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 COUNTERCLAIM

APPLICATION RESPONSE

Application response of: Steelhead Systems Inc., Mar Divina Ltd. and Amerl Zrinko (the "application respondent")

THIS IS A RESPONSE TO the notice of application of WGSKI, LLC filed April 7, 2026.

The application respondent estimates that the application will take 1 full day.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms: NONE

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs 1,2,3,4,5,7 and 8 of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in paragraph 6 of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

1. On June 7, 2024, the plaintiff, WGSKI, LLC ("WGSKI"), and Steelhead Systems Inc. ("SSI") entered into a written Purchase Agreement for the sale of a used Doppelmayr chairlift in parts from Austria, as described in Annex 1 to the Agreement.

2. The Agreement expressly provided for:
(a) a purchase price of EUR 1,380,000 for the Equipment;
(b) an estimated shipping amount of USD $600,000;
(c) USD $88,000 for optimization engineering; and
(d) a final amount to be determined before shipping for engineering, loading, bull wheel cradles, containers and other adjustments.

3. The Agreement further provided that:
(a) transport was not part of the Purchase Price;
(b) the buyer would be responsible for paying for transportation and shipping of the Equipment;
(c) loading was payable at USD $3,000 per container, with bull wheels handled on a case-by-case basis at additional charge;
(d) loading invoices were payable within five days of receipt; and
(e) loading of the Equipment was subject to and conditional on all payments under the contract being made up to the time of loading.

4. WGSKI made the initial contractual payments in 2024. The defendants say, however, that the Agreement expressly contemplated additional amounts to be invoiced before shipping and loading, and that WGSKI did not pay all amounts that the defendants say became due under the Agreement.

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

    a. Prices for other services listed below would be determined before shipping said product; and

    b. the exchange rate would be adjusted for the time of the final payment.

6. The Defendants provided an estimate only for 20 containers at $30,000 each and in no place it was anticipated it would be less.

7. 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.

8. 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.

9. On May 31, 2025, invoices were issued for:
(a) shipping / transportation;
(b) exchange-rate adjustment; and
(c) loading.

10. WGSKI did not pay the May 31, 2025 invoices.

11. In June, 2025, SSI advised WGSKI that absent payment, loading and shipment of the remaining equipment would pause.

12. WGSKI did not accept SSI’s position that those amounts were payable.

13. Despite the payment dispute, 23 containers were shipped. The remaining goods were not released for further loading or shipment.

14. As of August 18, 2025, the outstanding balance payable by the Plaintiff to SSI was USD $587,548 (the "Outstanding Payment") plus accruing interest.

15. As a result of the Plaintiff's refusal to make payment pursuant to the Purchase Agreement, SSI has incurred additional costs for storage and relocation of materials. These additional costs have not yet been quantified or added to the Outstanding Payment.

16. Section 2.4 of the Purchase Agreement expressly provides that any late payment by WGSKI shall accrue interest at the rate of 3.25% per annum, compounded monthly, from the date of default.

17. The Plaintiff has been in default since June 3, 2025, and the Outstanding Payment has accrued, and continues to accrue, interest at the rate of 3.25% per annum compounded monthly.

18. 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.

19. The defendants' position is that the remaining goods have not been released because WGSKI has not paid the amounts the defendants say are owing under the Agreement.

20. The defendants say the plaintiff's description of the remaining goods as "four outstanding containers" is imprecise. The remaining goods are not presently loaded in four ready containers. Rather, the defendants say the remaining goods consist of approximately two containers' worth of parts, two bull wheels, and haul rope, with the bull wheels requiring separate handling and cradle work.

21. The defendants acknowledge that SSI / Mr. Amerl have not authorized release of the remaining goods for loading and shipment while the payment dispute remains unresolved.

22. The Agreement does not contain an express delivery deadline of July 15, 2025 or any other fixed delivery date pleaded by WGSKI.

23. The Agreement is between WGSKI and SSI. While Mar Divina is referenced in the Agreement and Mr. Amerl signed on behalf of SSI, the written contract itself is not between WGSKI and Mr. Amerl personally.

24. The present application seeks, in substance, to compel release, loading, shipment and delivery of the remaining goods before trial and notwithstanding the live dispute over whether WGSKI has paid all amounts the defendants say were contractually due before further loading and release.

Part 5: LEGAL BASIS

1. The plaintiff seeks a mandatory interlocutory injunction. A mandatory interlocutory injunction directs the defendant to undertake a positive course of action. The Court looks to the substance and practical effect of the order sought, not merely its form: *R. v. Canadian Broadcasting Corp., 2018 SCC 5 at paras. 15 and 18.*

2. Here, the plaintiff asks the Court to order the defendants to:

   (a) take all steps within their possession, power or control to cause release, loading, shipment and delivery of the remaining goods;

   (b) execute consents, authorizations or letters for Pro-Alpin;

   (c) provide information necessary to effect shipment and delivery; and

   (d) refrain from impeding or delaying release and shipment.

   Those are plainly positive acts. The relief sought is mandatory in substance.

3. The general interlocutory injunction framework is set out in *RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 at 334, 341-42*. However, where the injunction sought is mandatory, the applicant must meet the modified test confirmed in *R. v. Canadian Broadcasting Corp., 2018 SCC 5 at paras. 17-18.*

4. In those circumstances, the applicant must show:

   (a) a strong prima facie case;

   (b) irreparable harm if relief is refused; and

   (c) that the balance of convenience favours granting the injunction: *R. v. Canadian Broadcasting Corp., 2018 SCC 5 at paras. 17-18.*

5. A "strong prima facie case" means a strong likelihood on the law and evidence presented that, at trial, the applicant will ultimately succeed in proving the allegations set out in the originating proceeding: *R. v. Canadian Broadcasting Corp., 2018 SCC 5 at para. 17.*

6. In British Columbia, the injunction factors are interrelated rather than watertight compartments. The Court's task is to determine what is just and equitable in all of the circumstances: *British Columbia (Attorney General) v. Wale 1986 CanLII 171 (1986), 9 B.C.L.R. (2d) 333 at 346-47 (C.A.), aff'd [1991] 1 S.C.R. 62.*

7. The plaintiff has not shown a strong prima facie case. Properly interpreted, the Agreement creates a real and substantial dispute about whether WGSKI had an immediate and unconditional right to compel further release, loading and shipment in the face of unpaid invoices which the defendants say were contractually due.

8. Contractual interpretation requires a practical, common-sense reading of the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with

the surrounding circumstances known to the parties at the time of formation: *Sattva Capital Corp. v. Creston Moly Corp., 2014 SCC 53 at para. 47.*

9. Read as a whole, the Agreement expressly provides that:

(a) the USD $600,000 shipping amount was an "**estimated** price of shipping" under clause 2.1;

(b) under clause 2.1, a "$ Final Amount (TBD)" remained to be determined before shipping for engineering, loading, bull wheel cradles, containers and other adjustments, and was to be detailed in a final invoice;

(c) transport was not part of the Purchase Price under clauses 2.7 and 3.4;

(d) the buyer was responsible for transportation and shipping under clause 3.9;

(e) loading invoices were payable within five days of receipt under clause 3.2; and

(f) loading of the Equipment was "subject to and condition on all payments in this contract being made up to the time of loading" under clause 3.5.

10. On the defendants' case, those provisions entitled SSI to insist that the contractual payments be brought current before further loading and release of the remaining goods. At minimum, they establish a serious and bona fide contractual dispute which prevents WGSKI from showing a strong likelihood of success on its claimed right to immediate, unconditional release.

11. The plaintiff's case also depends on alleged implied terms and alleged pre-contract or collateral representations that are disputed. The written Agreement contains no express term:

(a) guaranteeing delivery by July 15, 2025;

(b) capping shipping finally at USD $600,000;

(c) requiring disclosure of the defendants' internal costing; or

(d) requiring the defendants to surrender control of shipping to WGSKI mid-project.

12. The plaintiff also seeks relief collectively against SSI, Mar Divina and Mr. Amerl. The written contract is between WGSKI and SSI. While that is not necessarily dispositive for all forms of injunctive relief, it is another reason why the plaintiff cannot establish a clear, immediate entitlement to the broad relief sought against all defendants.

13. The defendants acknowledge that they have not authorized release of the remaining goods while the payment dispute remains unresolved. That does not establish the plaintiff's legal entitlement to mandatory interlocutory relief. It establishes that the parties are in a live contractual dispute about payment, loading, shipping, and release.

14. The plaintiff relies on section 55 of the *Sale of Goods Act*, which provides:

"In any action for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the application of the plaintiff, order that the contract be performed specifically without giving the defendant the option of retaining the goods on payment of damages."

Sale of Goods Act, RSBC 1996, c. 410, s. 55(1)

30. Section 55 of the *Sale of Goods Act* is discretionary, not automatic. It further provides that any such order may be made on terms and conditions as to damages, payment of the price, and otherwise, as the court thinks just.

31. Accordingly, even if the remaining goods are specific or ascertained goods, section 55 does not displace the defendants' contractual position that WGSKI had not paid all amounts required before further loading and release. At most, section 55 confirms that if the Court were minded to grant relief, it may do so only on just terms, including terms respecting payment and security.

32. The plaintiff also invokes Rule 10-1(4) of the *Supreme Court Civil Rules* and s. 57 of the *Law and Equity Act*. Rule 10-1(4) provides that where a party claims recovery of specific property other than land, the Court may order the property claimed to be given up pending the outcome of the proceeding, either unconditionally or on terms and conditions relating to security, time, mode of trial or otherwise. Section 57(1) of the *Law and Equity Act* is to similar effect.

33. The Court of Appeal has explained that replevin relief under Rule 10-1(4) is not the same as an injunction analysis. The Court must consider:

(a) which party has the better claim to the property; and

(b) how the defendant's interests can be protected, including by security or other terms: *Cascade Aerospace Inc. v. Viking Air Limited, 2025 BCCA 2 at paras. 45-50 and 77-78.*

34. On the present record, WGSKI has not shown the better immediate possessory claim. On the defendants' case, WGSKI failed to make payments required under the Agreement before loading of the remaining goods, and SSI was contractually entitled to withhold further loading and release pending payment.

35. The relief sought is also vague, overbroad, and difficult to enforce. The plaintiff refers to "four outstanding containers," but the defendants' evidence is that the remaining goods are not presently loaded in four ready containers and instead consist of approximately two containers' worth of parts, two bull wheels and haul rope, with the bull wheels requiring separate cradle work and handling.

36. The plaintiff's proposed obligations to take "all steps reasonably within [the defendants'] possession, power or control," execute whatever documents may be "reasonably required," and provide all information "reasonably necessary" are similarly vague, open-ended, and difficult to enforce. In *Este v. Esteghamat-Ardakani, 2020 BCCA 202*, the Court of Appeal set aside a mandatory interlocutory order in part because the cooperation order was impermissibly vague and unenforceable.

37. Further, the Plaintiff has also failed to establish irreparable harm on a proper evidentiary footing. In *RJR-MacDonald*, the Supreme Court held that "irreparable" refers to the nature of the harm, not its magnitude, and means harm that cannot be quantified in monetary terms or cured, usually because damages cannot be collected: *RJR-MacDonald at 341.*

38. The harms pleaded and deposed to by WGSKI are overwhelmingly economic in nature: lost revenue, loss of one or more ski seasons, financing costs, market-share loss, wasted engineering and installation expenditures, and other project losses. Those are, in principle, matters that can be addressed in damages.

39. The harms plead are directly a result of WGSKI's failure to abide by the contractual obligations of the Agreement.

40. Further, any harm that stems from WGSKI not being operation for the 2025-2026 winter season is attributable to the delay and issues WGSKI brought upon themselves due to faulty surveying. WGSKI took 6 months to correct the issue or find and alternate surveyor.

41. The Plaintiff's claim of urgency is also weakened by delay. The invoice dispute crystallized no later than May and June 2025. WGSKI filed its civil claim in August 2025. Yet the present application was not brought until April 7, 2026, notwithstanding the plaintiff's position that shipping had to begin by May 1, 2026. That chronology is inconsistent with the extraordinary urgency usually relied on for mandatory interlocutory relief. In the legal proceeding, lists of documents have not been exchanged. Examinations for discovery have not occurred.

42. The balance of convenience does not favour the Plaintiff. Granting the orders sought would, in substance, compel performance of the disputed final stage of an international commercial transaction before trial, notwithstanding the live dispute over whether WGSKI defaulted in making payments required before further loading and release.

43. If the application is granted as framed, the defendants will lose the practical benefit of the contractual provisions on loading, payment, and adjustments, and will be left to pursue collection later while the plaintiff obtains substantially the relief it seeks in the action.

44. The plaintiff's undertaking as to damages do not adequately protect the defendants. If the Court is minded to grant any relief, it should only do so on strict terms requiring substantial security or payment into court / trust sufficient to protect the defendants' claimed outstanding amounts, interest, and reasonably foreseeable additional handling, cradle, loading, customs, storage, or related costs.

45. In the result, the plaintiff has not shown that it is just and equitable to grant the mandatory interlocutory and replevin-style relief sought.

46. In the alternative, if the Court is minded to grant any interim relief, the defendants say any order should:

    (a) be narrowly framed;

    (b) precisely identify the remaining goods;

(c) avoid making final findings on the merits of the payment dispute; and

(d) be conditional upon full or substantial security for the defendants' claimed outstanding amounts, interest, and reasonably foreseeable ancillary costs.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Zrinko Amerl, to be sworn.
2. The pleadings filed in this action, including:
   (a) the Response to Civil Claim filed January 5, 2026;
   (b) the Amended Counterclaim filed October 14, 2025;
   (c) the Amended Notice of Civil Claim filed April 7, 2026; and
   (d) the Notice of Application filed April 7, 2026.
3. Such further material as counsel may advise.

The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Dated: April 16, 2026

Signature of
❒ application respondent
☒ lawyer for application respondent(s)

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