



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

RESPONSE TO COUNTERCLAIM

Filed by: Mary Reynolds (the “responding party”)

Part 1: RESPONSE TO COUNTERCLAIM FACTS

Division 1 – Response to Facts

1. None of the facts alleged in Part 1 of the counterclaim are admitted.
2. The facts alleged in paragraphs 1, 2, 3 and 4 of Part 1 of the counterclaim are denied.
3. The facts alleged in the Counterclaim at paragraph 2 and in the Response to Civil Claim at paragraphs 5, 6, 7, 8, 9, 21, are outside the knowledge of the Plaintiff.

Division 2 – Responding Party’s Version of Facts

1. The responding party adopts the facts and definitions as set out in the Notice of Civil Claim, filed on June 20, 2022.
2. DWR operates a shipbreaking operation that at all materials times presented an ongoing risk to the marine environment in and around Baynes Sound. DWR stores and dismantles ships and barges using heavy equipment and cutting torches on the foreshore of Baynes Sound (the “Property”), including on permeable ground on and near the foreshore. The ships and barges release toxins and hazardous materials on disassembly and the toxins and hazardous

materials sink into the soil and run off into the marine environment. DWR's systems for preventing runoff of toxins and hazardous materials into marine environment are inadequate. DWR's operation is inextricably connected to sensitive marine habitat for fish, seabirds and shellfish, and aerial helicopter

3. DWR's operation is on industrial zoned land and itself produces high volume noise from heavy equipment including dump trucks, 18 wheelers, excavators, grapplers, cranes, cutting torches, grinders and pneumatic hammers. The workers are required to wear hearing protection and hard hats at all times. DWR's operation is exposed to the elements, subject to view from passing watercraft and subject to aerial overflight by aircraft and seabirds.
4. The Plaintiff, the residents of Union Bay, the K'ómoks First Nation and its members, and all persons having a connection to the waters of Baynes Sound, have a lawful right to a marine environment free from excessive toxins and hazardous substances. DWR's operations are regulated by federal and provincial environmental legislation but federal and provincial authorities lack the resources to monitor and supervise DWR's operations. Elected officials lack the resources to monitor and supervise DWR's operations and need objective evidence in order to advocate within the legislature and government executive for accountability and compliance with environmental standards.
5. DWR, through its principal operator, Mark Jurisich, repeatedly makes false statements to news reporters that are disseminated to the public, including falsely denying that DWR presents any risk to the marine environment in the vicinity of its operations, and falsely denying that DWR disassembles ships and barges on permeable ground on or near the foreshore.
6. The Plaintiff's mini-drone is about 10 inches across and weighs less than 250 grams. The Plaintiff flew her mini-drone and continues to fly her mini-drone at high altitude without entering the airspace of the Property and without interfering with DWR's operations.

7. The Plaintiff lawfully recorded and continues to record the Defendants' shipbreaking operation with the intention of distributing those recordings and participating in and enhancing public debate about the shipbreaking operation, which includes providing objective evidence to refute falsehoods conveyed by DWR about its operations. The Plaintiff's surveillance and video recording of DWR's operations are of use to federal and provincial regulators in fulfilling their statutory mandates to ensure that DWR complies with federal and provincial legislation.
8. The Plaintiff denies flying her mini-drone near any person and denies causing any person to reasonably or even unreasonably fear for their safety or security. No person has been injured or harmed by the Plaintiff's mini-drone.
9. The Plaintiff did not cause any physical or practical interference with the Counterclaimant's shipbreaking operation. The Plaintiff's mini-drone is so small it can hardly be seen or heard. DWR's hostility to the drone arises from the dissemination of drone footage, which has resulted in new reporting critical of DWR and Mr. Jurisich, has led to public opposition to DWR's operations, has been used as evidence in a civil claim by the Comox Valley Regional District against DWR's operations for violation of local bylaws, and has resulted in investigations of DWR's operations by federal and provincial regulators as well as citations and penalties issued to DWR by the British Columbia Ministry of Environment for environmental offences.
10. The Plaintiff's mini-drone did not and does not present any meaningful risk to any person's safety.
11. DWR did not demand that the Plaintiff cease entering onto the Property and cease flying her drone into the Property's airspace, as alleged at paragraph 24 of the Response to Civil Claim, adopted by reference by paragraph 2 of the Counterclaim. The airspace of the Property is not "enclosed" within the meaning of the *Trespass Act*, RSBC 2018, c.3, in the sense that there are no signs prohibiting entry into the airspace. Prior to filing the Counterclaim, DWR did not give the Plaintiff notice, actual or constructive, that her mini-drone had entered

DWR's airspace, that she should not enter DWR's airspace, or that DWR made claim to any airspace above or around the Property, as is required to establish liability for trespass.

12. The Plaintiff did not receive any direction from the Royal Canadian Mounted Police to cease drone flights. Further, the Plaintiff denies that any such direction by the Royal Canadian Mounted Police would be valid or lawful, even if such direction had been given, which never happened.
13. The Plaintiff did not trespass by entry onto the surface of the Property. The Plaintiff visited her friend across the highway from DWR's operation and accessed her friend's residence by means of a public road. There is an easement on title that provides the public with a right of access over the public road leading to her friend's residence, and DWR is aware of that easement. DWR resiled in open court from its claim against the Plaintiff for trespass by entry onto the surface of the Property, but DWR has not yet amended its pleading of this claim.
14. To the knowledge of DWR, one or more people other than the Plaintiff operate a drone or drones over and near DWR's operations. Employees of DWR are aware that the Plaintiff is not the only person who operates a drone near their operation. One or more of these other drones operated by someone other than the Plaintiff may well have flown over DWR's operations at lower altitude or near DWR employees or the Defendant Mark Jurisich. While the Plaintiff denies that any drone caused any DWR employee to be subjectively fearful or concerned for their safety or well-being, any such fear or concern or expressions of fear of concern may be attributable to drones other than the Plaintiff's mini-drone. The Plaintiff puts DWR to the strict proof that it was her mini-drone that allegedly caused fear, distraction and concern for DWR employees.
15. DWR, and its director and principal operator, the Defendant Mark Jurisich, knowingly set out the following false pleadings in the Counterclaim and incorporated Response to Civil Claim:

