



No. S-224947
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

RESPONSE TO CIVIL CLAIM

Filed by: The Defendants, Deep Water Recovery Ltd. ("Deep Water Recovery") and Mark Jurisich (collectively, the "DWR Defendants")

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – DWR Defendants' Response to Facts

1. The facts alleged in the following paragraphs of Part 1 of the Notice of Civil Claim are admitted: NONE.
2. The facts alleged in the following paragraphs of Part 1 of the Notice of Civil Claim are denied: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32.
3. The facts alleged in the following paragraphs of Part 1 of the Notice of Civil Claim are outside the knowledge of the DWR Defendants: 1.

Division 2 – DWR Defendants' Version of Facts

4. Unless expressly admitted herein, the DWR Defendants deny each and every allegation of fact, argument, and all other matters contained in the Plaintiff's Notice of Civil Claim, and put the Plaintiff to the strict proof thereof.

I. The Parties

A. The DWR Defendants

5. Deep Water Recovery is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 1500-570 Granville Street, Vancouver, British Columbia, V6C 3P1.

6. Deep Water Recovery operates from lands known as 5084 Island Highway South, Union Bay, British Columbia (the “Property”).

7. Deep Water Recovery is the tenant at the Property.

8. Deep Water Recovery’s operations at the Property include a barge loading facility, a storage and works yard and warehousing facility, a waterfront freight handling facility, and marine vessel services.

9. Mark Jurisich is a director of Deep Water Recovery and, at all times, Mr. Jurisich has acted as a director of Deep Water Recovery.

B. The Plaintiff

10. The Plaintiff, in coordination with others, has engaged in a malicious campaign against Deep Water Recovery. The Plaintiff’s campaign against Deep Water Recovery is driven by conduct that is wrongful, high-handed, and deserving of rebuke. The Plaintiff’s wrongful conduct includes continuing acts of trespass, nuisance, invasion of privacy, and the illegal operation of a drone, all of which are calculated to disrupt, interfere with, and ultimately shut down Deep Water Recovery’s business activities and operations. The Plaintiff has unjustifiably refused to cease the wrongful conduct, despite Deep Water Recovery’s demands and the Royal Canadian Mounted Police’s (the “RCMP”) instructions that she stop doing so. The Plaintiff continues to engage in the wrongful conduct in flagrant disregard of Deep Water Recovery’s property and privacy rights.

II. The Plaintiff has Committed Acts of Trespass and Nuisance

11. Starting in or around February 2022, the Plaintiff has engaged in ongoing acts of trespass and nuisance, in flagrant disregard and violation of Deep Water Recovery's property rights.

12. In or around late June or early July 2022, the Plaintiff has increased the frequency of her wrongful conduct including, but not limited to, by flying a drone into the Property's airspace approximately once or twice daily.

13. Without limiting the generality of the foregoing, the DWR Defendants note the following.

- (a) The Plaintiff has repeatedly physically entered onto the Property, without permission.
- (b) The Plaintiff has repeatedly flown a drone into the Property's airspace at a height of between 30 and 100 feet, without permission.
- (c) The Plaintiff has operated a drone in a manner that causes a substantial and real danger to the DWR Defendants and Deep Water Recovery's employees. Among other things:
 - (i) The Plaintiff does not maintain the drone in a visual-line-of-sight at all times during flight.
 - (ii) Without limiting the generality of the foregoing, the Plaintiff flies a drone behind trees, buildings, and other full and/or partial obstructions.
 - (iii) The Plaintiff operates a drone in close proximity to the DWR Defendants and Deep Water Recovery's employees while they are working with and/or around heavy equipment and on top of barges, thereby causing distractions and safety risks.
 - (iv) The Plaintiff does not maintain a minimum distance of 100 feet, measured horizontally and at any altitude, between the drone and the DWR Defendants and Deep Water Recovery's employees.

14. In these circumstances, the Plaintiff has operated a drone in a manner that wrongfully and without lawful excuse directly obstructs, interrupts, and/or interferes with the DWR Defendants' lawful use, occupation, operation and/or enjoyment of the Property, thereby constituting a trespass upon the Property and a nuisance.

III. The Plaintiff has Invaded the Privacy of the DWR Defendants

15. The Plaintiff has willfully, and for the purpose of advancing the campaign to shut down Deep Water Recovery's business, conducted surveillance and has recorded the DWR Defendants' business activities, operations, and employees on private property, without a claim of right or permission.

16. The Plaintiff has published and shared these recordings publicly and to third parties with malice, and without the DWR Defendants' permission.

