



OUR REF S5801.121/JSWM
YOUR REF
12 October 2023

FIRST CLASS

Mr Don Staniford
78 Glenwood Drive
Irby
Wirral
CH61 4UJ

Dear Sir

Scottish Sea Farms Limited (“SSF”)

Our client operates over 60 aquaculture sites across Scotland and within the UK’s territorial waters, including on the foreshore.

Incursions

For several years, you and other individuals have regularly accessed (or at least sought to access) our client’s fish farms, marine assets and other land-based facilities without our client’s consent. Our client tells us that it has documented, and has evidence of, numerous examples of incursions at its facilities. These include, but are not limited to, the following:

Date	Location	Activity
August 2018	Loch Spelve	You accessed, and filmed from, the gangways and pens at our client’s fish farm.
July 2019	Shuna	You accessed, and filmed from, the gangways and pens at our client’s fish farm. You were also videoing within a pen and untying nets at our client’s fish farm.
July 2020	Loch Creran	You attended at our client’s fish farm and while there, an individual who accompanied you, Matthew Mellen, dived and swam within our client’s leased area.
May 2021	Loch Spelve	You accessed, and filmed from, the gangways into a pen (or pens) at our client’s fish farm.
July 2022	Finuary, Sound of Mull	You boarded our client’s vessel.
February 2023	South Shian Processing site	You attended our client’s processing facility, videoing the facility and staff, and verbally abusing members of our client’s staff.
May 2023	Shuna Point	Our facility and staff were filmed carrying out their work. It is believed the footage was captured using a drone. You also accessed a barge at our client’s fish farm, removed cable ties and opened mortality bins.
June 2023	Kishorn	You were videoing within a pen and untying nets at our client’s fish farm.

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Our client has no indication that you will desist from this behaviour and reasonably concludes that these incursions will continue absent you agreeing to stop, or our client taking action to prevent future incursions.

Health & Safety and Biosecurity

Your actions are not only unacceptable to our client because you are accessing our client's property without its consent, but because at least some of your actions pose a danger to you and jeopardise the welfare of the fish.

Our client assesses and reviews work related risks by carrying out risk assessments. It then puts in place appropriate arrangements for planning, organising, controlling, monitoring and reviewing any risks identified. In terms of its employees, our client puts in place arrangements for implementing its health and safety policy and to train its staff. In addition, our client's staff also have the necessary training and understanding to enable them to comply with the relevant biosecurity requirements.

Our client has no reason to believe that you understand any of the identified risks, have the requisite biosecurity training or comply with the relevant biosecurity requirements. Even if you did, which is not accepted, that would still not give you the right to access our client's property without SSF's consent.

Mowi's court action

Our client is aware of the proceedings that were brought against you by Mowi Scotland Limited ("**Mowi**") in Oban Sheriff Court. We enclose a copy of the court's judgment.

As you know, the Sheriff repelled your defences, and rejected your argument that granting an interdict would interfere with exercising your right of navigation and that any interdict would restrict your actions as a "campaigner, journalist or the like."

Therefore, you have now been prohibited (interdicted) from doing any of the following:

- (i) "boarding, entering onto, physically occupying, attaching himself to, attaching vessels to or approaching within 15 metres of all structures, docks, walkways, buildings, floats or pens of salmon aquaculture farming sites of [Mowi];
- (ii) flying unmanned aircraft, also known as drones, above [Mowi's sites]; and
- (iii) instructing, procuring, encouraging or facilitating others to so act."

'Digivan' Tour

In addition to the past incidents noted above, and our client's reasonably held belief that you will continue to act as you have done in the past, our client understands that you plan to attend at one of its processing plants near Oban on 5 November 2023, during the proposed "London to Edinburgh Digivan Tour".¹

While our client respects your right to peacefully and lawfully protest, and in no way seeks to interfere with the responsible exercise of that right, this does not give you the right to board, access or otherwise interfere with our client's property. Indeed, in a case involving Greenpeace, the court was clear that the lack of access to a particular location is not destructive of the right of freedom of expression or freedom of assembly. In short, you do not require access to our client's facilities and premises in order to protest.

