An order that the Plaintiff's application for relief under the *Protection of Public Participation Act*, S.B.C. 2019 c. 3 (the "PPPA Application"), filed on August 8, 2022, be scheduled for two days and be heard on an expedited basis or as soon as practicable;
2. An order changing the venue of this application from the Courthouse in Vancouver to the Courthouse in Victoria pursuant to Rule 23-1(13) to ensure the timely hearing of this application;
3. An order setting the following schedule for the PPPA Application:

- a. The parties shall provide the availability of all affiants for cross-examination by September 16, 2022;
 - b. Cross-examinations on affidavits are to be completed by October 14, 2022;
 - c. The parties are to file and serve any ancillary applications arising out of affidavits or cross-examinations by October 21, 2022;
 - d. The applicant (Plaintiff) is to file and serve written argument and affidavits attaching excerpts or exhibits from any cross-examination by October 28, 2022;
 - e. The application espondent (Defendant) is to file and serve its written argument and affidavits attaching excerpts and/or exhibits arising from any cross-examinations by November 4, 2022.
- 4. An order pursuant to Rule 22-1(4)(b) that prior to October 14, 2022, Mr. Jurisich shall be examined under oath for not more than 7 hours on topics related to the *PPPA* Application.
 - 5. The parties may vary the timelines set out in paragraphs three and four by consent or on application if the parties cannot consent.

Part 2: FACTUAL BASIS

- 1. The Defendant, Deepwater Recovery Ltd. ("DWR"), owns and operates a shipbreaking operation on an oceanside beach in Baynes Sound on the eastern shore of Vancouver Island, near Union Bay, British Columbia.
- 2. The Defendant, Mr. Jurisich, is a corporate director and operations manager of DWR.
- 3. DWR's shipbreaking operation is a matter of public debate and controversy. The Comox Valley Regional District has commenced a civil action against DWR for operating in contravention of zoning restrictions. There has been extensive media coverage regarding DWR's operations, opposition from K'ómoks First Nation, and public criticism from local residents and international NGOs.
- 4. Ms. Reynolds has recorded and disseminated drone footage of the DWR shipbreaking operations.

5. DWR and Mr. Jurisich responded unlawfully to Ms. Reynolds' recording and dissemination of drone video of their shipbreaking operation by engaging in the following activity:
- a. On June 11, 2022, Mr. Jurisich robbed Ms. Reynolds of her drone, in the presence of another man;
 - b. On June 14, 2022, Mr. Jurisich returned the stolen drone to Ms. Reynolds' residence by dropping it off on her front porch in the dead of night, while another man stood guard for Mr. Jurisich;
 - c. On June 15, 2022, Mr. Jurisich unlawfully confined and intimidated Ms. Reynolds in the Union Bay Community Hall parking lot by blocking her parked vehicle in with his parked vehicle, chasing her into her vehicle and then partially entering her vehicle through an open window; and
 - d. On June 15, 2022, Mr. Jurisich intimidated, menaced and beset Ms. Reynolds by following her to her residence and then watching and besetting her residence with two other men who arrived in a separate pickup truck.

Affidavit of Mary Reynolds #1, Exhibit G

6. The above-noted misconduct was captured on video.

Affidavit of Mary Reynolds #1, Exhibit G

7. Ms. Reynolds initiated civil proceedings by way of a Notice of Civil Claim filed on June 20, 2022. Ms. Reynolds claims the above noted activity constitutes conversion, harassment, assault and intimidation.
8. On July 13, 2022, the Defendants DWR and Jurisich filed a Response to Civil Claim. The Response to Civil Claim pleads manifest and knowing falsehoods, including a false denial that Mr. Jurisich did not steal Ms. Reynolds' drone.

Affidavit of Mary Reynolds #1, Exhibit G

9. The Response to Civil Claim also asserts that DWR and Jurisich are legally entitled to rob Ms. Reynolds, destroy her property, intimidate and threaten her because she has provoked them by recording their shipbreaking operation and then disseminating that footage online. This pleading suggests that DWR and Jurisich feel no legal disinhibition to continuing their unlawful acts.

10. On July 13, 2022, DWR commenced a counterclaim that adopts the narrative and falsehoods in the Response to Civil Claim and alleges that Ms. Reynolds' gathering and dissemination of drone footage constitutes torts of trespass, nuisance, a privacy tort and illegal operation of a drone.
11. On August 8, 2022, Ms. Reynolds filed a Notice of Application seeking to dismiss the counterclaim as a SLAPP suit under s. 4 of the *PPPA*. In support, Ms. Reynolds has filed affidavits from three affiants: (1) herself; (2) Ray Rewcastle; and (3) Rob Kerr.
12. On August 15, 2022, the Defendants provided their application response and affidavits of (1) Duncan McIntyre and (2) Terrance Robert Martin Ruttan in support. Notably, Mr. Jurisich, who is a party and central to the *PPPA* Application, has not provided an affidavit.
13. Since August 10, 2022, counsel for the Plaintiff has repeatedly requested the Defendants' position on timelines for the conclusion of cross-examinations, the venue of the hearing, a time estimate for the hearing and availability of counsel for the hearing and the availability of witnesses for cross-examination. Counsel for the Defendants have not responded to these repeated requests.

