No. S255985
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

WGSKI, LLC

PLAINTIFF

And:

STEELHEAD SYSTEMS INC., MAR DIVINA LTD. and ZRINKO AMERL

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Steelhead Systems Inc. (the "defendant")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1—Defendant's(s') Response to Facts

1 The facts alleged in paragraphs *1, 2 to 4, 6, 7(a), 7(b), 7(d), 7(e), 8, 9, 16, 18, and 19* of Part 1 of the notice of civil claim are admitted.

2 The facts alleged in paragraphs *5, 7(c), 10, 11, 12, 13 to 15, 17, 20 to 29, 30 to 33, and 34,* of Part 1 of the notice of civil claim are denied.

3 The facts alleged in none of the paragraphs of Part 1 of the notice of civil claim are outside the knowledge of the defendant.

Division 2—Defendant's Version of Facts

1. Zrinko Amerl ("Mr. Amerl") is the sole shareholder and operator of Steelhead Systems Inc. ("SSI") and Mar Divina Ltd. ("Mar Divina").

Purchase Agreement

2. On or about June 7, 2024 SSI and WGSKI entered into an agreement for the purchase of a chairlift (the **"Agreement").**

3. Pursuant to clause 2.1 of the Agreement, the purchase price and shipping price was

agreed to of $2,206,000 USD upon conversion from EUR (the “Purchase Price”). The Purchase Price was comprised of;

(a) €1,380,000 for the Equipment;

(b) $600,000 USD for the estimated price of shipping the Equipment;

(c) $88,000 USD for "Optimization engineering"; and

(d) a price "determined before shipping" for "other services listed below" in the Agreement.

4. Further pursuant to clause 2.1 of the Agreement, the Purchase Price payments shall be due as follows;

(a) $650,000 USD due after the Agreement was signed and not later than 18 June 2024 "as an initial payment";

(b) $850,000 USD due by 20 July 2024;

(c) $706,000 USD due by 1 August 2024; and

(d) a "final amount (TSO)" for "engineering, loading, bull wheel cradles, containers and other adjustments" that are "due two weeks before shipping and will be detailed in a final invoice".

5. Further pursuant to clause 2.1 of the Agreement, the shipping cost of $600,000 USD was provided as estimated price of shipping the Equipment, additional services pricing would be provided before shipping, and any adjustments from EURO to USD would be “adjusted at the time of final payment”.

6. It was an express term of the Agreement that;

(a) Prices for other services listed below would be determined before shipping said product;

(b) the exchange rate would be adjusted for the time of the final payment; and

(c) engineering, loading, bull wheels cradles, containers and other adjustments

would be provided in a final invoice.

7. In clause 3.1, it expressly states the price per loading of container is $3,000 net. This amount was reflective of the total purchase price

8. The Defendants deny that it was implied that adjustments to the exchange rate would be based on the exchange rate which was prevailing at the time WGSKI made each relevant payment to SSI pursuant to the Agreement.

   (a) WGSKI failed to make all of the payments due under the Agreement and as such, the equipment could not be loaded for transport.

   (b) The Defendants deny there was a deadline of July 15, 2025 for the equipment to be delivered under the Agreement. If July 15, 2025 was the deadline, which is denied, then any delay was caused by WGSKI's failure to make the payments pursuant to the Agreement.

   (c) Mr. Amerl advised WGSKI that delivery in 2025 was optimistic given that there was still no proper survey data as of June 14, 2025.

   (d) The Defendants deny that there was any term in the Agreement, written or implied, that SSI would provide commercially reasonable particulars, information and documents to substantiate any amounts invoiced (or adjusted).

9. The Defendants deny that any representation was made that shipping costs for the Equipment would be less than $600,000 USD. The Defendants provided an estimate only for 20 containers at $30,000 each (**the "Estimate"**) and in no place it was anticipated it would be less. By paying advance amount, transport was guaranteed to be on first possible vessel.

10. The Defendants deny that WSGKI has suffered any loss a result of the Estimate. If WGSKI did suffer loss, which is denied, such loss is the result of WGSKI's failure to make the payments pursuant to the Agreement.

SSI's Subsequent Assurances and WGSKI's Payment

11. The Defendants deny that there were any representations made that the shipping rate would be "locked in." Mr. Amerl advised the Plaintiff that rates could not be guaranteed a year in advance, especially during COVID when rates were very high. Mr. Amerl did state that after COVID he anticipated rates would be going down, but payment in advance was ONLY securing the spot, not the final price.

12. The Defendants deny that there were any representations made that the shipping costs could be less. Mr. Amerl advised the Plaintiff he would do his best, but could not guarantee any price a year in advance.

13. Mr. Amerl agreed to provide the Plaintiff with the Defendants' invoices for the shipping, engineering, etc. It was not agreed that the supplier invoices would be provided, only the invoices payable by the Defendants.

14. The amount set out in paragraph 18 of the Notice of Civil Claim were all approved by the Plaintiff prior to be paid.

Disputed Invoices and SSI's Breaches

15. In or about May 2024, the Defendant advised the Plaintiff of the increased cost of shipping and that the number of containers required would likely exceed 30.

16. The May 31, 2025 invoices sent to the Plaintiff from SSI were higher than the original Estimate as shipping costs had increased and so had the number of containers that were being shipped.

