

FORM G1A

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

COMMERCIAL ACTION

**PROFESSOR (EMERITUS) DAVID K SMYTHE, residing
at 1, rue du Couchant, 11120 Ventenac en Minervois,
France.**

PURSUER

against

**THE UNIVERSITY COURT OF THE UNIVERSITY OF
GLASGOW, University Avenue, Glasgow G12 8QQ**

DEFENDERS

RIAZ for the Pursuer craves the Court:

1. To find and declare that the defender is in breach of Clause 9 of Compromise Agreement dated 3 and 4 November 1998 entered into between the pursuer and the defender by de-activating and cancelling the pursuer's (i) university email address david.smythe@glasgow.ac.uk and (ii) the pursuer's Glasgow Unique Identifier "ds193p" together with the free access to the library e-resources, such as articles, e-journals, e-books and databases both on and off campus that comes with such access.

2. To find and declare that the defender is in breach of the implied term of Compromise Agreement dated 3 and 4 November 1998 entered into between the pursuer and the defender not to interfere with the pursuer's academic freedom, as an Honorary Senior Research Fellow of the University, to hold and promote views that are contrary to the views of other members of the academic staff and that by de-activating and cancelling the pursuer's (i) university email address david.smythe@glasgow.ac.uk and (ii) the pursuer's Glasgow Unique Identifier "ds193p" together with the free access to the library e-resources, such as articles, e-journals, e-books and databases both on and off campus that comes with such access.

3. For an order ordaining the defender within two weeks of the court order, or such other time as the court may determine, to reinstate the pursuer's (i) university email address david.smythe@glasgow.ac.uk and (ii) the pursuer's Glasgow Unique Identifier "ds193p" together with the free access to the library e-resources, such as articles, e-journals, e-books and databases both on and off campus that comes with such access or alternatively to provide a similar university email address and Glasgow Unique Identifier with the foresaid free access.

4. For an order *ad interim* ordaining the defender, to reinstate the pursuer's (i) university email address david.smythe@glasgow.ac.uk and (ii) the pursuer's Glasgow Unique Identifier "ds193p" together with the free access to the library e-resources, such as articles, e-journals, e-books and databases both on

and off campus that comes with such access, or alternatively to provide a similar university email address and Glasgow Unique Identifier with the foresaid free access.

5. In the event that the defender is not required to reinstate a university email address and Glasgow Unique Identifier or fails to do so following a decree in terms of crave three, for payment by the defender to the pursuer of the sum of FIFTY THOUSAND POUNDS (£50,000.00) STERLING with interest thereon at the rate of 8% per annum from 1 February 2016, or from such other date and at such other rate as the court may determine until payment.

6. To find the defender liable to the pursuer for the expenses of the action.

CONDESCENDENCE

1. The pursuer resides at 1, rue du Couchant, 11120 Ventenac en Minervois, France. The defender has their head Offices at University Avenue, Glasgow G12 8QQ. This action relates to a breach of contract by the defender. This court accordingly has jurisdiction. Reference is made to section 42 and paragraph 2(2)(b) of Schedule 8 of the Civil Jurisdiction and Judgments Act 1982. The pursuer knows of no agreement, which prorogates the jurisdiction of a court in any other country. The pursuer knows of no proceedings involving the same cause of action, subsisting between the parties in any country to which the Convention in Schedule 1 to the Civil Jurisdiction and Judgments Act 1982 applies.

2. The pursuer became Professor of Geophysics at the defender's Department of Geology and Applied Geology, in the Faculty of Science in 1988. By the mid 1990s there were pressing financial pressures on the department, so that a re-orientation of research direction, combined with staff reductions, was required. At that stage the pursuer and the defender were in dispute on a number of issues including inter alia that the pursuer and a colleague had appeared as expert witnesses at the Nirex local planning inquiry appeal of 1995-96, acting for objectors to Nirex's proposals to excavate an underground nuclear waste test repository at Sellafield. Thereafter, following a review of the Department, and in settlement of said disputes, the pursuer agreed to take early retirement with a view to carrying on research independently and entered into the Compromise Agreement referred to hereafter.

3. To settle said dispute and to facilitate the pursuer's early retirement, the pursuer and the defender entered into a Compromise Agreement dated 3 and 4 November 1998 to settle all outstanding claims that the pursuer might have against the defender. A copy of the Compromise Agreement is produced and is referred to for its whole terms which are held to be repeated herein for the sake of brevity. In particular Clause 9 provides:

“9. Employee rights and responsibilities

9.1 The Employee shall become Professor Emeritus on the Termination Date and shall retain the right to said title in perpetuity.

9.2 The Employee shall become an Honorary Senior Research Fellow of the University on the Termination Date and shall retain the right to said fellowship in perpetuity.

