

Form 6.2 Note of appeal

Rule 6.2(1)

APPEAL

to

THE SHERIFF APPEAL COURT

MOWI SCOTLAND LIMITED, a company incorporated under the Companies Act (Company Number) SC148843 and having its registered office at 1st Floor Admiralty Park, Admiralty Road, Rosyth, Fife, KY11 2YW.

PURSUER and RESPONDENT

against

Don Staniford, residing at 78 Glenwood Drive, Irby, Wirral, CH61 4UJ

DEFENDER and APPELLANT

1. The Appellant appeals to the Sheriff Appeal Court against the final judgment being the interlocutor of the Sheriff at Oban dated 14 September 2023 finding the Appellant liable for expenses of the action following the decision to sustain the Respondent's pleas in law and to repel the Appellant's pleas in law. The court reference number is OBN-A20-21.

OUTCOME PROPOSED

The Appellant respectfully invites the Sheriff Appeal Court

- to recall the Sheriff's interlocutor;

- to sustain the Appellant's first, second and fourth pleas in law;

- to repel the Respondent's second, third and fourth pleas in law; and,
- to dismiss the action; or,
- alternatively, to remit the cause for Proof before Answer, all pleas left standing, and in that event to remit the cause to the Court of Session on the ground that it raises a number of novel and complex points of law of public importance relating to the freedom to navigate, access to the sea and the foreshore, and the nature of interdict. The Supreme Courts have ruled on similar cases in the past (*Wills Trustees v. Cairngorm*, 1976 SC (HL) 30; *Crown Estate Commissioners v. Fairlie Yacht Slip Ltd*, 1979 SC 156; *Winans v. Macrae*, (1885) 12 R 1051).

GROUNDS OF APPEAL

2. (i) The Sheriff erred in law by holding that the Appellant's averments were irrelevant. He has erred in law by failing to apply the correct test: a defence will not be dismissed as irrelevant unless it must necessarily fail even if all the averments are proved (*Jamieson v. Jamieson*, 1952 SC (HL) 44, page 50).
- (ii) The Sheriff erred in law by reaching conclusions on matters of fact and drew inferences based on both parties' untested averments at debate without hearing evidence on them. There was no inescapable inference from the facts averred which meant that the Sheriff could dismiss the defence without any inquiry into the facts (*Wilson v. Norwich Union Fire Insurance Society Limited*, 1999 SLT 1139).
- (iii) The Sheriff erred in law by failing to articulate, and apply the correct test for interdict, including, *inter alia*, the requirement for an appreciable wrong and it being an equitable remedy (*Winans v. Macrae*, (1885) 12 R 1051).

- (iv) The Sheriff erred in law by failing to articulate, and apply the correct test for the freedom to navigate (*Wills Trustees v. Cairngorm*, 1976 SC (HL) 30; *Crown Estate Commissioners v. Fairlie Yacht Slip Ltd*, 1979 SC 156).

AVAILABILITY OF SHERIFF'S NOTE

3. The Sheriff has provided a note setting out the reasons for the decision appealed against, and a copy is appended.

INITIAL CASE MANAGEMENT: APPELLANT'S VIEWS

4. The Appellant considers that the appeal should be appointed to the Chapter 7 appeal procedure because it would be proportionate to do so having regard to:
- (i) The importance of the claim; and,
 - (ii) The complexity of the issues of fact and law raised by the appeal.

IN RESPECT WHEREOF



James Alexander Cameron Whittle, Solicitor for Appellant

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10/10/2023