Action Required

Our client requires that you confirm in writing that you will immediately cease from:



¹ End Salmon Farming: Join the Scottish Salmon Boycott - 'Digivan' Tour from London to Edinburgh (31 October to 6 November) - Green Around the Gills (typepad.com)

1. boarding, entering onto, physically occupying, attaching yourself to, attaching vessels to, or approaching within 15 metres of all structures, docks, walkways, buildings, yards, floats, vessels, boats or pens of aquaculture sites of SSF ("**SSF's Aquaculture Sites**");
2. flying unmanned aircraft (a.k.a. drones) above SSF's Aquaculture Sites;
3. operating unmanned underwater vehicles (a.k.a. drones) above SSF's leased areas of the seabed, or within 15 metres of SSF's Aquaculture Sites; and
4. instructing, procuring, encouraging or facilitating others to so act in your stead.

Our client requires this confirmation in writing by 4pm on 27 October 2023. Failing this, SSF will be left with no option but to raise court proceedings against you. If proceedings are raised, no further warning will be given to you beforehand.

In the meantime, our client reserves all of its rights.

Yours faithfully



John MacKenzie
For and on behalf of Shepherd and Wedderburn LLP
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Enc

SHERIFFDOM OF NORTH STRATHCLYDE AT OBAN

OBN-A20-21

JUDGMENT

By

SHERIFF ANDREW BERRY

in causa

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

PURSUERS

Against

DON STANIFORD, residing at 78 Glenwood Drive, Irby, Wirral, CH61 4UJ

DEFENDER

Act: Barne KC

Alt: Crabb

The Sheriff, having resumed consideration of the cause, Repels the first and second preliminary pleas for the Defender; Sustains the third preliminary plea for the Pursuer and Grants decree in terms of the first crave for the Pursuer; Continues the cause to a procedural hearing on the question of expenses.



Note.

1. The Pursuer, who operate 47 salmon aquaculture farming sites in Scotland, seek an order of interdict preventing the Defender from:-

- (i) *boarding, entering onto, physically occupying, attaching himself to, attaching vessels to or approaching within 15 metres of all structures, docks, walkways, buildings, floats or pens of salmon aquaculture farming sites of the Pursuer (together "the Pursuer's Salmon Aquaculture Farms");*
 - (ii) *flying unmanned aircraft, also known as drones, above the Pursuer's Salmon Aquaculture Farms; and*
 - (iii) *instructing, procuring, encouraging or facilitating others to so act; and for an extended interdict ad interim.*
2. Sheriffs are reminded that, if the following can be answered in respect of material averments then the pleadings are likely to give sufficient notice to satisfy the test of specification and enable evidence to be led :-
- 1. What?
 - 2. When?
 - 3. Who?
 - 4. Where?
 - 5. How?
 - 6. Why?
3. They are further reminded of the dicta of Lord President Hope from *Southside Housing Association Limited v David Harvey, Alex Scott and Partners and Others* (2 July 1992) quoted at 1993 SCLR 189, dealing with the correct approach to considering relevancy:

'The advantage of this procedure is that it enables points to be disposed of on relevancy without spending time and money on what might be a worthless inquiry, if it appears that, even if the party were to succeed in proving all his averments he would nevertheless fail to make out his case. If this test cannot be satisfied the proper course is to sustain the plea to the relevancy and to dismiss the action, repel the defences or exclude the averments from probation as the case may be. But it is a misconception of the procedure to go further and to assume that the party has proved his averments and, on that assumption, to grant the remedy to which he is entitled after Proof. A debate on relevancy is not to be treated as a substitute for a Proof of the averments. It is assumed when deciding on relevancy that the party will be able to prove his averments. But that is only an assumption and all decisions on the merits of the action, which cannot be resolved on relevancy, must be reserved until after the Proof. In some cases it may be clear from the debate that the plea to relevancy is unsound and it may then be repelled. In others it may be clear that, since the test of relevancy has not been satisfied, the proper course is to sustain it. In cases of doubtful relevancy, where it is appropriate that the facts should be inquired into, a Proof before Answer will be necessary so that the answer is given after all the facts have been established by the evidence.'