9.3 The Employee shall retain all rights of access to University facilities, including but not limited to the Library other than as qualified in clause 13.1 and the Sports and Recreation Service, on the same basis as an Honorary Senior Research Fellow of the University.

9.4 The Employee shall be entitled to use the description "Emeritus Professor of Geophysics, Faculty of Science, University of Glasgow" on academic publications. The Employee shall not be entitled to use the said description for any other purpose.

...

13. Dial-up service

13.1 The University shall provide for the Employee, from the Termination Date until his Normal Retirement Date, dial-up access to the internet *via* the U-Net full internet service scheme arranged for academic users by UKERNA. Dial-up access shall include access to JANET, including the facilities such as BIDS which are restricted to members of the University.”

4. Clause 13.1 is irrelevant to the present dispute because dial up access has been superseded by direct broadband internet access, which is now used by *inter alia* Honorary Senior Research Fellows of the defender. The pursuer's normal retirement date was 31 August 2012. It was agreed, by the transfer of ownership of various computers and other geophysical equipment to the pursuer, combined with the defender's reimbursement of the costs of increasing the security at the pursuer's flat in Glasgow that the Compromise Agreement provided for the pursuer to work remotely from the University. As an Honorary Senior Research Fellow of the University in perpetuity, under the Compromise Agreement, it was understood that the pursuer would undertake research for academic purposes and for use in other work that he might undertake post his employment with the university, such as giving evidence to public bodies or giving advice to clients or giving evidence in connection with planning applications or public inquiries. This arrangement continued amicably from late 1998 until July 2014.

5. In terms of the Compromise Agreement the defender provided the pursuer *inter alia* with the university facilities of (i) a university email address and (ii) access to and use of the library and its electronic resources including using an allocated Glasgow Unique Identifier (“GUID”) which gives free access to e-resources, such as articles, e-journals, e-books and databases both on and off campus. The pursuer was originally allocated the email address dks1e@udcf.gla.ac.uk, but this was later changed in August 2015 to david.smythe@glasgow.ac.uk. The pursuer’s allocated GUID was “ds193p”. A university email address and a GUID are facilities that are normally allocated to and used by an Honorary Senior Research Fellow of the University.

6. On about 30 January 2016 the defender, in breach of the Compromise Agreement, cancelled the pursuer's university email address and the use of his GUID without giving the pursuer any notice of this decision. He only became aware that this was done when he found that he could not access his university email address or use the GUID. The instruction came from David Newall, Secretary of the University Court in an email, sent 29 January 2016 10:19, to Lesley Carr instructing that the pursuer's email account should be terminated. This instruction was given upon a request from the School of Geography & Earth Sciences – reference is made to an email from David Newall to Martin Lee, head of the school sent 04 February 2016 17:34. The decision was reviewed, at the request of the pursuer, by the defender's Senior Vice-Principal, Professor Neal Juster, in March 2016, but the decision was maintained. Cancelling the pursuer's university email address and the use of his GUID is in breach of Clause 9.3 of the Compromise Agreement because the pursuer was appointed an Honorary Senior Research Fellow of the University in perpetuity and a university email address and GUID access are both facilities accorded to Honorary Senior Research Fellows at the university. Said denial of a university email address and use of the GUID preventing access to library and other resources is in breach of the pursuer's rights under the Compromise Agreement.

7. The pursuer believes and avers that the termination of these rights has been instigated by Professor Paul Younger, who joined the College of Science and Engineering in 2012. Professor Younger and his research group has sought research funding from the unconventional gas and oil extraction industry. Professor Younger disagrees with the views expressed by the pursuer in academic articles, other publications and in his evidence to public bodies and public inquiries into unconventional gas and oil extraction. The instruction to close the email account was given two days after a paper by the pursuer critical of fracking in the UK was published in the academic journal Solid Earth Discussions – “Hydraulic fracturing in thick shale basins: problems in identifying faults in the Bowland and Weald Basins, UK”. Professor Younger was in email correspondence with David Newall and others at the university, complaining about the pursuer’s research articles and work for groups that oppose unconventional gas and oil extraction. David Newall wrote to the pursuer on 16 July 2014 saying “A number of my academic colleagues are concerned that the views which you have expressed, particularly on the subject of shale gas, are not consistent with work which is currently being undertaken at the University.”, thus making clear that the fact that pursuer held different views from those of some of the university staff was at the root of the dispute. Further, in an email to David Newall sent Wed, 23 Jul 2014 21:40:21, Professor Younger wrote that “Various industrial research partners have suggested an open letter to major newspapers making clear that he [the pursuer] does not speak for us ...” thus making clear his connection with research partners in the industry. Professor Younger emailed the pursuer on 1 July 2014 complaining that the pursuer was “shamelessly using your emeritus