17. The Plaintiff's unauthorized surveillance, recordings, and dissemination of the recordings of Deep Water Recovery's business activities, operations, and employees on private property was not reasonable in the circumstances, having regard to the lawful interests of Deep Water Recovery.

18. The Plaintiff operates a drone in a manner that violates the DWR Defendants' privacy rights.

19. Without limiting the generality of the foregoing, the Plaintiff's activities constitute a breach of the DWR Defendants' privacy pursuant to the *Privacy Act*, R.S.B.C. 1996, c. 373.

IV. The Plaintiff's Illegal Operation of the Drone

20. The Plaintiff's activities violate applicable legal requirements, including under Part IX of the *Canadian Aviation Regulations*, SOR/96-33. Without limiting the generality of the foregoing, the Plaintiff's activities violate applicable legal requirements, including as follows.

- (a) The Plaintiff operates an unregistered drone.
- (b) The Plaintiff operates an unmarked drone. In the alternative, if the Plaintiff's drone does have an issued registration number, it is not clearly visible on the drone.
- (c) The Plaintiff operates a drone in a manner that fails to maintain the drone in a visual-line-of-sight at all times during flight. Without limiting the generality of the foregoing, the Plaintiff flies the drone behind trees, buildings, and other full and/or partial obstructions.

- (d) The Plaintiff operates a drone in a manner that is reckless and/or negligent, and that endangers or is likely to endanger the safety of the DWR Defendants, Deep Water Recovery's employees, and/or others.
- (e) The Plaintiff operates a drone in close proximity to the DWR Defendants and Deep Water Recovery's employees while they are working with and/or around heavy equipment and on top of barges, thereby causing distractions and safety risks.
- (f) The Plaintiff operates a drone in a manner that fails to maintain a minimum distance of 100 feet, measured horizontally and at any altitude, from the DWR Defendants, Deep Water Recovery's employees, and/or others.
- (g) The Plaintiff operates a drone in a manner that wrongfully and without lawful excuse directly obstructs, interrupts, and/or interferes with the DWR Defendants' lawful use, occupation, operation and/or enjoyment of the Property, thereby constituting a trespass upon the Property and a nuisance.
- (h) The Plaintiff operates a drone in a manner that violates the DWR Defendants' privacy rights.

V. The DWR Defendants' Demands

- 21. Deep Water Recovery has reported and filed multiple police reports in respect of the Plaintiff's unlawful drone use to the RCMP.
- 22. The RCMP have instructed the Plaintiff to stop flying the drone into the Property's airspace, but she has refused to comply with these instructions.
- 23. The Plaintiff's actions and ongoing refusal to comply with the directions of the RCMP are unlawful and constitute a further violation of Part IX of the *Canadian Aviation Regulations*, SOR/96-33.
- 24. Deep Water Recovery has demanded that the Plaintiff cease entering onto the Property and cease flying the drone into the Property's airspace, but she has refused to comply with these demands.

VI. The Plaintiff's Version of Events Is Not Accurate

25. The DWR Defendants deny that the purported events and circumstances referred to at Part 1, paragraphs 9 to 32 of the Notice of Civil Claim occurred.

A. The DWR Defendants Deny Assaulting the Plaintiff

26. The DWR Defendants deny that they assaulted the Plaintiff, as alleged or at all.

27. The DWR Defendants did not cause the Plaintiff to fear or apprehend imminent contact of a harmful or oppressive nature.

28. Further, and in the alternative, if the DWR Defendants did cause the Plaintiff to fear or apprehend imminent contact of a harmful or oppressive nature, they did not desire to produce the consequences that followed from the alleged act(s) and did not do so intentionally.

29. Further, and in the alternative, if the Plaintiff did fear or apprehend imminent contact of a harmful or oppressive nature, which is not admitted but is specifically denied, that fear or apprehension was not reasonable.

30. Indeed, the Plaintiff has continued to operate the drone in the manner set out above. That being the case, the Plaintiff continues to do the very thing that purportedly gave rise to the alleged events that are the subject of the Notice of Civil Claim.

B. The DWR Defendants Deny Intimidating the Plaintiff

31. The DWR Defendants deny that they intimidated the Plaintiff to deprive her of the use of the drone and/or to make her cease her activities of photographing and making video recordings of Deep Water Recovery's operations and disseminating those images and recordings, as alleged or at all.

32. The DWR Defendants did not threaten the Plaintiff with an illegal act, either expressly or impliedly. Indeed, the Notice of Civil Claim does not allege a threat whatsoever.

