

Federal Court



Cour fédérale

Date: 20210826

Dockets: T-1836-17
T-1837-17

Citation: 2021 FC 887

St. John's, Newfoundland and Labrador, August 26, 2021

PRESENT: The Honourable Madam Justice Heneghan

**ADMIRALTY ACTION *IN REM* AGAINST THE SHIP M/V “INUKSUK I” AND
IN PERSONAM AGAINST THE OWNERS, CHARTERERS AND ALL OTHERS
INTERESTED IN THE SHIP M/V “INUKSUK I”**

Docket: T-1836-17

BETWEEN:

**SEALAND MARINE ELECTRONICS
SALES AND SERVICES LTD**

Plaintiff

and

**THE OWNERS, CHARTERERS AND ALL
OTHERS INTERESTED IN THE SHIP M/V
“INUKSUK I” AND INUKSUK FISHERIES
LTD. AND BAFFIN FISHERIES
COALITION**

Defendants

**ADMIRALTY ACTION *IN REM* AGAINST THE SHIP M/V “SIVULLIQ” AND
IN PERSONAM AGAINST THE OWNERS, CHARTERERS AND ALL OTHERS
INTERESTED IN THE SHIP M/V “SIVULLIQ”**

Docket: T-1837-17

**SEALAND MARINE ELECTRONICS
SALES & SERVICES LTD.**

Plaintiff

and

**THE OWNERS, CHARTERERS AND ALL
OTHER INTERESTED IN THE SHIP M/V
“SIVULLIQ” AND REMOY FISHERIES LTD.
AND BAFFIN FISHERIES COALITION**

Defendants

JUDGMENT AND REASONS

I. **INTRODUCTION**

[1] By a Statement of Claim issued on November 30, 2017, Sealand Marine Electronics Sales and Services Ltd. (the “Plaintiff”) commenced an action *in personam* and *in rem* against the Owners, Charterers and all others interested in the Ship M/V “Inuksuk I”, Inuksuk Fisheries Ltd. and Baffin Fisheries Coalition (collectively the “Defendants”), in cause number T-1836-17, seeking the recovery of \$13,368.06 for the provision of goods and services supplied to the M/V “Inuksuk I”.

[2] By a Statement of Claim issued on November 30, 2017, the Plaintiff commenced an action *in personam* and *in rem* against the Owners, Charterers and all others interested in the Ship M/V “Sivulliq”, Remoy Fisheries and Baffin Fisheries Coalition (collectively the “Defendants”) in cause number T-1837-17, seeking the recovery of \$171,393.46 for the provision of goods and services to the M/V “Sivulliq”.

[3] Pursuant to a Warrant of Arrest issued on November 30, 2017, the Defendant M/V “Inuksuk I” was arrested. The Defendant Ship M/V “Sivulliq” was also arrested.

[4] On December 29, 2017, the Defendants posted cash bail in the amount of \$14,704.86 to secure the release of the M/V “Inuksuk I” from arrest. On January 3, 2018, the Defendants posted cash bail in the amount of \$14,704.86 to secure the release from arrest of the M/V “Sivulliq”.

[5] Since the commencement of these two actions, certain corporate reorganizations were undertaken. However, those commercial steps are not relevant to the issues raised in these proceedings.

II. THE PARTIES

[6] The Plaintiff is a body corporate carrying on business in Mount Pearl, Newfoundland and Labrador. It provides and installs marine electronic equipment and other shipboard equipment to vessels. It provided materials and services to the corporate Defendants for a number of years.

[7] Inuksuk Fisheries Ltd. is a body corporate and, together with Baffin Fisheries Coalition, was the Owner of the Defendant Ship M/V “Inuksuk I” when the action in cause number T-1836-17 was begun.

[8] Remoy Fisheries Ltd. is a body corporate and, together with Baffin Fisheries Coalition, was the owner of the Defendant Ship M/V “Sivulliq” when the action in cause number T-1837-17 was begun.