4. To set the arguments in context, condescendence 11 avers conduct of which the Pursuer complains with answer 11 answering, for example,

“(ix) Admitted that the Defender attended at the Pursuer’s farm at Ardnish on 18 July 2020. Admitted that the Defender travelled by kayak. The Defender kayaked over the water above the Pursuer’s leased area of the seabed. Admitted that the Defender secured the kayak to the Pursuer’s structures

(x) Admitted that the Defender attended at the Pursuer’s farm at Bagh Dail nan Ceann on 16 July 2021. Admitted that the Defender travelled by kayak. Admitted that the Defender kayaked over the water above the Pursuer’s leased area of the seabed. Admitted that the Defender secured the kayak to the Pursuer’s cage.

(xiii) Admitted that the Defender attended at the Pursuer’s farm at Poll Na Gille on 17 July 2021. Admitted that the Defender travelled by kayak. Admitted that the Defender kayaked over the water above the Pursuer’s leased area of the seabed. Admitted that the Defender secured the kayak to the Pursuer’s cage. Admitted that the Defender boarded the walkway surrounding a cage. The Defender penetrated the above-surface netting of the cage with an electronic device. The Defender inserted the device below the water surface of the cage.”

5. Senior counsel for the Pursuer pointed out that there are 8 such admissions, namely, Answer 11(iv), (vi), (viii), (ix), (x), (xi), (xii) and (xviii).

6. In answer the Defender replies:-

“Admitted that the Pursuer has requested (to) Defender to desist. Admitted that he has refused to do so under the explanation that the Defender’s activities are legitimate and relate to matters of public concern” and “the Defender seeks to gather evidence for public bodies” and “he is performing a watchdog function.”

7. The Pursuer offers to prove other such behaviour.

8. It might be, of course, that at any evidential hearing the Pursuer would have restricted their case to what is admitted and invite the court to decide that such alone merits an award of interdict.

9. Further admissions by the Defender are as follows:-

“Answer 4. Admitted that the environment around the Pursuer’s Aquaculture Farms can be dangerous

Answer 5. Admitted that the Defender is an environmental activist (there then follows detail of that activism).

Answer 6. Admitted that Fish Farming is a regulated industry”

10. Condescence 17 sets out, amongst other things, the Pursuer's apprehensions in relation to health and safety of their staff, the Defender and others as well as possible delictual liability.

11. This is met by:-

"Answer 17. Admitted that the Pursuer has requested the Defender to desist. Admitted that he has refused to do so under the explanation that the Defender's activities are legitimate and relate to matters of public concern" and"the Defender seeks to gather evidence for public bodies he is performing a watchdog function."

12. Accordingly it is clear from the outset that the Defender has engaged in, (and is likely to continue engaging in), conduct, in relation to the operations of the Pursuer, over a period of time and at various locations.

13. Senior counsel for the Pursuer described such acts as "incursions".

14. I had the benefit of written submissions for both parties which were supplemented, but not substantially varied from, by either side.

15. The submissions for the Defender invite me to dismiss the action on the basis of the Pursuer's averments being irrelevant and the Pursuer having no title to sue.

16. I observe that the Defender clearly regards the averments of the Pursuer as sufficiently relevant, and indeed clear, to have been able to make the multiple admissions to which I have referred.

17. The Pursuer's averments about other similar alleged behaviour are set out in a similar style.

18. It is clear that the Defender's admitted behaviour is not that merely of a protester who has unfurled a banner at a location to protest an issue. His behaviour goes much further and is substantially more interventionist.

Defender's submissions.

19. I now deal with the Defender's submissions in the order they are set out in writing:-

(1) The Defender's actions fall within his protection of freedom to navigate.

I conclude that the argument is misguided as, on plain reading, there is nothing in the crave that seeks any such prohibition. The order sought is clear and might be summarised as seeking to require the Defender to "keep off/out of" the business operations of the Pursuer.

The navigation of waters is the means by which it is suggested, and repeatedly admitted, the Defender was able to access the business operations of the Pursuer but, if the interdict were granted there would be no restriction on the Defender otherwise freely navigating waters.