33. In the alternative, if the DWR Defendants did threaten the Plaintiff with an illegal act, which is not admitted but is specifically denied, they did not intend to injure or cause damage to the Plaintiff.

34. Further, and in the alternative, if the DWR Defendants did threaten the Plaintiff with an illegal act, which is not admitted but is specifically denied, the Plaintiff did not comply with the demand or threat. At all materials times, the Plaintiff has continued to fly the drone into the airspace of the Property and did not cease the activities of photographing and making video recordings of Deep Water Recovery's operations and disseminating those images and recordings.

35. The DWR Defendants did not cause damage or loss to the Plaintiff.

C. The DWR Defendants Deny Stealing the Drone

36. The DWR Defendants deny stealing and/or damaging the drone, as alleged or at all.

37. The DWR Defendants did not wrongfully interfere with the drone in a manner inconsistent with a right of possession belonging to the Plaintiff, if any.

38. In the alternative, if the DWR Defendants took the drone as alleged or at all, the DWR Defendants' interference with the drone was merely temporary and the drone was promptly returned to the Plaintiff unharmed. The Plaintiff accepted the return of the drone.

39. Further, and in the further alternative, if there was damage to the drone, which is not admitted but is specifically denied, such damage occurred after the drone was returned by the DWR Defendants and while in the possession of the Plaintiff.

D. In the Alternative, the Plaintiff Provoked the DWR Defendants

40. In the alternative, if the DWR Defendants did engage in conduct amounting to assault, intimidation, and/or theft of the drone, as alleged or at all, which is not admitted but is specifically denied, the DWR Defendants were provoked by the Plaintiff.

41. The conduct of the Plaintiff in repeatedly flying the drone in an illegal, unsafe, and disruptive manner over the Property (thereby trespassing, causing a nuisance, and invading the DWR Defendants' privacy) which occurred at the time of and/or shortly before the events alleged by the Plaintiff, has aggravated the DWR Defendants and heightened tensions between the DWR Defendants and the community, including the Plaintiff. Further, the effect of the ongoing wrongful conduct of the Plaintiff has inflamed the situation.

E. The DWR Defendants Deny Confining the Plaintiff

42. The DWR Defendants deny confining the Plaintiff at the Union Bay Community Hall parking lot, as alleged or at all.

43. The DWR Defendants did not deprive the Plaintiff of her liberty or prevent her from leaving against her will.

44. At all material times, the Plaintiff had the ability to freely leave the Union Bay Community Hall parking lot. Indeed, in her Notice of Civil Claim, the Plaintiff pleaded that she did leave the Union Bay Community Hall parking lot and drove home.

F. Deep Water Recovery Properly Reported the Plaintiff's Wrongful Conduct to the RCMP

45. As noted above, Deep Water Recovery has reported and filed multiple police reports in respect of the Plaintiff's unlawful drone use to the RCMP.

46. To the extent Mr. Jurisich was involved in making such reports, he did so in good faith as a director of Deep Water Recovery.

47. In any event, Deep Water Recovery and Mr. Jurisich deny making any false statements to the RCMP, as alleged or at all.

48. Deep Water Recovery, or alternatively, Mr. Jurisich, acting in good faith as a director of Deep Water Recovery, has accurately and properly reported the Plaintiff's wrongful conduct to the RCMP.

49. In the alternative, if Deep Water Recovery, or alternatively, Mr. Jurisich, made any statements to the RCMP that turned out to be false, which is not admitted but is specifically denied, they did not know that the statements were false at the time.

G. The DWR Defendants Deny Coordinating With Others

50. The DWR Defendants deny coordinating their actions with others, as alleged or at all.

51. There was no agreement among the DWR Defendants and others, as alleged or at all, to coordinate any actions in respect of the Plaintiff.

VII. The Plaintiff Continues to Engage in the Wrongful Conduct

52. The DWR Defendants deny that the Plaintiff has lost sleep and experienced distress, fear and anxiety, as alleged or at all.

53. Since the occurrence of the alleged events comprising the basis of the Plaintiff's claim against the DWR Defendants, which are not admitted but are specifically denied, the Plaintiff has continued to operate the drone in the inappropriate manner set out above.

54. The Plaintiff continues to trespass onto the Property and into the Property's airspace, and continues to cause a nuisance, including in the manner set out at paragraphs 11 to 14 of this Response to Civil Claim. Further, the Plaintiff continues to operate the drone in a manner that violates the DWR Defendants' privacy rights, including in the manner set out at paragraphs 15 to 19 of this Response to Civil Claim. Finally, the Plaintiff continues to operate the drone in violation of applicable legal requirements, including in the manner set out at paragraphs 20 to 24 of this Response to Civil Claim.