III. THE PROCEDURAL HISTORY

[9] These two actions were commenced on November 30, 2017. The Plaintiff seeks recovery of monies due under three Invoices, one relative to goods and services supplied to the M/V “Inuksuk I” and two relative to goods and services supplied to the M/V “Sivulliq”.

[10] On December 18, 2017, the Defendants filed Defences and Counterclaims in the two actions.

[11] The Defendants admitted paragraphs 1, 2 and 3 of the Plaintiff’s Statement of Claim, that is regarding the status of the Plaintiff as a body incorporated under the laws of Newfoundland and Labrador; that the Defendant ships are each registered in the port of Iqaliut, Territory of Nunavut; that the Defendant Inuksuk Fisheries Ltd., Remoy Fisheries Ltd., and Baffin Fisheries Coalition (“Baffin”) are the Owners of the M/V “Inuksuk” and the M/V “Sivulliq”, respectively.

[12] In these Statements of Defence, the Defendants denied any liability to the Plaintiff in respect of the outstanding Invoices for the supply of materials and services to the two Defendant ships. In the counterclaims contained in the Statements of Defence, the Defendants alleged that the principal of the Plaintiff, Mr. Harold Young, had conspired with two employees of the Defendant Baffin Fisheries Coalition to perpetuate a fraud by billing for non-Marine items,

including snowmobiles, dirt bikes, and all-terrain vehicles (“ATV’s”), thereby converting property of Baffin to their own use and benefit.

[13] On January 10, 2018, the Plaintiff filed its Defence to the counterclaim in each of these actions. In that pleading, the Plaintiff denied the allegations of fraud, conspiracy and conversion, and pleaded the common law principle of the “Indoor Management Rule”.

[14] By Order made on February 8, 2018, the within proceedings were consolidated.

[15] By Order dated February 25, 2019, the within proceedings were designated as specially managed proceedings and Prothonotary Steel was appointed as Case Management Judge.

[16] A pretrial conference was held on July 21, 2020. By Order dated September 4, 2020, Prothonotary Steel identified the issues for trial and set out a timeline for the completion of certain pretrial steps, including the filing of a joint book of documents and a joint trial chart. Paragraph nine of the September 4, 2020 Order acknowledged the intention of the Plaintiff to challenge the jurisdiction of this court to entertain the Defendants counterclaim and provided that further directions would issue, either from the trial judge or the case management judge, with respect to the determination of any preliminary motion to strike their counterclaim, prior to trial.

[17] A direction was issued by the case management judge on September 21, 2020 inquiring as to pursuit by the Plaintiff of its challenge to the Defendants’ counterclaim and asking for a response by September 24, 2020.

[18] On September 24, 2020, the Defendants filed a Notice of Discontinuance with respect to their Counterclaim.

[19] On October 30, 2020, the Defendants filed an Amended Statement of Defence. In this pleading, the Defendants referred to the amalgamation of Inuksuk Fisheries Ltd. and Remoy Fisheries Ltd., together with other corporations, pursuant to the provisions of the *Canadian Business Corporations Act*, R.S.C. 1985, c. C-44, to “form the amalgam Niqitaq Fisheries Ltd.”

[20] In their amended Statement of Defence, the Defendants advanced the defence of set-off in response to the Plaintiff’s claims. They again pleaded the commission of fraud and unlawful conversion, and alleged that the Plaintiff was unjustly enriched. The defence of set-off refers to Invoices tendered in respect of the Defendant Ships, as well as to Invoices tendered to Arluk Fisheries Ltd. on behalf of the M/V “Arluk II”.

[21] Neither Arluk Fisheries Ltd. nor the M/V “Arluk II” is a party to these consolidated actions.

[22] The Defendants plead that the Plaintiff, in collusion, with certain employees of Baffin, facilitated the provision of recreational vehicles, for the account of Baffin, that were “camouflaged” on the Invoices as marine electronic and related equipment.

[23] On November 4, 2020, the Plaintiff filed its Reply to the Amended Statement of Defence, in each of the within actions. The Plaintiff maintained its claims for monies owing in respect of

the provision of marine goods and services, and denied the existence of any fraudulent scheme or its participation in same.