17. The Defendants provided an Estimate only for shipping costs. The Defendants could not reasonably be expected to give an exact shipping cost one year in advance. By reviewing and signing the Agreement, the Plaintiff agreed to pay the shipping costs for the equipment including the exchange rate adjustment.

18. SSI expected that the Plaintiff would honour the Agreement and pay the costs associated with shipping the equipment. SSI relied on the Agreement when they made the shipping arrangements and pre-paid the suppliers, logistics and loading companies.

19. The Defendants deny that their services were not provided in a timely or

commercially reasonably manner. The Defendants provided their services in a timely manner until the Plaintiff failed to make the payments under the Agreement, at which time the Defendants ceased providing the services.

20. Pursuant to the Agreement, the Plaintiff agreed to pay for shipping and currency exchanges. It was agreed that any changes would be relayed to the Plaintiff two weeks in advance, which was ample notice for shipments to occur in mid-June 2025.

21. The shipping rates are commercially reasonable rates for the transportation of ski lifts and parts.

22. The Defendants do not agree to refund any of the shipping fees paid by the Plaintiff as the Defendants incurred those costs, and paid for those costs, in order to have the equipment shipped.

23. The 16th tower was requested by Steve Doreau, SCJ Engineer of the project. The original Agreement was based on 15 towers. Accordingly, the SSI issued an invoice for the 16th tower, for the same price as the other towers from 4 years prior. SSI did not increase the price of the 16th tower, despite the market price increasing.

24. Delivery of the equipment will not be completed until payment pursuant to the Agreement has been made.

25. Mr. Amerl had previously advised the Plaintiff that their 2025/26 ski season was optimistic. Mr. Amerl provided no guarantees that the Plaintiff would be able to have things up an running for the 2025-26 season.

26. The Defendants advised the Plaintiff on several occasions that there were mistakes being made, namely:

    (a) The surveying was faulty and it took the Plaintiff 6 months to correct the issue or find and alternate surveyor. The Defendants attempted to use the faulty data, which caused delay by having to have Optimization engineering done. This delay and expense could have been avoided if the Plaintiff had corrected the initial survey issue.

(b) ProAlpin insisted that there be a garage system put in place for maintenance and storage of chairs, however, WGSKI refused to follow this recommendation.

(c) When SSI issued a customs invoice, they were warned by the Plaintiff's counsel not to send any further invoices. It was only after Pacific Customs Brokers urged payment of the invoice that Pete authorized the customs invoices.

27. Pursuant to clause 3.7 of the Agreement, all responsibility and risk with respect to the equipment, including transportation, rests with the Buyer. This responsibility includes any changes to shipping costs or exchange rates, which are matters outside the control of the Defendants.

28. As of September 1, 2025, four containers remained outstanding for shipment. The Plaintiffs have not fulfilled their contractual obligations, as the final allotment of funds, including the resulting exchange rate adjustment, has not been received by the SSI.

29. At no time did the Defendant provide any assurance that the lift would be constructed in advance of the Plaintiff's 2025/2026 winter season. The construction and completion of the lift falls outside the scope of the Agreement and the services undertaken by the Defendant.

30. At no time did the Plaintiff have any contractual relationship with Mr. Amerl.

31. At no time did the Plaintiff have any contractual relationship with Mar Divina.

32. At all times, Mr. Amerl acted as a principal of SSI when dealing with the Plaintiff.

Division 3—Additional Facts

33. If the Platiniff has suffered any loss, which is not admitted and expressly denied, then the Platiniff has failed to mitigate such loss.

34. In the alternative, if the Platiniff has suffered any loss, which is not admitted and expressly denied, then the Platiniff has mitigated such loss.

35. If the Platiniff has suffered any loss, which is not admitted and expressly denied, then such loss was not caused by the Defendants and was not proximate cause nor a

foreseeable loss.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The defendant consents to the granting of the relief sought in paragraphs *NONE* of Part 2 of the notice of civil claim.

2. The defendant opposes the granting of the relief sought in paragraphs *ALL* of Part 2 of the notice of civil claim.

3. The defendant takes 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 Defendant relies on the law of contract and seeks specific performance of the Agreement.

2. The Defendants deny that SSI, Mar Divina, or Mr. Amerl made any dishonest, fraudulent, or negligent misrepresentation, and further denies that any duty of care owed to the Plaintiff was breached.

3. The Plaintiff failed to complete the payments required under the Agreement in the timely manner necessary for the shipping and delivery of the equipment.

4. Any delay in the delivery of the equipment was caused solely by the acts or omissions of the Plaintiff.

5. The Defendant denies that it has been unjustly enriched. The Defendant has not received any enrichment and the Plaintiff has not suffered a corresponding deprivation.

6. Mar Divina and Mr. Amerl had no direct relationship with the Plaintiff, and Mar Divina, or Mr. Amerl owed no duty to the Plaintiff.

7. At all times, Mr. Amerl acted as a principal of SSI when interacting with the Plaintiff.

8. This is not an appropriate case to pierce the corporate veil, or to find alter ego liability.

Defendant's address for service: Sorensen Truong LLP
220A-6640 Vedder Road
Chilliwack, BC V2R 0J2

Attention: Daniel Sorensen

Fax number address for service (if any): 604-210-2145

E-mail address for service (if any): daniel@stllp.ca AND service@stllp.ca

Dated: September 15, 2025

Signature of
❒ defendant ☒ lawyer for defendant

Daniel Sorensen

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.