PART 2: RESPONSE TO RELIEF SOUGHT

55. The DWR Defendants consent to the granting of the relief sought in the following paragraphs of Part 2 of the Notice of Civil Claim: NONE.

56. The DWR Defendants oppose the granting of the relief sought in the following paragraphs of Part 2 of the Notice of Civil Claim: ALL.

57. The DWR Defendants take no position on the granting of the relief sought in paragraphs of Part 2 of the Notice of Civil Claim: NONE.

PART 3: LEGAL BASIS

VIII. There Is No Merit To The Claims Against The DWR Defendants

58. The Plaintiff's theories and allegations of assault, intimidation, conversion by theft and/or damage, unlawful confinement, conspiracy, and harassment against the DWR Defendants are exceedingly broad, entirely without merit, and lacking in any factual or legal foundation, as pleaded or at all.

A. The DWR Defendants Are Not Liable For Assault

59. The DWR Defendants deny that they assaulted the Plaintiff, as alleged or at all. The DWR Defendants did not cause the Plaintiff to fear or apprehend imminent contact of a harmful or oppressive nature.

60. In the alternative, if the DWR Defendants did cause the Plaintiff to fear or apprehend imminent contact of a harmful or oppressive nature, they did not do so intentionally.

61. Further, and in the alternative, if the Plaintiff did fear or apprehend imminent contact of a harmful or oppressive nature, which is not admitted but is specifically denied, that fear or apprehension was not reasonable.

B. The DWR Defendants Are Not Liable For Intimidation

62. The DWR Defendants deny that they intimidated the Plaintiff, as alleged or at all.

63. The DWR Defendants did not threaten the Plaintiff with an illegal act, either expressly or impliedly.

64. In the alternative, if the DWR Defendants did threaten the Plaintiff with an illegal act, which is not admitted but is specifically denied, they did not intend to injure or cause damage to the Plaintiff.

65. Further, and in the alternative, if the DWR Defendants did threaten the Plaintiff with an illegal act, which is not admitted but is specifically denied, the Plaintiff did not comply with the demand or threat.

66. The DWR Defendants did not cause damage or loss to the Plaintiff.

C. The DWR Defendants Are Not Liable For Conversion

67. The DWR Defendants did not convert any property belonging to the Plaintiff and are not otherwise liable to the Plaintiff in respect of a drone, as alleged or at all.

68. In the alternative, if the DWR Defendants did convert a drone belonging to the Plaintiff, as alleged or at all, the DWR Defendants' interference with the drone was not substantial; it was trivial and merely temporary.

69. In the further alternative, if the DWR Defendants converted the drone as alleged or at all, the drone was returned to the Plaintiff unharmed and the Plaintiff accepted the return of the drone, such that the Plaintiff would only be entitled to nominal damages.

70. In the further alternative, if there was damage to the drone, which is not admitted but is specifically denied, such damage occurred after the drone was returned by the DWR Defendants and while in the possession of the Plaintiff.

D. Defences to Claims of Assault, Intimidation, and Conversion

71. As set out at paragraphs 26 to 39 of this Response to Civil Claim, the DWR Defendants are not liable for assault, intimidation, and/or conversion.

72. In the alternative, if Deep Water Recovery or Mr. Jurisich engaged in acts constituting assault, intimidation, and/or conversion, which is not admitted but is specifically denied, the DWR Defendants were provoked by the Plaintiff and rely on the defence of provocation and on the facts pleaded in paragraphs 11 to 24, 40 to 41, and 53 to 54 of this Response to Civil Claim, including the following:

- (a) the Plaintiff's trespass onto the Property and into the Property's airspace;
- (b) the Plaintiff's nuisance;
- (c) the Plaintiff's invasion of the DWR Defendants' privacy rights; and
- (d) the Plaintiff's illegal operation of the drone.

73. Further, and in the alternative, if Deep Water Recovery or Mr. Jurisich engaged in acts constituting assault, intimidation, and/or conversion, which is not admitted but is specifically denied, the Plaintiff is prevented from attempting to recover as against the DWR Defendants by the equitable doctrine of *ex turpi causa*. The Plaintiff cannot profit from her own unlawful

conduct, which includes, but is not limited to, the facts pleaded in paragraphs 11 to 24 and 53 to 54 of this Response to Civil Claim and the following:

- (a) the Plaintiff's trespass onto the Property and into the Property's airspace;
- (b) the Plaintiff's nuisance;
- (c) the Plaintiff's invasion of the DWR Defendants' privacy rights; and
- (d) the Plaintiff's illegal operation of the drone.