I observe that often courts are asked to grant orders of interdict to prevent person B from approaching person A, or entering/attending at the home of person A or, indeed, going into a particular street or town in protection of person A

Such an order does not prohibit, by implication or otherwise, person B from using, in general, roads, footways, public transport or from driving a car.

Such orders are granted on the basis of what is proportionate to the circumstances of the facts of each case.

(2) The Crown leases do not permit the terms of the interdict sought.

The Crown leases, as quoted at paragraph 29 of the submissions for the Defender, do not prohibit the Pursuer from seeking the protection sought as the rights of navigation and, indeed, fishing would not be restricted as stated above.

Additionally the Crown are not a party to these proceedings to state their position and so it is for me to read, in plain terms, what the lease says.

(3) The Pursuer has failed to aver any appreciable harm.

The pursues have clearly set out the protection that they seek indeed sufficiently, as previously stated, for the Defender to admit several acts on his part and admits, in answer 4, as stated:-

"Admitted that the environment around the Pursuer's Aquaculture Farms can be dangerous"

While I accept the submission for the Pursuer in paragraph 31 that trespass is unlawful conduct the admission, of itself, states a potential appreciable harm both now and in the future.

With regard to the suggestion that the Pursuers seek protection from reputational damage their submissions at paragraph 32 is denied with the explanation that they seek to protect their employees and property from unlawful trespass.

(4) The interdict is not necessary and is disproportionate.

Paragraph 38 of the Pursuer's submissions states that, in effect, the Defender having acted as he admits, and as they offer to additionally prove, they are entitled to seek the protective order craved.

They relevantly argue the order is necessary.

Again, on plain reading, the order sought can be deemed to be proportionate in view of its terms. Standing the admissions by the Defender that he has behaved as averred on multiple occasions and intends to continue to do so it cannot be said that the order is, disproportionate

(5) The Pursuer has no title to sue.

This is stated in relation to one location where in answer the Pursuer submits that they own aquaculture equipment at the location, Maol Ban, which, would provide the Pursuer with title to sue.

Counsel for the Defender advised that he did not wish to add to the written submission in relation to this.

20. I conclude that the "What? When?, Who?, Where?, How?, Why?" test is met by the Pursuer on the basis of the multiple admissions of averments for the Pursuer and the plainly stated further incursions the Pursuer offers to prove, which, for the purpose of the legal argument I must assume they can indeed prove.

21. I further conclude that the preliminary plea for the Defender must fail as the averments for the Pursuer are clear and, in substantial part, admitted by the Defender

Pursuer's submissions.

22. Turning then to the submissions for the Pursuer, they invite me to reject the averments for the Defender and grant the interdict sought at this stage of the proceedings.

23. Alternatively they argue that certain parts of what the Defender avers in answer should not be allowed to proceed in any evidential hearing.

24. At paragraphs 2 and 3 of the written submissions the Pursuer sets out a summary of their argument with paragraph 3 setting out clearly why the Pursuers seek the order craved.
25. Dealing with the submission at paragraph 15 about the averment by the Defender in relation to the ownership of the Pursuer's parent company I do not conclude that it adds anything to the overall argument for either side.
26. Both the Pursuer (paragraphs 41 and 42) and the Defender (paragraph 12 and 13) make submissions in relation to the application of the Aarhus Convention. I reject the submissions for the Defender that the order sought is "inappropriate, unfair, unequitable and prohibitively expensive to defend" standing my later observations and conclusions.
27. Additionally however I understand the convention to have three "Pillars", namely any citizen having:-
 - a. Access to information.
 - b. Public participation in decision making;
 - c. Access to justice.
28. I do not think that reference to the convention therefor assists the Defender in that the actions of the Defender, especially as admitted, do not conform to an exercise of any of the foregoing rights.
29. The Pursuer argues correctly at paragraph 13 that "those rights are secured through judicial review, right of public interest interventions, and the availability of protective especially orders".
30. There are no averments for the Defender that indicate he has been thwarted in any of these pillars and it would not be appropriate that the Defender seek to exercise such rights he might feel he has under the convention as a Defender in the present case.
31. I observe, generally, that the Defender is variously described as a journalist, watchdog, campaigner, environmental activist, and the like.
32. At paragraph 6 the Pursuer suggests:-

