Federal Court  Cour fédérale

Date: 20201118

Docket: T-891-19

Citation: 2020 FC 1067

Ottawa, Ontario, November 18, 2020

PRESENT: Mr. Justice Pentney

ADMIRALTY ACTION *IN REM* AGAINST THE SHIP "THE KNIGHT SHIP" AND *IN PERSONAM*

BETWEEN:

UNITED YACHT TRANSPORT LLC

Plaintiff

and

BLUE HORIZON CORP., THE OWNERS AND ALL OTHERS INSTERESTED IN THE SHIP "THE KNIGHT SHIP", A YACHT BEARING HULL IDENTIFICATION NUMBER TAV1100H945, THE SHIP "THE KNIGHT SHIP"

Defendants

JUDGMENT AND REASONS

[1] The Plaintiff, United Yacht Transport LLC, moved the yacht known as "The Knight Ship," owned by the Defendant Blue Horizon Corporation (Blue Horizon), from Port Everglades,

Florida to Nanaimo, British Columbia. It did so pursuant to a booking note signed by Mr. Tracey Knight, the director and sole shareholder of Blue Horizon, in which the Defendant Blue Horizon agreed to pay $102,800 USD to have the yacht moved (Booking Note).

[2] When the yacht arrived at the port for loading onto the ship it was found to be too heavy, and so fuel was removed and eventually the yacht was loaded. There is no dispute that it was loaded and moved from Florida to British Columbia, where it is now under arrest. There is also no dispute that the Defendant Blue Horizon agreed to pay $102,800 USD under the Booking Note, and that, to date, no funds have been paid pursuant to this agreement.

[3] The Plaintiff brought a motion for summary trial pursuant to Rules 231(1) and 216(6) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], seeking recovery of the amount owed under the Booking Note, plus additional charges, for a total amount of $164,074.50 USD plus interest and costs. The Defendants resist the motion for summary trial, and deny that they owe for any additional amounts; furthermore, the Defendants seek to set-off against the Plaintiff's claims both the value of the fuel that was removed from the yacht as well as amounts for damages they say were caused during the transport of the yacht.

[4] For the reasons that follow, I am granting the motion for summary trial, and I grant judgment in favour of the Plaintiff in the amount of $160,199 USD.

I. Background

[5] On April 1, 2019, Mr. Knight contacted Mr. Paul Haber, the President of United Yacht Transport, for a quote to freight the yacht he had purchased. The yacht, known as "The Knight

Ship," is a 107-foot long Tarrab motor yacht, bearing hull identification number TAV1100H945, and worth approximately $1 million.

[6] The original quote provided by Mr. Haber was $130,800 USD to freight the ship from Port Everglades, Florida to Victoria, British Columbia. A few days later, Mr. Knight asked Mr. Haber to lower the price because he had received a better offer from another shipping company. Mr. Haber had previously promised to provide a five per cent discount on any other legitimate quote, and after reviewing the competitors' quote, agreed to a revised price of $102,800 USD. In the competitor's quote, the weight of the yacht was stated to be 79,000 pounds, but Mr. Knight confirmed to Mr. Haber that this was an error, and it should have been 79 tonnes, not pounds. Mr. Knight's e-mail stated: "They confirm the weight is 79 tonnes not lbs. I said yes to the best of my knowledge, as long as it was under 100 tonnes they were fine…" (Mr. Haber's Affidavit, Exhibit B, Plaintiff's Motion Record, p 34).

[7] When the Plaintiff provided the revised quote, further information was requested from Mr. Knight, including the length, beam, height, weight, make and model, and insured value of the yacht.

[8] On April 8, 2019, the Plaintiff sent the contract package containing the Booking Note to freight the yacht from Port Everglades, Florida to Victoria, British Columbia. On April 16, 2019, the agreement was finalized, with Mr. Knight signing the final page and initialling each page of the agreement. Mr. Knight also made certain handwritten changes to the document.

[9] The signed Booking Note contained the following key provisions:

Clause 1: Definitions

…

12. "Yacht" means the boat (or other form of watercraft) and its contents being transported by United Yacht Transport LLC

…

Clause 5: Description of the Yacht

1. The Yacht Owner, upon booking, shall provide Carrier with an up-to-date description of the Yacht and its particulars. This means that the Yacht Owner must inform the Carrier of any and all changes made to the Yacht that deviate from the original manufacturer's specifications and accurately state the particulars of the Yacht as it will be delivered alongside for loading. The Yacht Owner must also disclose any other information which might affect the loading or stowage of the Yacht on board the Vessel. Carrier has the sole discretion to adjust the carriage rate payable by the Yacht Owner if the yacht is inaccurately described.

2. The Yacht Owner, upon booking, is deemed to have guaranteed to the Carrier the accuracy of the Yacht's particulars, including, but not limited to, its overall length, extreme breadth, air draft, keel dimensions and weight.

3. It is expressly understood and agreed that the Carrier shall not be liable for any loss or damage resulting from the Yacht Owner's error, omission and misrepresentation in respect hereof and that the Yacht Owner shall indemnify the Carrier against all loss, damages, and expenses arising or resulting from inaccuracies, misrepresentations or omissions in stating such particulars.

4. If such information is not provided, or provided inaccurately, the Carrier has the right to suspend its obligation of this agreement without releasing the Yacht Owner from his/her obligation under this agreement.

5. The Carrier shall not be liable for any loss, damages, or expenses resulting from the Yacht Owner's inaccuracies, misrepresentations, or omissions in respect hereof.

6. Failure to timely disclose information referred in the above paragraph shall (without prejudice to any other rights hereunder) release the Carrier from its obligation under this agreement.

Clause 6: Condition of the Yacht

1. The Yacht Owner warrants the Yacht is fit for ocean carriage and shall ensure that prior to loading, the Yacht is properly trimmed in accordance with the Carrier's instructions, and made as light as possible, unless the Carrier agrees in writing otherwise. Prior to lifting, the Yacht Owner will secure and/or remove any loose items on board the Yacht.

[10] On the cover page of the Booking Note, box 8, titled "Yacht Description (see Terms and Conditions Clause 5)," includes the following:

Size & Manufacturer:	107' Tarrab
Hull ID:	TAV1100H1495
Yacht Name:	"The Knight Ship"
LOA (overall length measured in feet):	107'6"
BOA (extreme beam measured in feet):	25'
Weight (actual weight in Metric Tons):	90mt

[11] In accordance with box 9 of the cover page, titled "Freight Rate (see Terms and Conditions Clause 11)," the parties agreed to a demurrage rate of $15,000 USD per day. In addition, Clause 11 of the Booking Note provided that the Yacht Owner would pay 25 per cent of the amount owing as specified in box 9 upon execution of the contract, with the remainder due upon loading of the yacht.