professor status ... to misrepresent not only geosciences generally and hydrology in particular ...”. That is untrue, because the pursuer holds other views on the subject which he is entitled to represent, in the exercise of his rights to academic freedom. In another email to Peter Aitchison, the university Director of Communications and Public Affairs, copied to David Newall sent 26 May 2016 07:48, Professor Younger refers to his own papers that discussed the pursuer’s arguments about fracking “demonstrating that they are nonsense”, thus showing his own antipathy to the pursuer’s research. Professor Younger’s assertions that the pursuer presented himself as representing the university was inaccurate, because, apart from using his title as Emeritus Professor, which he was entitled to use in terms of the Compromise Agreement, the pursuer always made clear that he was presenting his own views. In all these circumstances the pursuer contends that the action of the defender in closing his university email address and denying the pursuer GUID access was for the purpose of stifling academic freedom and the pursuer’s research and work as an expert witness where his views are contrary to those of current employees of the university.

8. It is an implied term of the Compromise Agreement in relation to the pursuer's position as an Honorary Senior Research Fellow of the University in perpetuity that the defender would not restrict the pursuer's academic freedom, including freedom of speech, to carry out research, publish academic articles and to use the research in connection with his other work, such as giving expert evidence to public bodies and at public inquiries in relation to unconventional oil and gas extraction (which includes fracking and unconventional coalbed methane extraction). As an Honorary Senior Research Fellow, the pursuer is entitled to have his academic freedom recognised and protected in the same way that academic freedom is protected for members of the defender's academic staff.

9. By removing his university email and his GUID access the defender is making it very difficult for the pursuer to carry out such research and work. He requires access to GUID in order to access the library's electronic resources which give free access to e-resources, such as articles, e-journals, e-books and databases both on and off campus. He requires such access to keep up to date with research, to be able to read relevant articles for citation in his own research and to be in a position to give advice to organizations or evidence to public bodies or to public inquiries. Most of such material is not on open access via the internet and access to it will have to be purchased, often at a cost of about £30 to £50 per article, if it is publicly available. Some databases, such as the EDINA digital map database for the UK, held at Edinburgh University, are not publicly available and can only be accessed through a GUID. Such databases are critical to the pursuer's academic research and work.

10. In these circumstances the pursuers seeks a declarator from the court that the defender is in breach of the Compromise Agreement including the implied term condescended upon and an order upon the defender to reinstate the pursuer's university email address and GUID access. Further, the balance of convenience favours the pursuer and accordingly the court should grant the interim orders as fourth craved. There is no cost to the defender in reinstating the said email address and GUID. While the pursuer is deprived of the said email and GUID he is prejudiced in his academic research and other work.

11. The pursuer has sustained loss, injury and damage as a result of the defender's said breach of contract. He has incurred costs arising from his inability to use his GUID amounting to about £500. Further, in the event that the email address and GUID access are not reinstated the pursuer will continue sustain loss, injury and damage. He will have to pay for access to journals and other electronic resources, which he reasonably estimates at a cost of about £3,500 per annum. He will not be able to access some databases and so this will limit his research ability to provide research advice and evidence to public bodies and at inquiries. This will limit the income he can earn which is reasonably estimated at £10,000 per annum. His academic standing, has been and will continue to be compromised and his standing as an academic has been and will be damaged with a significant consequence upon his earning power.

PLEAS IN LAW

1. The defender being in breach of the Compromise Agreement, as condescended upon, by terminating the pursuer's university email address and GUID access, declarator as first craved should be pronounced.

2. The defender being in breach of the implied term of Compromise Agreement as condescended upon, by terminating the pursuer's university email address and GUID access, declarator as second craved should be pronounced.

3. Following grant of the declarator as first and/or second craved, the court should ordain the defender to reinstate the pursuer's university email address and GUID access as third craved.
4. The balance of convenience favouring the pursuer, the orders sought in the fourth crave to reinstate the pursuer's university email address and GUID access should be pronounced *ad interim*.
5. The pursuer having sustained loss, injury and damage as a result of the defender's breach of contract, as condescended upon, is entitled to reparation from the defender therefor.
6. *Esto* the court grants declarator in terms of the first and/or the second crave, but does not ordain the defender to reinstate the pursuer's university email address and GUID access and/or in the event that the court does ordain the defender to reinstate the pursuer's university email address and GUID access, but the defender fails to implement the said order, the pursuer will continue to suffer loss, injury and damage through the defender's breach of contract and so the pursuer is entitled to reparation therefor.
6. The sum sued for being a reasonable estimate of the pursuer's said loss, injury and damage, decree should be pronounced as fourth craved.

Ziqyia Riaz,

Solicitor for the Pursuer

Campbell & McCartney

430 Victoria Road

Glasgow G YOU

LLP Queen Spark

zr@patrickcampbellsolicitors.co.uk