

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MARINE HARVEST CANADA INC.

PLAINTIFF

AND:

ALEXANDRA MORTON,
JOHN DOE, JANE DOE and ALL OTHER PERSONS
UNKNOWN TO THE PLAINTIFF OCCUPYING,
OBSTRUCTING, BLOCKING, OR PHYSICALLY IMPEDING
THE PLAINTIFF'S AQUACULTURE SITES

DEFENDANTS

RESPONSE TO CIVIL CLAIM

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

Filed by: ALEXANDRA MORTON, WILLIE MOON in his personal capacity and for and on behalf of the Dzawada'enuxw members, FARRON SOUKOCHOFF, and JOE WILLIE.

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The fact alleged in paragraph 2 of Part 1 of the Notice of Civil Claim is admitted.
2. In partial response to paragraph 3 of the Notice of Civil Claim, Willie Moon, Farron Soukochoff, and Joe Willie are three of the persons identified as John Doe and Persons Unknown in the Notice of Civil Claim (collectively, the "Dzawada'enuxw Defendants"). The facts alleged in paragraph 3 of the Notice of Civil Claim are otherwise denied.
3. The facts alleged in paragraphs 1, 4-24 of the Notice of Civil Claim are denied.

Division 2 – Defendant's Version of Facts

1. The Defendant Morton admits she attended near the Glacier Falls facility on August 13, 2016, but denies that she entered the facility or that she caused any damage or unlawful interference to property, or that she committed trespass or private nuisance therein. The Dzawada'enuxw Defendants were not present at the Glacier Falls facility.

2. The Dzawada'enuxw Defendants admit they attended at the Midsummer Island facility on August 23, 2016, but deny that they caused any damage or unlawful interference to property, or that they committed any act of trespass or private nuisance therein.
3. The Defendant Morton admits she attended at the Midsummer Island facility on August 23, 2016, but denies that she caused any damage or unlawful interference to property, or that they committed any act of trespass or private nuisance therein.
4. The Defendant Morton and the Dzawada'enuxw Defendants each deny that they entered upon the Sonora Island facility on August 28, 2016 at all, and deny that they caused any damage or unlawful interference to property, or that they committed any act of trespass or private nuisance therein.
5. The Defendant Morton and the Dzawada'enuxw Defendants each further deny that the licences or grants claimed by the plaintiff in paragraphs 4-9 of the notice of civil claim grant any or sufficient rights of property or other exclusive rights to occupy the public ocean or the surface of the water.

Division 3 – Additional Facts

1. The Dzawada'enuxw Defendants are each members of the Dzawada'enuxw First Nation. The defendant Willie Moon is the elected Chief of the Dzawada'enuxw First Nation and was acting on his own behalf and on behalf of the Dzawada'enuxw members.
2. The Dzawada'enuxw Defendants, the other members of the Dzawada'enuxw First Nation and the Dzawada'enuxw First Nation itself are Aboriginal Peoples of Canada within the meaning of s. 35(1) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c. 11*.
3. The Defendants each assert that the Glacier Falls and Midsummer Island facilities are within the lawful traditional territory of the Dzawada'enuxw First Nation (the "Dzawada'enuxw Territory").
4. On August 13, 2016, the Defendant Morton's attendance near the Glacier Falls facility was accompanying a Dzawada'enuxw representative who was delivering a letter from Dzawada'enuxw First Nation to the plaintiff.
5. On August 23, 2016 the Dzawada'enuxw Defendants' attendance at the Midsummer Island facility was a lawful act of traversing within the Dzawada'enuxw Territory and a lawful engagement in a ceremony of elders of the Dzawada'enuxw First Nation. The Defendant Morton was in attendance with the Dzawada'enuxw defendants and at that ceremony with the authority and at the invitation of the Dzawada'enuxw Defendants and the Dzawada'enuxw First Nation.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant Morton and the Dzawada'enuxw Defendants consent to the granting of the relief sought in paragraphs: None.

2. The Defendant Morton and the Dzawada'enuxw Defendants each oppose the granting of the relief sought in paragraph 25(a)-(c) (All) of Part 2 of the notice of civil claim.
3. The Defendant Morton and the Dzawada'enuxw Defendants each take no position on the granting of the relief sought in paragraphs None of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

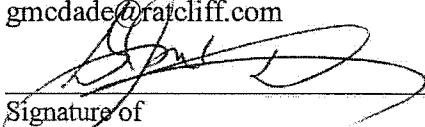
1. The plaintiff's rights under the *Land Act*, if any, do not contain, and are not constitutionally capable of containing, the grant of the right of exclusive occupation to the public ocean, and do not amount to an interest in land.
2. The plaintiff has no sufficient legal right to exclude the members of the Dzawada'enuxw First Nation in the use and/or occupancy of the Dzawada'enuxw Territory, nor their invited guests.
3. The actions of the Defendant Morton, herself, and the actions of the Dzawada'enuxw defendants did not cause any damage or unreasonable interference or otherwise amount to the tort of trespass or nuisance.
4. The Defendant Morton and the Dzawada'enuxw Defendants each assert that the traversing of the Dzawada'enuxw Territory, including at or near the Glacier Falls and Midsummer Island facilities, and the ceremonies held by the Dzawada'enuxw First Nation and the Dzawada'enuxw Defendants were lawful, an exercise of the Dzawada'enuxw Defendants' and the Dzawada'enuxw First Nation's customary and traditional practices, and in the public interest. The defendant Morton's attendance and participation in those events was authorized.

Defendant's address for service: Ratcliff & Company LLP
500 – 221 West Esplanade
North Vancouver, BC V7M 3J3
Phone: 604-988-5201
Attention: Greg J. McDade, Q.C.

Fax number address for service (if any): 604-988-1452

Email address for service (if any): gmcdade@ratcliff.com

Date: 15/Nov/2016



Signature of
 defendant lawyer for defendant
Greg J. McDade

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.