- a. “the Plaintiff has repeatedly physically entered onto the Property, without permission” (Response to Civil Claim, para.13(a)). DWR and Mark Jurisich are aware that the Plaintiff did not enter onto the Property;
- b. “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” (Response to Civil Claim, para.22). DWR and Mark Jurisich are aware that the RCMP did not instruct the Plaintiff to stop flying the drone into the Property’s airspace;
- c. “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” (Response to Civil Claim, para.24) DWR and Mark Jurisich are aware that, at the time of filing the Counterclaim, DWR had not demanded that the Plaintiff cease entering onto the Property and cease flying the drone into the Property’s airspace;
- d. “The Plaintiff has no right of use or entry in respect of the Property” (Counterclaim, Part 3, para.2). DWR and Mark Jurisich are aware that there is an easement giving the public a right of way to access the Plaintiff’s friend’s residence; and
- e. The Plaintiff’s conduct is “for the Plaintiff’s own personal gain” (Counterclaim, Part 3, para.7). DWR and Mark Jurisich are aware that the Plaintiff does not achieve personal gain by restricting DWR’s business activities or operations and is not motivated by personal gain.

Division 3 – Additional Facts

Part 2: RESPONSE TO RELIEF SOUGHT

1. The responding party consents to the granting of the relief sought in **none** of the paragraphs of Part 2 of the counterclaim.

2. The responding party opposes the granting of the relief sought in **all** paragraphs of Part 2 of the counterclaim.
3. The responding party takes no position on the granting of the relief sought in **none** of the paragraphs of Part 2 of the counterclaim.

Part 3: LEGAL BASIS

1. **Trespass into Airspace.** The Plaintiff says that DWR is not the registered owner of the Property and DWR has no legal entitlement to the Property or any airspace above the Property, leasehold or otherwise, and puts DWR to the strict proof thereof. If DWR has any airspace entitlement, the Plaintiff's mini-drone did not enter into DWR's airspace, and no trespass occurred. Further, airspace is not "enclosed" within the meaning of the *Trespass Act*, RSBC 2018, c.3, and DWR did not give the Plaintiff notice, actual or constructive, that her mini-drone had entered DWR's airspace, that she should not enter DWR's airspace, or that DWR made claim to any airspace above or around the Property, as is required to establish liability for trespass. The Plaintiff says that DWR has no property right to restrict the flight of her drone above the foreshore or the ocean and no liability for trespass arises therefrom.
2. **Trespass by Entry.** The Plaintiff says that DWR resiled in open Court from its claim against the Plaintiff for trespass by entry onto the Property. The Plaintiff says that DWR is thereby estopped from advancing this claim. In any event, the Plaintiff's use of a public road to visit her friend across the highway from DWR's facility does not constitute trespass. Even if the Plaintiff's use of a public road could constitute trespass, the public road is not "enclosed land" within the meaning of the *Trespass Act*, DWR did not given the Plaintiff notice of trespass and no signage or other physical notice of trespass was posted on or near the road. The Plaintiff asserts the defences of lawful authority and colour of right, as there is an easement providing a right of public access over the road to her friend's residence and the road is ostensibly a public road with unrestricted access from the highway.

3. **Privacy Tort.** DWR is a corporate entity that has no reasonable expectation of privacy, privacy interest or right of exclusion under the *Privacy Act*, in this context or otherwise, having regard to the lawful interests of others, including the Plaintiff and members of the public, in free expression, informed debate and compliance with environmental legislation. DWR is not entitled to make a claim for a breach of the personal privacy interests of its employees, officers or directors. Even if a corporate entity can in theory make a claim for a breach of its privacy under the *Privacy Act*, DWR has no reasonable expectation of privacy in respect of its open air industrial operation, and there is no basis under the *Privacy Act* for requiring the Plaintiff to make payment to DWR for video recording or surveilling those industrial operations.
4. **Nuisance.** The flights of the mini-drone and surveillance and recording do not substantially interfere with DWR's use of the Property, and, even if there were a substantial interference, this interference is not unreasonable having regard to all the circumstances, including the need for and right of public discourse, the interest in truth, the need for compliance with and enforcement of environmental legislation and the need to inform elected officials and regulators about DWR's conduct and operation. In assessing whether there is a substantial interference and whether the interference is reasonable, the Court should also consider that DWR's operation is in plain sight on industrial zoned land and itself produces the noise of heavy equipment including dump trucks, 18 wheelers, excavators, grapplers, cranes, cutting torches, grinders and pneumatic hammers. The workers wear hearing protection and hard hats at all material times. The Plaintiff's mini-drone is not a nuisance under the common law.

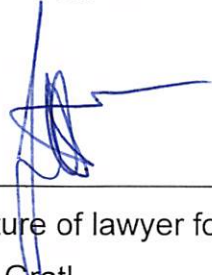
Address for service of the responding party:

Gratl & Company
Barristers and Solicitors
511-55 East Cordova
Vancouver, BC V6A 0A5

Fax number address for service (if any): n/a

E-mail address for service (if any): jason@gratlandcompany.com with a copy to
service@gratlandcompany.com

Date: April 11, 2024



Signature of lawyer for filing party
Jason Gratl

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.