Affidavit #1 of Shauna Stewart, affirmed August 17, 2022

14. At present, there are no available dates for two-day chambers hearings in Vancouver. Two-day chambers hearings are available in Victoria.

Affidavit #1 of Shauna Stewart, affirmed August 17, 2022, Exhibits Y and Z

Part 3: LEGAL BASIS

Expediting the Hearing of this Application

1. The applicant requests that the hearing of this application be expedited or heard as soon as practicable. Section 9(3) of the *PPPA* provides that an application for a dismissal order under s.4 of the *PPPA* must be heard as soon as practicable.
2. Ms. Reynolds seeks the stated relief to ensure that this matter moves ahead in an expeditious and timely manner. Counsel for DWR appear unwilling to provide available dates or address scheduling issues.
3. The Defendant DWR is not prejudiced; it has filed a response to the *PPPA* Application. The orders sought further the purpose of the rules by moving this matter towards a just, speedy and inexpensive conclusion on its merits.

4. Collectively, the parties have provided five affidavits that are subject to cross-examination as of right under s.9(5)(b) of the *PPPA*. The proposed timeline will ensure the parties are permitted to cross-examine any affiants they choose while preserving the efficient and orderly process envisioned by the *PPPA*.
5. Quite apart from the legislative purpose of the *PPPA*, the facts of this matter support moving it ahead expeditiously. The affidavits in support show that Mr. Jurisich has stolen Ms. Reynolds' drone, gone to her house in the middle of the night with another unknown man, blocked in her vehicle, followed her home and beset her home, and has dangerously tailgated and spit at persons who he knows are in opposition to DWR's shipbreaking. Mr. Jurisich has threatened to bankrupt one resident of Union Bay using lawsuits and has threatened another that "he is next".

Affidavit of #1 of Mary Reynolds, affirmed August 6, 2022

Affidavit #1 of Rob Kerr, affirmed August 6, 2022

Affidavit #1 of Ray Rewcastle, affirmed August 6, 2022

6. There is a suggestion in the Response to Civil Claim that the Defendants are receiving legal advice that their misconduct is permissible if the Defendants feel provoked, and an assertion in the Counterclaim that gathering and recording drone footage of industrial activity is unlawful. There is no sustainable basis in law for these legal positions and the *PPPA* Application affords the earliest opportunity to address the issue.
7. BCSC Civil Rule 23-1(13) provides that at any time after a proceeding is started, the Court may, on application, order the proceeding to be transferred from the registry in which it is being conducted to any other registry of the court for any or all purposes. The Court enjoys the discretion to transfer this application to the Victoria registry to satisfy the requirements of s.9(3) of *PPPA*. The applicant has met her onus to justify the exercise of discretion.

Robertson v. Zimmer, 2001 BCSC 1067

8. The Plaintiff, Ms. Reynolds, is experiencing emotional distress from this lawsuit, as are other critics of DWR. DWR has threatened other individuals and non-profit organizations with defamation lawsuits. The right of the public to participate in democratic discourse about subjects in the public interest is diminished because residents are intimidated and because energies are diverted and

depleted by responding to this lawsuit. The chilling effect of DWR's litigation should be addressed as soon as possible.

Affidavit #1 of Mary Reynolds, affirmed August 6, 2022

Affidavit #1 of Rob Kerr, affirmed August 6, 2022

Affidavit #1 of Ray Rewcastle, affirmed August 6, 2022

Examination of Mr. Jurisich

9. Section 9 of the *PPPA* provides that an application under s. 4 must be made in accordance with the Supreme Court Civil Rules. Rule 22-1(4)(b) applies and allows this Court to order a party or witness to be examined under oath in *PPPA* proceedings

Galloway v. A.B., 2020 BCCA 106; *Lang v Neufeld*, 2021 BCSC 1468

10. Despite being a party to these proceedings and the operations manager and director of DWR, Mr. Jurisich has not provided an affidavit for the *PPPA* Application. There is a significant amount of compelling evidence, including video evidence, that Mr. Jurisich stole Ms. Reynolds' drone, went to her house in the middle of the night with another unknown man, blocked in her vehicle, followed her home and beset her home, and has dangerously tailgated and spit at persons who he knows are in opposition to DWR's shipbreaking.
11. Mr. Jurisich's evidence is clearly of central importance to the *PPPA* Application. The Court should order his attendance to answer questions under oath related to the *PPPA* Application.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Shauna Stewart, affirmed August 17, 2022.
2. Affidavit #1 of Mary Reynolds, affirmed August 6, 2022.
3. Affidavit #1 of Rob Kerr, affirmed August 6, 2022.
4. Affidavit #1 of Ray Rewcastle, affirmed August 6, 2022.
5. Such other materials as the Court may accept.

The applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: August 17, 2022



 Signature of Lawyer for Applicant
 for Jason Gratl
 Gratl & Company
 Barristers & Solicitors
 511-55 East Cordova Street
 Vancouver, B.C. V6A 0A5

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

Date: _____

Signature of Judge Master ☐ Judge ☐ Master

APPENDIX**THIS APPLICATION INVOLVES THE FOLLOWING:****THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☒ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts