



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


WGSKI, LLC

DEFENDANT BY COUNTERCLAIM

NOTICE OF APPLICATION

Name of applicant: the plaintiff, WGSKI, LLC

To: the defendants, Steelhead Systems Inc., Mar Divina Ltd. and Zrinko Amerl
(collectively, the "**Defendants**")

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on April 20, 2026 at 9:45 AM for the orders set out in Part 1 below. 

The applicant estimates that the application will take 120 minutes.

This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. The Defendants shall forthwith take all steps reasonably within their possession, power or control to cause the release, loading, shipment and delivery to the plaintiff of the four outstanding containers that include chairlift equipment presently located in Austria (the "**Remaining Equipment**").

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2. In the alternative, the Defendants shall forthwith execute and deliver to the plaintiff and Pro-Alpin Ropeway Services GmbH any consents, authorizations, or other documents reasonably required to permit Pro-Alpin Ropeway Services GmbH's release, loading, transport and delivery of the Remaining Equipment to the plaintiff.
3. In the alternative, the Defendants shall forthwith execute and deliver to the plaintiff and Pro-Alpin Ropeway Services GmbH a letter consenting to Pro-Alpin Ropeway Services GmbH's release, loading, transport and delivery of the Remaining Equipment to WGSKI.
4. The Defendants shall forthwith provide the plaintiff with all information in their possession or control that is reasonably necessary to effect shipment and delivery of the Remaining Equipment, if any.
5. The Defendants shall not impede, delay, or discourage the release, loading, shipment, or delivery of the Remaining Equipment.
6. Pursuant to Rule 10-4(5), the plaintiff undertakes to abide by any order the Court may make as to damages arising from the injunctive relief granted herein.
7. Costs.
8. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

1. This action arises from Steelhead Systems Inc. ("**SSI**")'s agreement to sell, ship and deliver to the Plaintiff, WGSKI, LLC ("**WGSKI**"), a used Doppelmayr detachable quad chairlift and related equipment sourced from Sölden, Austria, for installation at WGSKI's ski resort, Ski Bluewood ("**Bluewood**").
2. Bluewood is a relatively small ski resort in Washington State. The chairlift project is a transformative capital project for Bluewood. It is intended to replace aging lift infrastructure, increase skier capacity, expand summer use of the mountain, and

preserve Bluewood's ability to compete with nearby resorts that already operate high-speed quad chairlifts.

3. On or about June 7, 2024, WGSKI and SSI entered into an agreement for the purchase and delivery of the chairlift equipment (the "**Agreement**").
4. Before the Agreement was signed, Mr. Amerl, acting on behalf of the Defendants, represented to WGSKI that the USD \$600,000 payment for transportation and shipping would "lock in" the shipping rates, that the actual shipping cost would likely be less than that amount, that any difference would be credited back for other project costs.
5. Between June and August 2024, WGSKI paid the Defendants the full contractual amount of USD \$2,206,000, including USD \$600,000 for transportation and shipping and USD \$88,000 for optimization engineering. WGSKI thereafter paid further amounts requested by the Defendants in connection with the project. In total, WGSKI has paid approximately USD \$2,289,578 pursuant to and in connection with the Agreement.
6. On May 31, 2025, shortly before the remaining equipment was to be loaded and delivered, SSI issued three invoices to WGSKI totalling USD \$644,100, namely: (a) a shipping invoice claiming a further USD \$425,700 after credit for the USD \$600,000 already paid (the "**Shipping Invoice**"; (b) an alleged USD \$110,400 exchange-rate adjustment (the "**Exchange Rate Invoice**"); and (c) a loading invoice in the amount of USD \$108,000 (the "**Loading Invoice**").
7. Those invoices were delivered without prior warning and without supporting documentation. WGSKI disputes that the additional claimed amounts were properly due under the Agreement. Among other things, WGSKI says:
 - (a) the Defendants had previously represented that the USD \$600,000 shipping payment would lock in transportation costs and that any overpayment would be credited back;

- (b) the Defendants had previously agreed that WGSKI would be able to see shipping costs and receive supporting invoices; and
 - (c) when WGSKI asked for particulars and supporting documents for the May 31, 2025 invoices, the Defendants refused to provide them.
8. WGSKI offered to pay the Loading Invoice if the Defendants would proceed with loading and shipment. WGSKI also offered, alternatively, to take over shipping directly and deal with the shipper itself, with a refund of the USD \$600,000 shipping payment already made. The Defendants refused those proposals.
 9. Although some of the chairlift equipment has been shipped, essential components of the chairlift system remain outstanding and undelivered. Those outstanding components are contained in four containers presently located in Austria.
 10. The Defendants are withholding the Remaining Equipment unless WGSKI pays the disputed additional amounts. WGSKI says the Defendants are withholding delivery of equipment that WGSKI has already paid to acquire.
 11. The Remaining Equipment is presently in Austria and is in the possession of, or subject to the control of, Pro-Alpin Ropeway Services GmbH ("**Pro-Alpin**").
 12. From approximately August 2025 until March 25, 2026, WGSKI understood that Pro-Alpin would assist with the release, loading, and delivery of the Remaining Equipment. On March 25, 2026, however, Pro-Alpin advised WGSKI that it would not load the Remaining Equipment without a clear statement authorizing their release from Mr. Amerl.
 13. On March 27, 2026, WGSKI's counsel demanded the immediate release and shipment of the Remaining Equipment and offered to pay the loading charges for the remaining containers into defence counsel's trust account, on terms that the funds not be released until the equipment had arrived. On March 30, 2026, counsel for the Defendants advised that the Defendants would not release the Remaining Equipment.

14. WGSKI has already lost the 2025–26 ski season because the chairlift was not delivered and installed in time. WGSKI now faces the loss of the 2026–27 ski season as well.
15. The Remaining Equipment must begin shipping by no later than May 1, 2026 in order for the chairlift to arrive and be installed in time for the 2026–27 season.

Part 3: LEGAL BASIS

1. WGSKI relies on Rules 10-4 and 10-1 of the *Supreme Court Civil Rules*, ss. 39 and 57 of the *Law and Equity Act*, RSBC 1996, c. 253, s. 55 of the *Sale of Goods Act*, RSBC 1996, c 410 and the inherent jurisdiction of this Court.
2. WGSKI has a strong prima facie case against the Defendants and a strong claim for the Remaining Equipment. It has suffered and will imminently suffer irreparable harm if an injunction order is not granted. The balance of convenience favours granting interlocutory injunctive relief and/or an order of replevin.

WGSKI meets the test for obtaining an interlocutory injunction

3. An injunction may be granted under Rule 10-4. This Court also has the inherent jurisdiction to grant injunctive relief, as recognized in s. 39 of the *Law and Equity Act*, RSBC 1996, c. 253.
4. The fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances.

Tsawak-Qin Forestry Limited Partnership v. O'Connell, 2025 BCSC 1880
at 16

5. The three-part test for injunctive relief is set out in *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 [*RJR – MacDonald*]. The applicant must show that:
 - (a) there is a serious issue to be tried;
 - (b) the applicant will suffer irreparable harm if the relief is not granted; and

(c) the balance of convenience favours granting the relief.

6. The three factors are not a checklist, each of which must be satisfied before injunctive relief may be granted. Nor are they intended to be separate watertight compartments. Rather, each stage of the test is interrelated such that the strength of one part can compensate for weakness of another.

B.C. (A.G.) v. Wale, (1986) 9 B.C.L.R. (2d) 333 at 346-347, aff'd in S.C.C. dismissed: [1991] 1 S.C.R. 62 [*Wale*]

Cambie Surgeries Corp. v. British Columbia (Attorney General), 2019 BCCA 29 at para. 19 (In Chambers)

7. A mandatory interlocutory injunction applies where the injunction compels a person to take positive action. Where the injunction sought is mandatory, it requires the applicant establish a "strong prima facie case" rather than the "serious issue to be tried".

Este v. Esteghamat-Ardakani, 2020 BCCA 202 at 36 [*Este*] at 36; citing *R. v. Canadian Broadcasting Corporation*, 2018 SCC 5 [*CBC*]

8. To determine the applicable test, the application judge must look past the form and language in which the order sought is framed, and identify whether the overall effect of the injunction would require the defendant to do something (mandatory) or to refrain from doing something (prohibitive).

CBC at 16

The applicant has a strong prima facie case

9. To establish a strong prima facie case the applicant must show a strong likelihood on the law and the evidence presented that, at trial, they will ultimately be successful in proving the allegations set out in the originating notice.

CBC at 18

10. This first prong of the test involves only a preliminary assessment of the merits of the action.

*Man Takraf Inc v Ebco Industries Ltd, 2000 CarswellBC at 21 citing RJR
– Macdonald*

11. WGSKI has a strong prima facie case for its claims in contract and negligent misrepresentation against the Defendants in the underlying action.
12. The Agreement set a Purchase Price of EUR 1,380,000 (converted at an agreed rate of 1.1 to USD), together with an estimated USD \$600,000 for shipping and USD \$88,000 for optimization engineering, totalling USD \$2,206,000 (s. 2.1). WGSKI paid the full Purchase Price between June and August 2024. WGSKI thereafter paid further amounts totalling approximately USD \$83,578 requested by the Defendants in connection with the project, bringing WGSKI's total payments to approximately USD \$2,289,578. WGSKI has fully performed its payment obligations under the Agreement.
13. On May 31, 2025, shortly before the remaining Equipment was to be loaded and shipped, SSI issued three invoices totalling USD \$644,100 — a shipping invoice of USD \$425,700 (on top of the USD \$600,000 already paid), an exchange-rate adjustment of USD \$110,400, and a loading invoice of USD \$108,000. Those invoices were delivered without prior warning and without supporting documentation. The Defendants have since withheld delivery of the Remaining Equipment pending payment of those disputed amounts.
14. The disputed invoices are not properly due under the Agreement.
15. First, the shipping invoice of USD \$425,700 purports to charge WGSKI an additional amount on top of the USD \$600,000 already paid for shipping, bringing the total claimed shipping cost to over USD \$1,025,700 — a more than 70% increase over the estimated amount. Before the Agreement was signed, Mr. Amerl represented to WGSKI that the USD \$600,000 payment would "lock in" shipping rates and that any difference would be credited back. On August 1, 2024, when WGSKI asked Mr. Amerl for transparency, he confirmed: "that's correct" and agreed that WGSKI would "see all shipping costs" and "be supplied invoices." A proper interpretation of the Agreement, that reflects the parties intentions at the

time of contracting, would be that the actual shipping charges incurred would be paid by WGSKI, not rates that appear to have been unilaterally set by Mr. Amerl's related company, Mar Divina.

Sattva Capital Corp. v. Creston Moly Corp., 2014 SCC 53 at para. 47
H.R.S. Resources Corp. v. Thompson Creek Metals Company Inc., 2026 BCCA 6 at 26; *Blackmore Management Inc. v. Carmanah Management Corporation*, 2022 BCCA 117 at para. 42.;

16. Second, the exchange-rate adjustment invoice of USD \$110,400 is without contractual foundation. The Agreement provided that the EUR purchase price would be "converted to USD at the current rate of 1.1" and "adjusted at the time of final payment" (s. 2.1). The chairlift purchase price was fully paid by August 1, 2024, when the Third Payment was made. On that date, the EUR to USD exchange rate was approximately 1.08 — lower than the agreed rate of 1.1. If anything, WGSKI is owed a credit, not an additional charge. The Defendants' claim for an adjustment based on a rate of 1.18 has no evidentiary or contractual basis.
17. Third, while section 3.5 of the Agreement provides that loading is "subject to and condition on all payments in this contract being made up to the time of loading," that provision does not assist the Defendants. WGSKI paid all amounts due under the Agreement. The Defendants cannot invoke section 3.5 to withhold delivery on the basis of invoices that are themselves disputed and which WGSKI says are not properly due. WGSKI has at all times been willing to pay the loading charges of USD \$108,000, and indeed offered to pay that amount into defence counsel's trust account. The Defendants refused.
18. With respect to the negligent misrepresentation claim, Mr. Amerl made a misleading statement that the estimated shipping costs would be less than USD \$600,000. WGSKI was relying upon Mr. Amerl's purported experience as a broker and he owed WGSKI a duty of care. WGSKI relied upon this misrepresentation to its detriment. The Agreement contains no provision in it that precludes reliance on representations by SSI.

Taggart v. No. 236 Seabright Holdings Ltd., 2008 BCSC 1412 at 106

19. On the whole of the evidence, WGSKI has more than a merely arguable case. The contractual terms are clear. WGSKI's performance is established. The Defendants' refusal to deliver is not in dispute. WGSKI has a strong likelihood of success at trial on its contractual claims and negligent misrepresentation claims, and the first prong of the test is readily satisfied.

The applicant will suffer irreparable harm if the Remaining Equipment are not delivered

20. The second part of the test requires the Court to consider whether the applicant will suffer irreparable harm if an injunction is not issued.
21. "Irreparable harm" refers to the nature of the harm suffered. It is harm which cannot be quantified in monetary terms or which cannot be cured. The only issue at this stage is the harm that might be suffered by the party seeking the injunction if it is not granted.

RJR – MacDonald, at 340-341

22. Demonstrating irreparable harm requires only a risk that such harm may occur absent an injunction, which is to be established on a solid evidentiary foundation.

Chan v. Vintila, 2026 BCSC 432; see also *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395 at 58-63.

23. In *Wale*, McLachlin JA (as she then was) held that "clear proof of irreparable harm is not required. Doubt as to the adequacy of damages as a remedy may support an injunction [...]"

Wale at 346

24. Whether harm is irreparable depends on the adequacy of damages as a remedy.

Este at 50.

25. In circumstances of partial delivery of equipment, where the defendants are the only source of supply available to the plaintiffs, and damages would not be a

sufficient remedy, an injunction may be granted for delivery in accordance with the underlying contract between parties.

Ebco Industries at 24, 29; citing *Sky Petroleum Ltd. v. V.I.P. Petroleum Ltd.*, [1974] 1 W.L.R. 567 (Eng. Ch. Div.)

26. Delay or non-delivery of the Remaining Equipment will result in WGSKI losing a further ski season which will cause significant and far-reaching harm.
27. The chairlift equipment is unique and there is no readily available substitute for it on the open market. If WGSKI were forced to source a replacement new chairlift, the cost would be in the range of USD \$8 million to \$9 million and the lead time would likely be several years. In the meantime, WGSKI would be left with a partial used chairlift system that cannot be completed without the Remaining Equipment.
28. WGSKI has already invested substantial sums and incurred substantial commitments in reliance on the Defendants' performance, including the approximately USD \$2.289 million already paid, lift engineering costs, electrical and concrete work, regulatory coordination, and other project expenses.
29. If the Remaining Equipment is not released and shipped immediately, WGSKI will suffer harm that is not readily quantifiable in damages, including:
 - (a) the loss of a second consecutive ski season;
 - (b) further loss of market share and competitive position relative to nearby resorts;
 - (c) ongoing loss of goodwill and reputational harm with customers and season pass holders;
 - (d) wasted project costs and commitments already incurred in reliance on the project proceeding; and
 - (e) further disruption to Bluewood's capital planning, financing, and operations.

30. Monetary damages are not an adequate remedy. The practical and commercial harm to WGSKI from continued non-delivery of the Remaining Equipment is immediate, ongoing, and not readily measurable in money.
31. Unless the order sought is granted, the Remaining Equipment will remain undelivered and WGSKI will continue to be deprived of equipment that it has already paid to acquire and have delivered.

The balance of convenience strongly favours granting an injunction

32. The third stage of the test involves “a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits.”

RJR – MacDonald at 342

33. This stage has also been characterised as the relative balance of inconvenience.

Este at 35

34. The Court may consider the extent of the duty imposed on the defendant if the mandatory injunction is granted.

Prairie Hospitality v. Renard International Hospitality Consultants Ltd.,
1980 CanLII 260 (BC SC) at 23

35. With respect to the balance of convenience, a judge should consider the following points:
 - (a) the adequacy of damages as a remedy for the applicant if the injunction is not granted, and for the respondent if an injunction is granted;
 - (b) the likelihood that if damages are finally awarded, they will be paid;
 - (c) the preservation of contested property;
 - (d) other factors affecting whether harm from granting a refusal of the injunction would be irreparable;

- (e) which of the parties has acted to alter the balance of their relationship, and so affect the status quo;
- (f) the strength of the applicant's case; any factors affecting the public interest; and
- (g) any other factors affecting the balance of justice and convenience.

Osooli-Talesh v. Emami, 2003 BCSC 1924 at para. 62, citing *Canadian Broadcasting Corp. v. CKPG Television Ltd.*, 1992 CanLII 560, [1992] 3 W.W.R. 279 (BCCA)

- 36. The balance of convenience overwhelmingly favours granting the relief sought.
- 37. WGSKI stands to suffer catastrophic and irreversible harm if the injunction is refused: the loss of a second consecutive ski season, continued deprivation of equipment it has already paid for, wasted capital expenditure exceeding USD \$2.289 million, and ongoing damage to its competitive position, goodwill, and commercial viability. By contrast, the prejudice to the Defendants if the injunction is granted is minimal or non-existent.
- 38. The duty that the requested orders would impose on the Defendants is neither onerous nor complicated. The Defendants are asked to take steps within their power to cause the release and shipment of the Remaining Equipment — a process that is already almost complete, with only four containers outstanding. In the alternative, the Defendants need only execute a letter or other document consenting to Pro-Alpin completing the loading and shipment. Pro-Alpin has confirmed it is "ready to load the rest of the goods" and requires only a "clear statement of Zrinko" to proceed. The effort required of the Defendants is, at most, the provision of a letter of consent.
- 39. The Defendants' monetary claims — to the extent they have any merit — are fully capable of being addressed at trial or secured by WGSKI's undertaking as to damages. WGSKI has offered such an undertaking pursuant to Rule 10-4(5). The Defendants' interests are therefore adequately protected in the event the injunction

is granted. By contrast, there is no undertaking or security that can compensate WGSKI for the loss of a second ski season if the injunction is refused.

40. It is the Defendants, not WGSKI, who have acted to alter the balance of the parties' relationship and disrupt the status quo. WGSKI performed its obligations under the Agreement and was entitled to expect delivery of the Equipment. The Defendants unilaterally refused to complete delivery, issued disputed and unsupported invoices on the eve of shipment, and then took active steps to prevent Pro-Alpin from releasing the Remaining Equipment. The Defendants' own correspondence confirms that their position is to withhold WGSKI's equipment as leverage to compel payment of amounts that are not properly due.
41. WGSKI has acted reasonably and in good faith throughout. It offered to pay the loading invoice if the Defendants would proceed with loading and shipment. It offered, alternatively, to take over shipping directly. It offered to pay loading charges into defence counsel's trust account, on terms that the funds not be released until the equipment arrived. The Defendants refused each of these proposals.
42. Finally, the strength of WGSKI's case on the merits, as set out above, weighs heavily in its favour on the balance of convenience. Where the applicant has demonstrated a strong prima facie case and irreparable harm, and the respondent's interests can be adequately secured by an undertaking as to damages, the balance of convenience will favour granting the injunction. That is the case here. The third prong of the test is satisfied.

The court should grant an order for the preservation and/or recovery of the Remaining Equipment under Rule 10-1

43. Rules 10-1(1), 10-1(4) and s. 57 of the *Law and Equity Act*, which provide for preservation orders pending the outcome of a proceeding, codify the interim injunction remedy of replevin.

Brown-Forman Corporation v. Charton-Hobbs Inc., 2021 BCSC 2610 at 57; citing *Terastream Networks Inc. v. Grossholz*, 2018 BCSC 837. *Viking Air Limited v Cascade Aerospace Inc.* 2024 BCSC 841 at 60-61, 70.

The court may order recovery of specific property under Rule 10-1(4)

44. A replevin order is intended to permit the immediate return of property that has been wrongfully retained, or in respect of which one party has a better right of possession than the other.

Cascade Aerospace Inc. v. Viking Air Limited, 2025 BCCA 2 at 7 (leave to appeal refused [*Viking Air (CA)*])

45. The court's inherent jurisdiction to grant relief regarding recovery of property is recognized in Rule 10-1(4), which provides:

If a party claims the recovery of specific property other than land, the court may order that the property claimed be given up to the party, pending the outcome of the proceeding, either unconditionally or on the terms and conditions, if any, relating to giving security, time, mode of trial or otherwise.

46. Replevin has been codified in statute under Rule 10-1(4) to provide a remedy where immediate recovery is essential or where a party with a strong claim to the property would be compelled, to its prejudice, to await the outcome of the trial. In this context, provision of security in lieu of permitting the other party to continue to hold the property pending the ultimate resolution of the dispute protects the interests of both parties.

Viking Air (CA) at 43

47. The discretion conferred under Rule 10-1(4) is broad. The applicant does not need to establish a risk of irreparable harm for the court to exercise its discretion, as this would undermine the broad discretionary nature of the order and the order's objectives.

Viking Air (CA) at 46

48. For an order of replevin, it is not necessary for the applicant to adduce evidence that the property is threatened with disposition or transfer out of the court's

jurisdiction. This is especially true in situations where the party in possession of the asset has a lesser claim than the applicant, and is holding onto the property to secure a monetary claim.

Viking Air (CA) at 7

49. Two broad principles guide the exercise of discretion in ordering replevin under 10-1(4):
- (a) the Court must consider who has the better claim to the property; and
 - (b) the Court must balance the interests of the parties, and assess whether and how the defendant's interests can be secured if the property is returned permanently or pending trial.

Viking Air (CA) at 77

50. The discretion to order replevin is fact specific, and dependent on the circumstances of the specific application.

Viking Air (CA) at 78

51. In the circumstances, the court should exercise its discretion under Rule 10-1 and order that WGSKI hold the Remaining Equipment before trial.

Part 4: MATERIAL TO BE RELIED ON


1. Affidavit #1 of Tavia Perron, made April 7, 2026;
2. Affidavit #1 of Peter Korfiatis, made April 7, 2026;
3. The pleadings filed in this action; and

4. Such other materials as counsel may advise.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

April 7, 2026
Date


Signature of lawyer for the plaintiff
DLA Piper (Canada) LLP (Struan T. Robertson
and Niles Bond)

CONTACT DETAILS FOR HEARING BY TELEPHONE

Name of Lawyer attending: Struan Robertson
Telephone: 604.643.2905
Email: struan.robertson@ca.dlapiper.com

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1
of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Associate Judge

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above