"These incursions are unlawful. It is therefore for the Defender to establish a valid defence. He fails to do so".
33. The Pursuer refers to various authorities, stating, at paragraph 5:-

"The clear theme running through these cases is that the honestly-held beliefs of campaigners do not justify unlawful acts"

34. At paragraph 33 the Pursuer states:-

"The Defender relies on the self-appointed status of "watchdog" to justify his unlawful conduct. At the same time, he argues that he is a journalist. He is neither. He is a campaigner with a fixed agenda."

35. At paragraph 34 the Pursuer, in quoting from *Monsanto v Tilly* [2000] Env. L.R. 313.

"In that case, as in the present case, there was no necessity and the public interest did not excuse unlawful conduct. As Mummery LJ said: "Further, even in cases of emergency, trespass by the individual, in the absence of very exceptional circumstances, cannot be justified as necessary or reasonable",

36. I do not read or understand the authorities to mean that a campaigner, for want of a better word, cannot behave as the Defender admits/denies as a matter of law, per se.

37. I keep in mind that the Defender is just that i.e. he has been brought to court in relation to the application of the Pursuer for an interdict. This action is not about either party seeking a declarator of what the Defender can do. It is an application to limit the means by which he has acted and would intend to continue acting

38. At paragraph 14 of the submissions for the Pursuer I am invited, that if I allow some of the Defender averments to proceed to proof, I should exclude what is set out in paragraph 15-25.

39. At paragraph 21 of the submissions it is argued for the Pursuer that in answers complained of (4-10) the Defender mentions, "various averments about alleged shortcomings in the roles played by certain bodies" e.g. SEPA, The Marine Accident Agency, The animal and Plant Health Agency and others.

40. While analogies can be flawed I mention that if a party, for good and honourable reasons, has a concern about a welfare issue within the home of another it would be open to that person to raise the issue with e.g. the police or the social work department.

41. If the party were to be unhappy with "alleged shortcomings" on the part of the police or the social work department they could take that issue up by way of

complaint to a higher level within the police or the social work department or perhaps to an independent complaints body or with a local or national politician.

42. It could hardly mean that the person can take it upon them self to attend at the address personally; seek to enter; enter uninvited; take photographs; make recordings; look through a window.
43. The agencies apparently giving the Defender cause for concern have statutory or other regulatory powers to act in certain matters within the limit of their authority.
44. I do not conclude that an individual can act in place of, or as an alternative to, the agency without authority, however well meaning.
45. I add that the various agencies referred to are also not party to these proceedings and consequently their views would not be known to the court. It is not hard to imagine that an evidential hearing might result, in part, in substantial evidence and argument about the alleged shortcomings of those agencies. That, I conclude, would be a distraction from the central issue i.e. the means by which the Defender has, to date, admittedly acted.
46. I further conclude that no relevant defence has been averred by the Defender standing the admissions of incursions on eight occasions; his admission that the environment in which the Pursuer operates can be dangerous; his actions being unauthorised; his admission that he has refused to desist; the intention to continue with similar actions.
47. I then must consider the order sought and conclude that the three parts of crave 1 are limited, proportionate and clearly averred. I accept that the Defender denies the use of a drone but I think the prohibition of the use of same is reasonable and proportionate standing the refusal to desist by the Defender.
48. There is nothing in the order sought that otherwise restricts the actions of the Defender, in general, as a campaigner, journalist or the like. He can continue to act as such limited only by the prohibited means he has admittedly used.
49. The restriction is limited to prevent incursion by him on or into the operations of the Pursuer.
50. Additionally his right to navigate waters is not restricted by the order sought other than to stay a modest distance away from the operations.

51. I have continued the cause to a procedural hearing on expenses. If parties agree a position in that regard the matter can be dealt with administratively.

In respect whereof

A handwritten signature in black ink, appearing to be 'A Berry', written over the printed name.

Andrew Berry
Sheriff of North Strathclyde at Oban
9th August 2023