E. The DWR Defendants Are Not Liable For Unlawful Confinement (False Imprisonment)

74. The DWR Defendants deny committing the tort of false imprisonment, as alleged by the Plaintiff or at all. The Plaintiff was not totally deprived of her liberty by the DWR Defendants against her will. At all material times, the Plaintiff had the ability to freely leave the Union Bay Community Hall parking lot, and did so.

F. The DWR Defendants Are Not Liable For Conspiracy

75. The DWR Defendants deny that they have engaged in any activity that could constitute a civil conspiracy, as alleged by the Plaintiff or at all.

76. Without limiting the generality of the foregoing, the DWR Defendants have never combined with each other or others, whether by agreement or common design, so as to engage in any unlawful conduct or, for that matter, any conduct that was intended to harm the Plaintiff.

77. Further, the DWR Defendants did not agree or arrange to injure, threaten, harm, intimidate, or cause emotional distress to the Plaintiff, whether by unlawful means or at all.

G. The Plaintiff's Harassment Claim Is Bound To Fail

78. There is no common law tort of harassment in either British Columbia or Canada. Accordingly, the Plaintiff's harassment claim in the Notice of Civil Claim is bound to fail.

79. Further, and in the alternative, even if a common law tort of harassment exists in British Columbia or Canada, which is not admitted but is specifically denied, the DWR Defendants deny

having harassed the Plaintiff. In particular, the DWR Defendants deny having engaged in a course of conduct against the Plaintiff amounting to harassment, as alleged or at all. The DWR Defendants' conduct was at all times lawful, proper and reasonable in the circumstances.

IX. The Plaintiff Has Suffered No Loss or Damage

80. In further and alternative response to the whole of the Notice of Civil Claim, the Plaintiff has suffered no loss or damage as a result of any acts or omissions of the DWR Defendants and the DWR Defendants put the Plaintiff to the strict proof thereof.

81. In further and alternative response to the whole of the Notice of Civil Claim, if the Plaintiff has suffered any loss or damage, which is not admitted but is specifically denied, that loss or damage was not caused by the DWR Defendants.

82. In further and alternative response to the whole of the Notice of Civil Claim, if the Plaintiff has suffered any loss or damage, which is not admitted but is specifically denied, the Plaintiff has failed or refused, and continues to fail or refuse, to take reasonable steps to mitigate that loss or damage.

X. The Plaintiff Is Not Entitled To Injunctive Relief

83. There is no factual or legal basis in the Notice of Civil Claim to grant the injunctive relief sought by the Plaintiff.

84. Further, and in the alternative, the Plaintiff has continued to operate the drone illegally, trespass onto the Property and into the Property's airspace, cause a nuisance, and invade the DWR Defendants' privacy rights, to the DWR Defendants' detriment. Given that the Plaintiff is coming to the Court with unclean hands, she should not be entitled to equitable injunctive relief.

XI. No Basis For Punitive or Aggravated Damages

85. The Plaintiff has failed to plead any factual or legal basis to support the relief sought of punitive or aggravated damages.

86. The DWR Defendants' conduct was at all times lawful, proper and reasonable in the circumstances. The DWR Defendants have not engaged in any conduct that is malicious,

oppressive, high-handed, deserving of rebuke, or conduct that would offend the Court's sense of decency, so as to justify an award of punitive or aggravated damages.

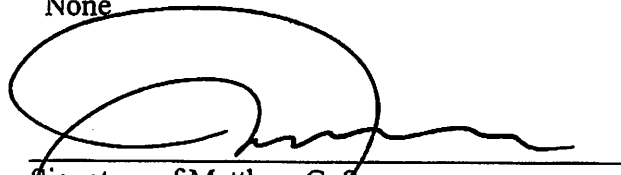
87. The Plaintiff's claim must be dismissed, with costs to the DWR Defendants.

DWR Defendants' address for service: BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre
200 Burrard Street
P.O. Box 48600
Vancouver, British Columbia
V7X 1T2
Attention: Matthew G. Swanson

Fax number for service (if any): None

E-mail address for service (if any): None

Date: July 13, 2022



Signature of Matthew G. Swanson
☐ defendants ☒ lawyer for defendants, Deep
Water Recovery Ltd. and Mark Jurisich

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

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Defendants

RESPONSE TO CIVIL CLAIM

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