Vancouver
17-Dec-25
REGISTRY

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

AND:

WGSKI, LLC

DEFENDANT BY WAY OF COUNTERCLAIM

RESPONSE TO AMENDED COUNTERCLAIM

Filed by: WGSKI, LLC (the "**WGSKI**")

Part 1: RESPONSE TO AMENDED COUNTERCLAIM FACTS

DIVISION 1 - RESPONSE TO FACTS

1. The facts alleged in paragraphs 1-2, 4-6, 7 (in part), 10 (in part), 11, 14 (in part), 18, 21, 23 (in part), 24 (in part) and 26 of Part 1 of the amended counterclaim are admitted.

2. The facts alleged in paragraphs 7 (in part), 8-9, 10 (in part), 13, 14 (in part), 15-17, 19, 22, 23 (in part), 24 (in part), 25, 27, 29 and 30-34 of Part 1 of the amended counterclaim are denied.

3. The facts alleged in paragraphs 3, 12, 20 and 28 of Part 1 of the amended counterclaim are outside the knowledge of the responding party.

DIVISION 2 – RESPONDING PARTY'S VERSION OF FACTS

1. WGSKI pleads and relies upon all of the facts set out in its notice of civil claim filed August 11, 2025.

Purchase Agreement and Dispute

2. On 7 June 2024, Steelhead Systems Inc. ("**SSI**") and WGSKI entered into an agreement (the "**Agreement**") for SSI to sell to WGSKI (and deliver) a chairlift for a purchase price of $2,206,000 USD. WGSKI paid SSI this full amount (including $600,000 USD for estimated transportation and shipping costs) between June and August of 2024.

3. Right before the defendants were set to deliver the chairlift pursuant to SSI's obligations under the Agreement, on 31 May 2025, the defendants told WGSKI that, before SSI would complete its delivery of the chairlift, WGSKI had to pay an additional: (a) $425,700 USD for transportation and shipping of the chairlift; and (b) $110,400 USD as an "exchange rate adjustment". Despite demand, SSI refused to:

   (a) disclose its actual transportation and shipping costs, provide supporting documents, or explain why transportation and shipping costs were over 70% greater than the upper bound of what the defendants had assured WGSKI they would be; or

   (b) disclose the actual currency exchange(s) that occurred in relation to the transaction, produce supporting documents, or explain why WGSKI should have to pay an "exchange rate adjustment" based the prevailing exchange rate in May of 2025 when WGSKI had made its payments to SSI almost a year earlier and SSI acknowledged that it had converted currency for the transaction "at different stages".

4. SSI refused to complete its delivery of the chairlift when WGSKI refused to pay these unjustified invoices. WGSKI filed this claim on 11 August 2025, seeking, *inter alia*, specific performance of the Agreement and damages.

5. In specific response to paragraph 7 of Part 1 of the amended counterclaim, the $2,206,000 USD and subsidiary amounts enumerated in paragraph 7 and clause 2.1 of the 7 June 2024 agreement ("**Agreement**") related to specific amounts that WGSKI agreed to pay as

the “Purchase Price” for: (a) the chairlift, or the “Equipment” as defined in the Agreement; (b) the estimated price of shipping the Equipment; and (c) “Optimization engineering”.

6. In specific response to paragraph 8 of Part 1 of the amended counterclaim, clause 2.1 of the Agreement does not specify that the “final amount” “would be determined at a later date” or subject to “adjustments” as alleged by the counterclaimants. The Agreement only specified that: (a) “all prices in Euro would be converted to USD at the current rate of 1.1 and they will be adjusted at the time of final payment” such that the purchase and shipping price was $2,206,000 USD; and, additionally, (b) there would be a payment for a “$ Final Amount (TBD)” 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.”

7. In specific response to paragraph 9 of Part 1 of the amended counterclaim, SSI did not advise the WGSKI of the increased cost of shipping and that the number of containers required would likely exceed 30 “in or about May 2024”. The Agreement was not entered into until June of 2024. At that time, and subsequently, the counterclaimants specifically and repeatedly assured WGSKI that SSI was locking in transportation costs with WGSKI’s $600,000 USD payment, that they anticipated actual transportation and shipping costs would likely be less than $600,000 USD, and that WGSKI could place its trust in SSI because Mr. AMRI had such extensive experience with other similar projects. Before issuing its “invoice” dated 31 May 2025, SSI had never indicated that WGSKI would be required to pay additional amounts for transportation and shipping costs beyond the $600,000 USD already paid.

8. In specific response to paragraph 10 of Part 1 of the amended counterclaim, the 31 May invoices did not accurately reflect charges which WGSKI had agreed to pay pursuant to the Agreement or the actual costs which they were indicated to be associated with (e.g. cost of shipping or exchange). When WGSKI demanded that SSI provide commercially reasonable particulars, information and documents to support the 31 May invoices, Mr. Amerl refused to provide any of the requested information.

9. In specific response to paragraph 13 of Part 1 of the amended counterclaim, at no point did ProAlpin tell SSI that “the materials for the last four containers, including the bull wheels and rope, would be scrapped” if all items were not picked up by 8 September 2025.

10. In specific response to paragraph 14 of Part 1 of the amended counterclaim: at various times, WGSKI offered to pay the 31 May invoice that purportedly related to the loading of the Equipment if: (a) SSI agreed to proceed with loading and shipping the Equipment; or (b) permitted WGSKI to take over shipping itself, such that WGSKI could work directly with the shipper. SSI refused these offers.

11. In specific response to paragraphs 15 to 19 of Part 1 of the amended counterclaim, WGSKI is not in breach of the Agreement. SSI breached the Agreement by, *inter alia*: (a) failing or refusing to deliver the chairlift as agreed; (b) attempting to coerce WGSKI to pay additional unjustified amounts that were not properly owing under the Agreement; and (c) failing to perform their obligations under the Agreement in a commercially reasonable and reasonably transparent manner.

August Press Release

12. On 29 August 2025, WGSKI issued a press release ("**Press Release**")to update the members and guests of its ski resort ("**Ski Bluewood**"). The Press Release stated as follows:

> WGSKI, LLC, the owner and operator of Ski Bluewood in Dayton, Washington, has commenced legal proceedings in the Supreme Court of British Columbia against Steelhead Systems Inc., Mar Divina Ltd., and their principal, Zrinko Amerl. The action seeks relief for breach of contract, negligent misrepresentation, and unjust enrichment in relation to the procurement and delivery of a ski chairlift critical to Ski Bluewood's operations.
>
> WGSKI entered into a purchase agreement in June on 2024 for the acquisition and shipping of the lift equipment, as paid in full under the contract. As a result of a dispute arising from the purchase agreement, Ski Bluewood faces delays that threaten its ability to open the new lift for the 2025–26 ski season.
>
> WGSKI is seeking specific performance requiring immediate delivery of the equipment, damages, and other remedies. WGSKI alleges that the defendants acted dishonestly and in bad faith, and it is determined to protect its investment and the interests of its guests and community.
>
> The matter is now before the Supreme Court of British Columbia. As litigation is ongoing, WGSKI will not provide further comment at this time.

13. In specific response to paragraph 22 of the amended counterclaim, the Press Release stated simply that WGSKI had initiated this action and briefly described what the claim is

about. These allegations were not being "continued" in the Press Release, nor were the underlying allegations baseless. The Press Release did not assert that the defendants acted dishonestly and in bad faith without qualification; rather, WGSKI reported that as simply something it "alleges" in the claim.

14. In specific response to paragraph 23 of the amended counterclaim, the Press Release only referenced Mr. Amerl because the Press Release was reporting basic facts related to WGSKI's filing of this claim, to which Mr. Amerl was named as a defendant.

15. In specific response to paragraph 24 of the amended counterclaim, it is admitted that the article "Bluewood Sues Steelhead Systems over Stalled Lift Project" appeared on the website "LiftBlog" on or about September 2, 2025 (the "**Blog Post**"). WGSKI did not author, approve, edit, or control that article or its publication.

16. In specific response to paragraph 25 of the amended counterclaim, it is not true that Liftblog "went onto" make specific allegations in the Blog Post. The Blog Post merely referenced and reported on WGSKI's claim as filed, it did not make independent claims or allegations that the defendants "engaged in a breach of contract, negligent misrepresentation and unjust enrichment."

17. In specific response to paragraph 27 of the amended counterclaim, a few people commented on the Blog Post to indicate that they already had a negative opinion of Mr. Amerl *before* seeing the Blog Post (or hearing of WGSKI's claim) based on his past business dealings.

18. In specific response to paragraphs 28-34 of the amended counterclaim, WGSKI denies that its actions or statements have caused significant (or any) harm to the reputation or professional standing of SSI or Mr. Amerl.

DIVISION 3 – ADDITIONAL FACTS

1. In the Canadian ski resort community, Mr. Amerl has a reputation of overpromising and dramatically underdelivering.

2. In or around 2005-2006, Zrinko Amerl was the principal and owner of a company called "Banff Rail Co. Inc.", which had acquired the rights to several Crown leases used to operate the Fortress Mountain ski resort in Kananaskis Country, Alberta. Banff Rail Co.

operated the resort for just a few months in early 2006 before the province of Alberta had to intervene in that project to order that Banff Rail Co. (owned and operated by Mr. Amerl): (a) cease advertising services that it cannot currently provide; (b) change its website to accurately describe the facility and the services that exist; and (c) stop selling ski passes for the 2006-07 and 2007-08 ski seasons. At the time, a spokesperson for the Province of Alberta said that these steps were taken “to protect consumers”, and that the order was “based on health and safety violations uncovered by other government agencies and past unresolved complaints from consumers.”

3. The Province subsequently terminated its leases with Banff Rail Co. in or around 2007, after Banff Rail Co. failed to maintain a bridge over the Kananaskis River and missed various lease payments. In or around 2009, Banff Rail Co. Inc. (still operated by Mr. Amerl) started selling passes again for Fortress Mountain, but was sued for credit fraud. Fortress Mountain did not reopen that year.

4. Also in or around 2009, Mr. Amerl made similar promises with respect to the Drumheller Ski Hill with another of his companies, Badlands Ski Hill Ltd. That project was ultimately also unsuccessful.

5. In the years since 2009, Mr. Amerl’s primary occupation has purportedly been in the manufacture, distribution and sale of airplanes (doing business as “BRC Aircraft”, which Mr. Amerl describes as the “aircraft division” of the Banff Rail Co. Inc.).

6. Mr. Amerl’s experience in the sale and delivery of used chairlifts has also been marred by disappointing results, delays and unexplained cost overruns.

7. The foregoing facts and Mr. Amerl’s checkered business past were previously known to parties in the mountain and ski resort business, as reflected (in part) in the Blog Post and several of the comments.

Part 2: RESPONSE TO RELIEF SOUGHT

1. WGSKI opposes the granting of each and all of the relief sought in Part 2 of the amended counterclaim.

Part 3: LEGAL BASIS

1. WGSKI relies on the common law principles applicable to contract and defamation.

2. WGSKI's allegations in its notice of civil claim cannot give rise to a claim in defamation pursuant to the doctrine of absolute privilege.

3. WGSKI's Press Release did not make any separate or fresh allegations, but simply reported the basic facts of the claim that WGSKI had filed. The Press Release simply described the issues in the claim, and stated that the allegations of dishonesty and bad faith were things that WGSKI "alleges" therein.

4. Finally, WGSKI's Press Release is not defamatory because it is true or substantially true: (a) the defendants were dishonest and did act in bad faith; and (b) WGSKI had filed the referenced claim that made those allegations.

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December 17, 2025
Dated

For Signature of ☒ lawyer for filing party
DLA Piper (Canada) LLP (Struan Robertson)

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.

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