[12] The yacht was scheduled to be loaded on the ship on May 2, 2019, at 2:00 p.m., but the first attempt failed. The Load Master informed Mr. Haber that the ship was too heavy for loading because its weight exceeded the 120 mt capacity of the cranes. Mr. Haber immediately sent an urgent email to Mr. Knight to inform him of this development. They had a phone discussion about the problem, which will be detailed further below. There is no dispute that the need to reduce the weight of the yacht was mentioned, as well as the fact that the yacht's fuel tanks were three-quarters full. Mr. Haber also reminded Mr. Knight about the "dead freight" clause in the

Booking Note, pursuant to which United Yacht Transport could refuse to load the yacht because it was overweight, but the Defendants would still be liable for the full amount owing. The parties also agree that during this discussion, Mr. Knight told Mr. Haber "to do whatever he thought was best for my interests."

[13] Following that conversation, Mr. Haber made arrangements to have the yacht towed to a shipyard where an attempt to remove fuel from the yacht was unsuccessful. The yacht was then towed back to the loading port, where the Load Master succeeded in pumping 7 mt of fuel from the yacht's fuel tanks. After further efforts the following day, the yacht was eventually loaded on the ship on May 4, 2019.

[14] Despite several promises by Mr. Knight, the deposit was never paid, nor was the remaining amount that became due upon loading of the yacht.

[15] At some point, it was agreed between the parties that the destination port would be changed from Victoria to Nanaimo, British Columbia to avoid a labour disruption that was anticipated at the Victoria port. Accordingly, the yacht arrived at Nanaimo on May 29, 2019, where it was arrested by the Plaintiff. Subsequently, the parties agreed that the yacht would be moved to another location at the port of Nanaimo, where it remains under arrest.

[16] On May 29, 2019, the Plaintiff filed a Statement of Claim for breach of contract in the amount of $164,074 USD, plus pre- and post-judgment interest, costs on a complete indemnity basis (in accordance with the terms of the Booking Note), as well as a contractual lien for the costs of recovering the outstanding freight owed, and a maritime lien under United States law for the supplies of necessaries to the ship.

[17] On November 15, 2019, the Plaintiff brought a motion for an Order pursuant to Rules 213(1) and 216(6) for a summary trial for determination of the matter.

II. Issues

[18] There are three issues in dispute:

A. Is summary trial appropriate for the determination of some or all of the issues in dispute?

B. Are the Defendants liable to the Plaintiff for the full amount claimed pursuant to the Booking Note?

C. Should the Defendants be allowed to set-off against the Plaintiff's claim amounts for the unlawful conversion of the fuel that was removed from the yacht, as well as for damages incurred during the freighting of the yacht?

III. Analysis

A. *Is summary trial appropriate for the determination of some or all of the issues in dispute?*

[19] Rule 216 provides for motions for summary trial in this Court, and in particular Rule 216(6) sets out criteria to be considered in assessing whether summary trial is appropriate:

Judgment generally or on issue	**Jugement sur l'ensemble des questions ou sur une question en particulier**
(6) If the Court is satisfied that there is sufficient evidence for adjudication, regardless of the amounts involved, the complexities of the issues and the existence of conflicting evidence, the Court may grant judgment either	**(6)** Si la Cour est convaincue de la suffisance de la preuve pour trancher l'affaire, indépendamment des sommes en cause, de la complexité des questions en litige et de l'existence d'une preuve contradictoire, elle peut rendre un

generally or on an issue, unless the Court is of the opinion that it would be unjust to decide the issues on the motion.	jugement sur l'ensemble des questions ou sur une question en particulier à moins qu'elle ne soit d'avis qu'il serait injuste de trancher les questions en litige dans le cadre de la requête.

[20] The burden is on the moving party to demonstrate that summary trial is appropriate (*Teva Canada Limited v Wyeth and Pfizer Canada Inc*, 2011 FC 1169 at para 35, appeal allowed on other grounds 2012 FCA 141 [*Teva Canada*]). Both parties have an obligation to put their "best foot forward" in a summary trial, and the failure to do so is not a reason, in itself, to deny a motion for summary trial (*0871768 BC Ltd v Aestival (Vessel)*, 2014 FC 1047 at para 62 [*Aestival*]). Furthermore, Rule 216(4) permits the Court to draw an adverse inference if a party fails to cross-examine on an affidavit.

[21] The Court has canvassed the circumstances in which a summary trial is appropriate in a number of decisions, in particular Justice Roger Hughes in *Teva Canada* at paras 28-34, and Justice Cecily Strickland in *Aestival* at paras 55-63. In *Cascade Corporation v Kinshofer GmbH*, 2016 FC 1117, Justice Richard Southcott provided the following useful summary:

> [35] In a motion for summary trial, Rule 216(6) provides that, if the Court is satisfied that there is sufficient evidence for adjudication, regardless of the amounts involved, the complexities of the issues and the existence of conflicting evidence, the Court may grant judgment either generally or on an issue, unless the Court is of the opinion that it would be unjust to decide the issues on the motion. In determining whether summary trial is appropriate, the Court should consider factors such as the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings, and any other matters that arise for consideration.
>
> [Citation omitted.]

[22] In *Aestival*, Justice Strickland noted that when determining whether summary trial is appropriate, the Court has considered "whether the cost of a trial would be high, the amount involved, the complexity of the matter, whether the summary trial would take considerable time, whether credibility was a crucial factor and if cross-examination had taken place, and whether a summary trial would result in detrimental 'litigation by slices'" [*Aestival* at para 60, citations omitted].

[23] The Plaintiff submits that summary trial is appropriate because this is a straightforward breach of contract claim, and all of the evidence needed to determine it is in the record. In view of the nature of the case, the amount of money in dispute, and the evidentiary record, the Plaintiff argues that this case meets the criteria for summary trial set out in Rule 216(6), which should be interpreted in accordance with the relevant jurisprudence from British Columbia, in particular *Dahl et al v Royal Bank of Canada et al*, 2005 BCSC 1263 at paras 11-12 [*Dahl*].

[24] The Plaintiff asserts that summary trial is appropriate even where there is a conflict in the evidence, as long as the court can determine the dispute based on the totality of the evidence (*Asia Ocean Services, Inc (UPS Asia Group Pte Ltd) v Belair Fabrication Ltd*, 2015 FC 1141 at paras 46-47). In view of the principle of proportionality in litigation affirmed by the Supreme Court of Canada in *Hryniak v Mauldin*, 2014 SCC 7, this case should be dealt with by way of summary trial.

[25] The Defendants argue that the motion for summary trial should not be granted, because the motion was brought on without discussion, the Plaintiff's evidence on core questions is based on hearsay, they have not had an opportunity to cross-examine on the affidavit filed by the Plaintiff, and there is a conflict in the evidence on important facts. They submit that proceeding

by way of summary trial will produce unnecessary complexity and result in litigating in slices, which is contrary to the guidance of the relevant jurisprudence (*Dahl*; *Inspiration Management Ltd v McDermid St Lawrence Ltd* (1989), 36 BCLR (2d) 202, 1989 CanLII 229 (BCCA) [*Inspiration Management*]).

[26] The Defendants point to the conflicting evidence as between Mr. Haber and Mr. Knight, and submit that this goes to the core of the dispute between the parties, thus making it inappropriate to proceed by way of summary trial (*Gichuru v Pallai*, 2013 BCCA 60). The Defendants contend that the fact that they have not had an opportunity to cross-examine Mr. Haber is an important consideration (*Concord Pacific Acquisitions Inc v Oei*, 2016 BCSC 969 at para 16), as is the fact that his affidavit contains hearsay and fails to provide evidence as to why the fuel was removed from the yacht or where it went. They contend that the evidence about the weight of the yacht – which was the reason for the removal of the fuel – is central to the Plaintiff's case, who thus risks dismissal of their claim because of a lack of evidence (*Middelaer v Delta (Corporation)*, 2013 BCCA 189). Furthermore, there is no urgency because the yacht remains under arrest.

[27] I am persuaded that this matter is suitable for summary trial, for the following reasons.

[28] First, I agree with the parties that British Columbia jurisprudence, together with that of this Court, is relevant to a determination of this question (*Louis Vuitton Malletier SA v Singga Enterprises (Canada) Inc*, 2011 FC 776 at paras 92-97 [*Louis Vuitton*]). I also agree that the criteria set out in *Dahl*, which cites the factors listed in *Inspiration Management*, are relevant for the assessment of this issue, to the extent that these reflect the jurisprudence of this Court in decisions such as *Teva Canada* and *Aestival*.

[29] The dispute in this case centres on the interpretation of the Booking Note, which is in the record. There are affidavits from the two principals, Mr. Knight and Mr. Haber, involved in the negotiations leading up to the signing of the contract, as well as copies of text messages and e-mails between them regarding the discussions prior to the agreement and the key events that followed. In addition, there is other contemporaneous written documentation about the issues at the core of the dispute.

[30] The Defendants claim that the motion for summary trial was brought on without prior discussion, and that they had little opportunity to cross-examine Mr. Haber, who lives in Florida. As the Plaintiff points out, however, the Defendants never asked for an opportunity to conduct such cross-examination, which could have been arranged on short notice. In this regard, I find that the situation is analogous to that in *Aestival*, where Justice Strickland found at paragraph 62:

> [T]his matter started life as a motion for summary judgment. In that context the Defendants were required to put their best foot forward (Rule 214). In the case of the Aestival Defendants, they failed to do so. The same basic concept applies in the context of summary trial where the Court may draw an adverse inference from a failure to cross examine an affiant or to file responding or rebuttal evidence (Rule 216(4)). The concept of putting one's best foot forward has also been applied to summary trial and the failure to do so has been held not to frustrate the ability of the Court to proceed by way of summary trial (*Everest Canadian Properties Ltd v Mallman*, 2008 BCCA 275 at para 34; also see *Louis Vuitton*, above, at paras 94-99). Here the Aestival Defendants had ample opportunity to obtain and file expert evidence as to causation but elected not to do so;

[31] The same holds true here. The Defendants had an opportunity to seek to cross-examine on the Plaintiff's (Mr. Haber's) affidavit, but they did not make any request to do so. This is a relevant consideration. Furthermore, I find that while the affidavits are useful to provide context for the events, the issues in dispute can largely be determined based on other documentary

evidence, in particular the Booking Note, the text messages and e-mails, as well as the transcripts of the telephone conversations between the principals recorded by Mr. Knight and other documents prepared by third parties. Therefore, I find that credibility is not a determinative consideration, nor is the Defendants' claim that certain aspects of the Plaintiff's affidavit contain hearsay evidence. Indeed, the exclusion of any hearsay evidence may weaken the Plaintiff's case, but that in itself is not a reason for this matter not to be dealt with by summary trial.

[32] In addition, although the Defendants assert that they were induced to enter into the agreement by the Plaintiff's negligent misrepresentation, they do not seek to invalidate the entire agreement and at the hearing they did not dispute that they owe the Plaintiff the amount due for freighting the yacht from Florida to British Columbia. Rather, the Defendants argue that they are entitled to a set-off against that amount in relation to the fuel that was removed, and they dispute the extra charges claimed by the Plaintiff.

[33] In light of this, the amount that is actually in dispute is not the total claimed ($164,074.50 USD plus interest). Rather, it is the difference between that amount and the amount due under the Booking Note ($102,800 USD) – a total of $61,274.50 USD plus interest, as well as the amounts claimed by the Defendants as a set-off against that figure, which are not precisely quantified but at most amount to $33,000 USD.

[34] Further, the case does not involve any novel or complex legal questions, and was dealt with in a single day. Although the Defendants argued that a summary trial would result in "litigation by slices" because the evidence was lacking on certain key points, I find that I am able to determine the matters in dispute and to render judgment on the entirety of the claims, as will be explained in further detail below. To the extent that the Defendants express concern about the

possibility that their claim for a set-off could be dealt with if the matter proceeded by way of summary trial, I would simply note that in light of the duty on both parties to "put their best foot forward" in proving their cases, and in view of the available evidence, it is not evident that the Defendants' chances of succeeding on their set-off would be improved by proceeding to a full trial.

[35] For all of these reasons, considering the factors set out in Rule 216(6) and the relevant jurisprudence, I find that this case is suitable for determination by way of summary trial.

B. *Are the Defendants liable to the Plaintiff for the full amount claimed pursuant to the Booking Note, as well as the additional charges?*

[36] The Plaintiff claims for the following losses:

a. the Booking Note fee for freighting the yacht in the amount of $102,800 USD;
b. demurrage in the amount of $22,500 USD;
c. fuel removal services in the amount of $2,850 USD;
d. towing in the amount of $2,000 USD;
e. exceeding the specified weight pursuant to the Booking Note in the amount of $33,924 USD.

[37] The Defendants do not seriously dispute that they owe the Plaintiff for freighting the yacht from Florida to British Columbia. However, they submit that the Plaintiff made a negligent misrepresentation regarding the limits on the lifting capacity at the loading port; they also argue that the Plaintiff has no basis to recover the extra charges claimed because the only evidence to prove that the yacht was too heavy to lift is hearsay, and they seek to set-off certain amounts. The set-off argument will be dealt with under the next issue. The focus at this stage is on the

Plaintiff's claims for $102,800 USD due under the Booking Note, plus the additional charges outlined above.

[38] The Plaintiff argues that this is a simple contractual dispute between two businesses.

[39] In regard to the terms of the Booking Note, the Plaintiff notes that Mr. Knight is experienced in business, as reflected in his approach to negotiating the terms of the agreement with Mr. Haber, including obtaining a second quote and then using that to obtain a reduced price from the Plaintiff. In addition, the Plaintiff submits that Mr. Knight made substantive changes to several clauses in the document relating to insurance coverage on the yacht, and he initialled each page of the document as well as signing the final page. The Plaintiff submits that the amendments show that Mr. Knight must have read the contract carefully, because he made substantive and specific changes to several clauses.

[40] It argues that this was a bargain struck between two commercial parties with equal bargaining power (*Ship MF Whalen v Pointe Anne Quarries Ltd* (1921), 63 SCR 109 at 125-26; *Atlas Construction Co Ltd v City of Montreal* (1954), 4 DLR 124 at 130, 1954 CanLII 351 (QCCS)). The Plaintiff submits that this is similar to the situation in *IAT Air Cargo Facilities Income Fund v BMO Nesbitt Burns Inc*, 2011 BCCA 226 [*IAT Air Cargo*], where it was found that the only issue was the interpretation of the parties' objective statement of their intentions, and therefore it is not necessary to look at extrinsic evidence regarding the relationship between the parties, because the document is clear and unambiguous (*IAT Air Cargo* at para 17, citing *Eli Lilly & Co v Novopharm Ltd*, [1998] 2 SCR 129 [*Eli Lilly*]).

[41] The Plaintiff points out that there were several indications that the weight of the yacht was important, including the request for clarification that the weight shown on the competitor's quote was incorrect. Further, when Mr. Haber sent Mr. Knight an e-mail confirming that he was willing to offer a five per cent discount on the competitor's quote, he asked Mr. Knight to provide details on the yacht, including length, beam, height, and weight.

[42] The Plaintiff argues that importance of accurate basic information about the yacht to be freighted, including its weight, is confirmed in the clear terms of the Booking Note itself. Clause 5 makes it perfectly clear that it is the sole responsibility of the yacht owner to provide such details, and to guarantee the accuracy of this information. The Plaintiff notes that only the yacht owner can provide such details because they are beyond the knowledge of the Plaintiff.

[43] Turning to the events that gave rise to this litigation, the Plaintiff notes the following key facts. First, there is no indication in the documentary record, including the e-mail exchanges as well as the transcript of the conversation between Mr. Knight and Mr. Haber, that the Plaintiff ever indicated that the certified weight of the yacht was not important, or otherwise waived this clause in the Booking Note.

[44] Second, the Plaintiff submits that there is sufficient proof that the yacht was too heavy to be loaded on the ship when it arrived at the loading port. This is confirmed from several different sources. Mr. Haber states in his affidavit that the Load Master at the loading port told him this, and that the written report provided by the surveyor also states this. Most importantly, however, Mr. Haber also states that he personally observed the efforts to load the yacht at the port, and can confirm that it was too heavy. The Plaintiff argues that this is not hearsay, because it is based on the personal observation of Mr. Haber.

[45] Mr. Haber informed Mr. Knight about the problem loading the yacht, and they discussed the possibility of reducing its weight by removing some of the fuel. Mr. Knight expressed his concern about the prospect of losing the value of the fuel that was to be unloaded, and suggested other options. It is key at this point, however, to note that in the context of that discussion Mr. Haber reminded Mr. Knight about the contractual terms pursuant to which the Defendants would owe the full amount under the Booking Note, even if the Plaintiff did not load or transport it (the so-called "dead freight" provision). Mr. Knight then told Mr. Haber to do whatever he thought was in Mr. Knight's best interests.

[46] Mr. Haber arranged to have the yacht towed to a ship yard where the fuel could be removed, but this effort was not successful and so the yacht was towed back to the loading dock, where the Load Master succeeded in removing fuel from the tanks. The yacht was then eventually loaded on the ocean-going ship. Mr. Haber states that he personally observed the removal of the fuel as well as the successful loading of the yacht. However, this process delayed its loading from May 2, 2019, to May 4, 2019, thus incurring the claimed demurrage charges for the Defendants.

[47] The Defendants resist the claims, and in particular the extra charges the Plaintiff seeks to recover. The Defendants argue that the terms of the agreement are unclear and ambiguous, and should be interpreted against the Plaintiff under the doctrine of *contra proferentem*. They also submit that the Plaintiff's negligent misrepresentation about its lifting capacity induced them to enter into the contract based on the understanding that the weight of the yacht would not be a problem. Mr. Knight had never purchased or moved a yacht as large as "The Knight Ship" and he relied on the specialized expertise of the Plaintiff, which holds itself out as an expert in this

business. He also relied on Mr. Haber's promise to match the competitor's quote, and the Defendants submit that this includes the representations made by the other company that as long as the yacht weighed less than 130 tonnes, lifting it would not be a problem. Finally, the Defendants submit that the Plaintiff has not established its entitlement to the additional charges because the only evidence to establish that the yacht was too heavy to lift is hearsay and therefore inadmissible.

[48] The Defendants argue that the Booking Note was unilaterally drafted by the Plaintiff, and Mr. Knight made minor modifications to it. Unlike the situation in *IAT Air Cargo*, where the contract had been negotiated at some length between the parties' solicitors, here the contract was drafted entirely by the Plaintiff. They say there is no objective statement of the parties' intentions in the contract. The Defendants note that there is no mention of fuel in Clause 5 of the Booking Note, and the reference to "weight" is ambiguous.

[49] In view of the unilateral drafting and ambiguous terms of the agreement, the Defendants submit that the doctrine of *contra proferentem* applies (*Eli Lilly* at para 53), and therefore they should not be made to suffer for any ambiguity or lack of clarity in the agreement (*Horne Coupar v Velletta & Company*, 2010 BCSC 483 at para 10).

[50] The Defendants also argue that the Plaintiff negligently misrepresented the lifting capacity at the loading port, and point to the initial exchanges between Mr. Knight and Mr. Haber. The e-mail from Mr. Haber to Mr. Knight providing the initial quote includes a statement that "UYT [the Plaintiff] is the largest yacht transporter in North America and most reliable… Regarding the cradling and loading, below are a couple of photos and videos that show our equipment and heavy lift method particularly well" (Mr. Haber's Affidavit, Exhibit B, Plaintiff's

Motion Record, p 29). It provides several links to Facebook posts, showing the Plaintiff transporting yachts of 350 mt and 330 mt. In addition, on or around April 3, 2019, prior to finalizing the Booking Note, Mr. Haber received an e-mail from Mr. Knight showing a photo of a 650 mt boat that had been lifted by the Plaintiff.

[51] Based on this, the Defendants argued that the Plaintiff negligently misrepresented their lifting capacity, inducing the Defendants to believe that the actual weight of the yacht would not be an issue. The Defendants contend that the mistake in the yacht's weight in the competitor's quote should have been a red flag to the Plaintiff. The quote showed a weight of 79,000 pounds, which is far off the actual weight of the yacht – a fact that should have been evident to the Plaintiff by virtue of its expertise and experience in the field.

[52] The Defendants submit that the facts of this case meet the five requirements for negligent misrepresentation set out in *Queen v Cognos Inc*, [1993] 1 SCR 87 at 109. They argue that the Plaintiff owed a duty of care to them by virtue of holding itself out as having specialized expertise in the highly specialized niche market of yacht transport. Based on their exchanges, Mr. Haber knew, or ought to have known, that the yacht was to be carried on a vessel with a limited lifting capacity that fell far short of the examples provided in the e-mail attachments, but he never advised Mr. Knight of this crucial fact. This was a misleading representation that constituted negligence, and the Defendants say they relied on this in entering into the contract. They point out that in an e-mail to Mr. Knight on April 12, 2019, Mr. Haber stated: "The boat is fine and we can safely lift it" (Mr. Haber's Affidavit, Exhibit D, Plaintiff's Motion Record, p 47). As a result of the negligent misrepresentation, the Defendants suffered damages.

[53] I am not persuaded by the Defendants' arguments. The Booking Note is clear and unambiguous, and it was entered into by two commercial parties. There was no negligent misrepresentation regarding the Plaintiff's capacity to lift the yacht in question, and the Defendants cannot rely upon general references by the Plaintiff to other yacht lifts to escape from liability under the Booking Note. In regard to the towing and fuel removal charges, I find that the Plaintiff acted pursuant to the original agreement between the parties, as supplemented by the oral agreement about the removal of the fuel.

[54] First, the terms of the Booking Note are clear. Clause 5, quoted earlier, makes it abundantly clear that it is the sole responsibility of the yacht owner to certify the weight of the vessel. Clause 5.2 states that the "Yacht Owner, upon booking, is deemed to have guaranteed to the Carrier the accuracy of the Yacht's particulars, including [its] weight." Clause 6 also clearly states that it is the yacht owner's responsibility to make the vessel as light as possible. While the Defendants are correct that Clause 5 does not specifically mention fuel, it does refer to the "weight" of the yacht, and I do not find any ambiguity in this term.

[55] There is no basis to find that the agreement's wording required any separate and specific reference to the fuel, oil, or water on-board the yacht, or that it could reasonably be understood to exclude them when it referred to the weight of the yacht. As noted above, the definitions section of the Booking Note states that "'Yacht' means the boat (or other form of watercraft) and its contents being transported by United Yacht Transport LLC" [emphasis added]. The reference to the "contents" of the yacht would, no doubt, include many different things, but it cannot be interpreted to somehow exclude fuel within the fuel tank of the yacht at the time of loading.

[56] In addition, there is no basis to find that the Plaintiff negligently misrepresented the loading capacity at the port of loading in regard to the Booking Note. The Defendants point to the Plaintiff's statements that it had the capacity to lift much larger yachts, up to 650 mt, and submits that this induced them to believe that the weight of "The Knight Ship" would not be an issue. I am not persuaded that the general statements in the initial e-mails from Mr. Haber to Mr. Knight constitute any sort of representation beyond an indication that the Plaintiff had experience lifting much heavier yachts.

[57] I am also not persuaded that these general references to other yacht lifts are sufficiently clear or connected to the agreement to constitute a representation, or that they demonstrate that the Defendants were induced into believing that the weight of the yacht was not important. There is no indication that Mr. Knight ever inquired about the lifting capacity at the port, nor is there any evidence that the Plaintiff ever waived the clear terms of Clause 5, or otherwise indicated that the weight of the yacht was not important. If anything, the documentary record demonstrates the reverse – the e-mail setting out the initial quote asked Mr. Knight to provide the weight of the yacht, as well as other details. Mr. Haber had Mr. Knight confirm that the weight of the yacht shown on the competitor's quote was not accurate. The other details about the yacht provided for the purposes of the first quote match those on the cover page of the Booking Note, and again weight is specifically listed. This, together with the clear terms of Clause 5, made it clear that the weight of the yacht was an important consideration.

[58] The Defendants submit that Mr. Knight relied upon Mr. Haber's promise to match the competitor's quote, and argue that he understood from his exchanges with the other company that as long as the yacht weighed less than 130 mt its weight would not be an issue. The

Defendants submit that this was part of what Mr. Knight understood Mr. Haber to have agreed upon when he said he would match the competitor's quote.

[59] I am not persuaded. First, there is no express reference in the competitor's quote to the effect that the weight of the yacht was not a concern as long as it was less than 130 mt. Second, the contemporaneous record does not support this statement. In an e-mail to Mr. Haber dated April 5, 2019, Mr. Knight stated "[t]hey confirm the weight is 79 tonnes not lbs. I said yes to the best of my knowledge, as long as it was under 100 tonnes they were fine…" (Mr. Haber's Affidavit, Exhibit B, Plaintiff's Motion Record, p 34). This is not consistent with the statement in Mr. Knight's affidavit, and he has provided no other documentation to prove the competitor's statement. In any event, it is unclear how such a statement could have induced him to enter into the agreement with the Plaintiff, since there is no record of any discussion regarding the competitor's quote other than in respect of price.

[60] In regard to the other charges, I find in favour of the Plaintiff. The demurrage rate was fixed in the Booking Note at $15,000 USD per day, to be prorated per day, including holidays and weekends. The yacht was scheduled to be loaded on May 2, 2019 at 2:00 p.m., but because of the weight issue, and the time taken in efforts to remove the fuel to make it lighter, it was not loaded until May 4, 2019. On its face, the delay supports the demurrage charge of $22,500 USD.

[61] The Defendants contend that the Plaintiff has failed to establish that the yacht was, in fact, too heavy to lift. They submit that the only evidence offered in support of this are hearsay statements set out in Mr. Haber's affidavit. For example, at paragraph 16 of his affidavit, Mr. Haber states "On or about May 2, 2019, the load master of the Vessel, Mr. Oliver Edwards (the "Load Master"), informed me that he was unable to load the ship onto the Vessel, as the weight

of the Ship exceeded the 120 MT capacity of the cranes at the Loading Port." He goes on to state that "While at the Loading Port, I was informed by the Load Master and the attending surveyor, Ian Morris ("the Surveyor"), and verily believe it to be true, that arrangements needed to be made to reduce the Ship's weight before it could be loaded onto the Vessel." The Defendants submit that both statements constitute inadmissible hearsay, and that without this evidence, the Plaintiff has failed to establish the core basis for the additional charges.

[62] I do not agree. First, Mr. Haber's affidavit does contain some hearsay, and in the circumstances I find it is not necessary to determine whether it is to be admitted based on the principled approach affirmed in *R v Bradshaw*, 2017 SCC 35, because there is other admissible evidence which establishes the key facts.

[63] It is true that Mr. Haber's affidavit does recount what he was told by the Load Master and Surveyor, and I accept that this is hearsay. He also states, however: "In response, I went down to the Loading Port to confirm that the Ship was overweight and that it could not be loaded onto the Vessel… Later on that day, I met with the Load Master and Surveyor at the Loading Port and discovered that the Ship was approximately three quarters full of fuel… and that it weighed more than 120 MT." Later in his affidavit, Mr. Haber recounts what he personally observed at the Loading Port when the fuel was removed and the yacht was successfully loaded. None of these statements constitute hearsay, and they are otherwise admissible evidence.

[64] The Defendants state that Mr. Haber does not provide any details on how he determined that the yacht was too heavy, or that its fuel tanks were three-quarters full of fuel, and they submit that this must be based on hearsay statements of the Load Master or Surveyor. I disagree. It is true that Mr. Haber does not explain in detail how he made these determinations, but that

does not lead to an inexorable conclusion that they were based on hearsay. The Defendants did not seek to cross-examine Mr. Haber on his affidavit, and so his evidence is unchallenged. On its face, Mr. Haber's evidence is based on personal observation of the yacht at the Loading Port. There is no evidence to contradict it, and Mr. Knight did not challenge this assertion when it was first made to him.

[65] In addition, I find there is other, independent evidence, that the yacht was too heavy. The record contains the Report of the Surveyor, dated July 3, 2019. Although this may not be admissible as an ordinary business record, since it is not a contemporaneous record, the Statement of Facts which is appended to this Report is admissible as an ordinary business record, made at the time of the relevant events (*Canada Evidence Act*, RSC 1985, c C-5, s 30; Sydney Lederman et al, *The Law of Evidence in Canada* (4th edition), LexisNexis, p 299ff). The Statement of Facts is a contemporaneous record, made in the ordinary course of business by a party with no interest in these proceedings and no other obvious motive to misrepresent the facts which are presented.

[66] This document sets out the basic facts about the loading of the various vessels onto the freighter (the M/V Taagborg) on the days in question. It indicates that the first attempt to load the Defendants' yacht (listed as Tarrab 107) on May 2, 2019, was cancelled because it was "too heavy to be loaded." The following day includes several notations about a further attempt to load the yacht, which was suspended because it was still too heavy; there is a further notation that fuel was removed from the yacht, and then activities were suspended because it was the end of the work day. The notations for May 4, 2019, indicate that the yacht was loaded after adjustments to the lifting belts.

[67] This record is admissible under the business records exception to the hearsay rule. It substantially confirms the evidence provided by Mr. Haber about the sequence of events, and I find that it is not necessary to rely on the hearsay statements in Mr. Haber's affidavit in order to find, on a balance of probabilities, that the Plaintiff has established that the yacht was too heavy when it first arrived at the Loading Port, and it was successfully loaded only after fuel was removed from its fuel tanks.

[68] For all of these reasons, I do not accept the Defendants' arguments that the terms of the Booking Note are unclear or ambiguous, or that the doctrine of *contra proferentem* applies to the facts of this case. I also do not find that the Plaintiff made any negligent misrepresentation that induced the Defendants into believing that the weight of the yacht was not important. Finally, I find that the Plaintiff has established, on a balance of probabilities, that the yacht was too heavy to lift when it first arrived at the Loading Port, and that it was only successfully loaded after fuel was removed from its fuel tanks. Even excluding certain hearsay statements in the affidavit of Mr. Haber, I find that the totality of the evidence is sufficient to enable me to make findings on the issue.

[69] As noted above, in order to reduce the weight of the yacht for loading, rather than incurring the dead freight charge and being left with a yacht still in Florida, the Mr. Haber and Mr. Knight, as representatives of the Plaintiff and Defendants, entered into an agreement pursuant to which Mr. Haber was to remove enough fuel to make the yacht light enough for loading. This entitles the Plaintiff to amounts resulting from the towing and fuel removal services. However, pursuant to the supplemental agreement, Mr. Haber was also either to stow the fuel on the ship so that it could be transported with the yacht, or to make other arrangements

for it. This latter aspect is discussed in further detail below, in relation to the Defendants' claim for a set-off.

[70] Clause 5.3 provides that "the Yacht Owner shall indemnify the Carrier against all loss, damages, and expenses arising or resulting from inaccuracies, misrepresentations or omissions in stating such particulars." Under Clause 11.3 of the Booking Note, "[a]ny dues, duties, taxes and charges which… may be levied on any basis such as the amount of freight, weight or cargo or tonnage of the Yacht shall be paid by the Yacht Owner." These provisions, together with the supplemental agreement between Mr. Haber and Mr. Knight, provide a legal basis for the Plaintiff's claims for fuel removal services in the amount of $2,850 USD (subject to the Defendants' claim for a set-off, discussed below), as well as the charge for towing in the amount of $2,000 USD.

[71] In summary on this issue, I make the following findings: (i) the Booking Note is a valid agreement; (ii) the yacht was heavier than the weight listed in the Booking Note when it first arrived at the loading port; (iii) the yacht was too heavy to lift, given the 120 mt lifting capacity of the cranes; (iv) the parties entered into a supplementary agreement pursuant to which the Plaintiff was to remove sufficient fuel from the yacht to make it light enough to lift, in order to avoid the possibility under the "dead freight clause" that the yacht would not be loaded, but the Defendants would be liable for the entire amount due on the Booking Note; (v) in order to accomplish this, the Plaintiff arranged to have the yacht towed to a ship yard where unsuccessful efforts were made to remove the fuel, and then the yacht was towed back to the loading dock; (vi) the Load Master then succeeded in removing 7 mt of fuel from the yacht; and (vii) on May 4,

2019, the yacht was loaded on the ocean-going ship, and it was then transported to Nanaimo, British Columbia.

[72] In addition, it is admitted that the Defendants have not made any payments pursuant to the agreement, despite repeated requests by the Plaintiff.

[73] I find that these facts are sufficient to support the Plaintiff's claim for payment of the amount agreed under the Booking Note, in the amount of $102,800 USD. Under Clause 11.3 of the Booking Note, the Plaintiff is entitled to recover any extra charges due to the additional weight of the yacht, and this supports the Plaintiff's claim for overage charges for excessive weight ($33,924 USD). The Plaintiff is also entitled to recover for costs it incurred relating to towing ($2,000 USD) and fuel removal ($2,850 USD). The delay in loading the yacht also triggers the agreed-upon demurrage charge in the amount of $22,500 USD.

C. *Should the Defendants be allowed to set-off against the Plaintiff's claim amounts for the unlawful conversion of the fuel that was removed from the yacht, as well as for damages incurred during the freighting of the yacht?*

[74] The Defendants amended their Statement of Defence to include specific references to their claim for a set-off on any amounts they owed to the Plaintiff, based on the unlawful conversion of the fuel that was removed from the yacht or, in the alternative, based on the unjust enrichment of the Plaintiff. The Defendants also claim a set-off for damage to the yacht that they say occurred during its transportation from Florida to British Columbia.

(1) Unlawful conversion by removal of the fuel

[75] The Defendants submit that the removal of the 7 mt of fuel from the yacht constitutes unlawful conversion of their property, because the Plaintiff removed fuel from the yacht valued at approximately $30,000 without proper authorization or justification.

[76] The Defendants say they had ownership and the right to possession of the fuel since it was laden on the ship while at the Boat Yard at which it was purchased. Mr. Knight's affidavit states that in accordance with the purchase agreement, the Boat Yard supplied the yacht with approximately 6,542 gallons (or 24,423 litres) of fuel, valued at approximately $20,000 USD, which filled the fuel tanks to less than half full. The Agreement of Purchase and Sale for the yacht is in the record, but it does not refer to this, and there is no other documentary evidence to substantiate it.

[77] When Mr. Haber informed Mr. Knight of the weight issue with the yacht and proposed to remove the fuel, Mr. Knight expressed serious concerns about losing the value of that much fuel. He requested that the fuel be loaded onto the ocean-going ship, so that it could be transported with the yacht and re-loaded upon arrival. In the alternative, he suggested simply not loading the yacht, so that he could sell the fuel rather than taking such a significant loss.

[78] The evidence shows that Mr. Haber explained to Mr. Knight that if the ship was not loaded, the Defendants would still be liable for the full cost due under the Booking Note. Mr. Knight's affidavit states that he then told Mr. Haber "to do whatever he thought was best for my interests, but that I did not want the fuel off the Ship as it would cost me money, so I asked that

the fuel be put on the freighter and brought to Canada" (Mr. Knight's Affidavit at para 20, Defendant's Motion Record, p. 134).

[79] The Defendants argue that the removal of the fuel from the yacht constitutes conversion (*Boma Manufacturing Ltd v Canadian Imperial Bank of Commerce*, [1996] 3 SCR 727 at para 31). This is a matter of strict liability. In this case, the Plaintiff admits that it was responsible for the removal of the fuel, and has offered no explanation as to where the fuel went. The Defendants submit that this is sufficient to warrant a set-off in its favour for the value of the fuel.

[80] The Plaintiff argues that it was justified in removing the fuel, in light of the circumstances facing the Defendants when it was discovered that the yacht was heavier than the weight certified in the Booking Note. Pursuant to the terms of the Booking Note, at that stage the Plaintiff could have either resiled completely from the agreement, or not loaded the yacht, leaving the Defendants liable for the full amount due. This would have meant the Defendants' yacht would have stayed in Florida, yet they would have been required to pay $102,800 USD.

[81] The Plaintiff says that it acted pursuant to Mr. Knight's general instruction "to do whatever is in my best interests," which was stated after the contractual terms regarding "dead freight" were explained to him. The efforts to remove the fuel were done pursuant to a supplementary agreement between the parties, which made commercial sense given the jeopardy facing the Defendants because the yacht weighed so much more than the weight set out in the Booking Note.

[82] The Plaintiff says that its actions reflect its compliance with the duty of good faith in contractual performance set out in *Bhasin v Hrynew*, 2014 SCC 71 at paras 77-92 [*Bhasin*]. In

particular , the Plaintiff says that it should not be penalized for acting in accordance with the common law duty to act honestly in the performance of contractual obligations and to have "appropriate regard" to the legitimate contractual interests of the other contracting party (*Bhasin* at para 65).

[83] The Plaintiff contrasts its behaviour with that of the Defendants, in particular their failure to pay the deposit or the remaining amount due on loading pursuant to the Booking Note, which has continued until the date of trial.

[84] I find that the Plaintiff has not committed the tort of conversion, because it acted pursuant to a supplementary agreement reached between Mr. Knight and Mr. Haber. I find, however, that the Plaintiff's conduct was not entirely consistent with that agreement, because it did not fully account for the sale value of the fuel or put the fuel onto the ocean-going vessel for transportation to Canada, the only two options it had under the terms of the arrangement with Mr. Knight.

[85] There are gaps in the evidence regarding the off-loaded fuel. The Plaintiff has claimed for $2,850 USD relating to the removal of the fuel from the yacht. In support of this claim, the Plaintiff has provided an invoice showing transfer and disposal costs, as well as a credit of $1,125 USD for "proceeds from fuel." This invoice appears to relate to a transfer of 750 gallons of fuel, and the disposal of 250 gallons with water. It is unclear what the credit relates to but it is either the proceeds from the sale of it, or a credit for the value of it. In any event, this is the only specific evidence showing that at least some of the fuel was either sold or that its value was credited to the Plaintiff. The Defendants state that this amounts to approximately 3 mt of fuel, and point out there is no explanation for the rest.

[86] The evidence of the Defendants in support of their claim for a set-off is also lacking. Mr. Knight stated that approximately $20,000 USD in fuel was supplied as part of his original purchase. He makes other statements in the record indicating that it will cost him $30,000 to replace the fuel, but provides no basis for this figure. I agree with the Plaintiff that the onus is on the Defendants to justify the claimed set-off amount, and in this respect it would have been preferable for the Defendants to have tendered further evidence.

[87] In relation to the Plaintiff's breach of the supplemental agreement as to the disposition of the off-loaded fuel, I find that the Defendants have already received the benefit of the credit from the proceeds of the fuel in the amount of $1,125 USD, since this has been removed from the invoice for fuel removal submitted to the Plaintiff. As in other situations, the fact that it may be difficult for the Court to estimate damages owed does not have the effect of rendering the claim meaningless; the obligation of the Court is to do its best in providing a reasonable estimate of the damages (*Louis Vuitton* at para 28, citing *Ragdoll Productions (UK) Ltd v Doe*, 2002 FCT 918 at paras 40-45).

[88] Having considered all of the evidence in the record, and considering the circumstances of this case, I find that a reasonable damage estimate for the Plaintiff's breach of its agreement with the Defendants is $5,000 USD. From this the amount credited for the proceeds of the fuel ($1,125 USD) should be deducted, and so the Defendant is entitled to a set-off for the value of the fuel removed from the yacht in the amount of $3,875 USD.

(2) Is the Plaintiff liable for any damage to the yacht during the move from Florida to British Columbia?

[89] This question can be disposed of quickly, since I find that the Defendants' evidence in support of this claim is entirely lacking. The Defendants rely on the affidavit of Mr. Knight, who states that he boarded the yacht upon its delivery in Nanaimo, and discovered damage to the hull. He states that this damage must have occurred during the transportation of the ship from Florida, and he indicates that he believes the cost to repair the damage may be approximately $3,000.

[90] I find that the Defendants have not met their onus of establishing this claim. First, it is not clear that the damage occurred after the yacht was delivered into the custody of the Plaintiff. The evidence shows that the Defendants arranged to have the yacht towed from the boat yard where it was purchased to the loading dock. The Defendants provide no evidence as to the condition of the yacht upon delivery. Second, the Defendants have provided no evidence to substantiate Mr. Knight's estimate that the cost of repairs will be approximately $3,000. The Defendants had the opportunity to bring forward such evidence, and failed to do so. In the circumstances, I find that the Defendants have failed to establish their claim for a set-off relating to the damage to the hull of the yacht.

IV. Conclusion

[91] For all of these reasons, I find that this case is suitable for determination by summary trial, and I am awarding judgment in favour of the Plaintiff in the following amounts:

Amount owed under the Booking Note	$	102,800	USD
Demurrage	$	22,500	USD
Fuel removal services	$	2,850	USD

Towing	$	2,000	USD
Exceeding the specified weights	$	33,924	USD
Less a set-off in favour of the Defendants	$	3,875	USD
Total due to the Plaintiff from the Defendants	$	160,199	USD

[92] In accordance with Rule 392, and *Gatineau Power Co v Crown Life Insurance Co*, [1945] SCR 655, conversion to Canadian currency of the amount due is to be made as of the date of breach, which in this case is May 2, 2019, in regard to the amount owing under the Booking Note and the charge relating to the excess weight, and May 4, 2019, in regard to the other amounts.

[93] The Plaintiff claimed solicitor-client costs pursuant to the terms of the Booking Note. However, as noted by Justice Sean Harrington in *National Bank of Canada v Rogers*, 2015 FC 1390, a contractual clause dealing with entitlement to costs does not oust the Court's discretion pursuant to Rule 400 (see also *Calogeras & Master Supplies Inc v Ceres Hellenic Shipping Enterprises Ltd*, 2011 FC 1276). In this case, the facts do not support an award of solicitor-client costs. The case was dealt with by way of summary trial. The Defendants resisted the motion for summary trial, as they were entitled to do, and otherwise did not bring needless motions or take other steps to prolong or complicate the procedure.

[94] In all of the circumstances of this case, and in view of the wide discretion accorded to the Court pursuant to Rule 400, I find that an award of costs at the high end of the scale of Column III is appropriate. The Defendants are hereby ordered to pay to the Plaintiff costs at the high end of the scale of Column III, together with reasonable disbursements. If the parties cannot agree on costs, they may make submissions not exceeding three (3) pages (excluding a draft bill of costs) within seven (7) days of receipt of this judgment.

[95] In addition, I award the Plaintiff pre-judgment and post-judgment interest, at the maritime rate, on the amounts owing from the Defendants as set out above.

[96] In the Statement of Claim, the Plaintiff asserted a contractual lien for the costs of recovering the outstanding freight owed by the Defendant ship and her Defendant owners, pursuant to Clause 12 of the Booking Note. The Plaintiff also claimed a maritime lien under United States law for the supply of necessaries to the ship. During the hearing, the Plaintiff acknowledged that it was not necessary to make findings on these claims because they relate to recovery on the amounts owing, and therefore I will not address them further.

JUDGMENT in T-891-19

THIS COURT'S JUDGMENT is that:

1. The Plaintiff's motion to have the matter heard by way of summary trial is granted.

2. The Defendants shall pay to the Plaintiff the following amounts:

Amount owed under the Booking Note	$	102,800	USD
Demurrage	$	22,500	USD
Fuel removal services	$	2,850	USD
Towing	$	2,000	USD
Exceeding the specified weight	$	33,924	USD
Less a set-off in favour of the Defendants	$	3,875	USD
Total due to the Plaintiff from the Defendants	$	160,199	USD

3. The Defendants shall pay the Plaintiff's costs, calculated at the high end of the Tariff in Column III, plus reasonable disbursements. If the parties cannot agree on costs, they may make submissions not exceeding three (3) pages (excluding a draft bill of costs) within seven (7) days of receipt of this judgment.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-891-19
STYLE OF CAUSE:	UNITED YACHT TRANSPORT LLC v BLUE HORIZON CORP., THE OWNERS AND ALL OTHERS INTERESTED IN THE SHIP "THE KNIGHT SHIP', A YACHT BEARING HULL IDENTIFICATION NUMBER TAV1100H945, THE SHIP "THE KNIGHT SHIP"
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 27, 2020
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	NOVEMBER 18, 2020

APPEARANCES:

David S. Jarrett J. Harry Ormiston	FOR THE PLAINTIFF
Darren Williams Robert Anderson (student)	FOR THE DEFENDANTS

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FOR THE DEFENDANTS