IV. THE TRIAL

[24] The following is a resumé of parts of the evidence given by the parties' witnesses. This is a summary of evidence, not a statement of facts. Factual findings will be made later and references will be made to other parts of the evidence, including to certain exhibits.

[25] The Plaintiff called three witnesses to support its claim, that is Mr. Harold Young, Mr. Seamus Power and Mr. Derek Moss.

Mr. Harold Young

[26] The first witness was Mr. Harold Young, sole shareholder of the Plaintiff Corporation. The Plaintiff engages in the business of the supply and installation of marine equipment on ships, and the invoicing for same.

[27] Mr. Young testified that he has worked with Baffin for at least 10 years, with no problems. Usually, he would be contacted by the Fleet Manager with a request to provide equipment or perform work. He described the process followed in the preparation of Work Orders and Invoices at issue in these actions.

[28] In that process, Mr. Young testified that he took instructions from Mr. Dudley Fowler, then Fleet Manager with Baffin, in writing the narrative of the Work Orders. The Work Orders described the nature of the work or equipment; the date of performance of the work; related hours of work, including travel time; and the price of equipment.

[29] The Work Orders were signed by Mr. Young and by Mr. Fowler. The Work Orders were written on “No Carbon Required” paper. According to Mr. Young, he reviewed the Work Orders and Invoices with Mr. Fowler at the offices of Baffin, where Mr. Young would sign the Work Orders. The purpose of Mr. Fowler’s signature was to acknowledge the work and equipment provided.

[30] Mr. Fowler would then forward the Plaintiff’s Invoice to Baffin’s accounts payable office. The evidence shows that seven Purchase Orders were issued by Baffin to Sealand.

[31] Mr. Young gave evidence about the three Invoices at issue in these proceedings.

[32] In cause number T-1837-17, the Plaintiff seeks recovery of the amounts due under Invoice #103367, dated August 8, 2017, supported by Work Orders #8422 and #8423, for the supply of marine equipment to the M/V “Sivilluq”, in the amount of \$155,502.31.

[33] It also seeks recovery of the sum of \$15,894.15, relative to the M/V “Sivilluq”, pertaining to Invoice #103386, dated September 12, 2017, and related Work Orders #8432 and #8433, for marine equipment.

[34] Although Work Order #8433 includes two Can Am Outlander ATVs, in the amount \$54,567.50, the Plaintiff is not seeking recovery of monies in connection with these items, in this action. A claim for those monies is underway before the Supreme Court of Newfoundland and Labrador, General Division.

[35] The total amount sought by the Plaintiff in respect of the M/V “Sivilluq” is \$171,396.46, inclusive of HST and the Plaintiff’s mark up.

[36] In cause number T-1836-17, the Plaintiff seeks judgment of the amount of \$13,368.06 in satisfaction of its Invoice #103366, dated August 7, 2017, supported by Work Order #8421, relative to the supply of marine equipment to the M/V “Inuksuk I”.

[37] The Work Order here details the purchase of four (4) dirt bikes, in the amount of \$66,189.17. Recovery of that money is not part of the Plaintiff’s claim in this action but is the subject of proceedings in the Supreme Court of Newfoundland and Labrador, General Division.

[38] Mr. Young testified that he recorded non-marine items on the Work Orders and Invoices, as being ship-board equipment, because he was instructed to do so by Mr. Dudley Fowler, then the Fleet Manager for Baffin.

[39] Mr. Young was questioned about six (6) other Invoices, in response to the Defendants’ plea of equitable set-off, as follows:

Invoice #10339 to Inuksuk Fisheries Ltd., dated April 1, 2017,
with related Work Order #8358;

Invoice #103365 to Inuksuk Fisheries Ltd., dated July 17, 2017,
with related Work Order #8407;

Invoice #103330 to Remoy Fisheries Ltd., dated April 1, 2017,
with related Work Order #8365;

Invoice #103336 to Inuksuk Fisheries Ltd., dated April 30, 2017,
with related Work Order #8382;

Invoice #103345 to Arluk Fisheries Ltd., dated May 8, 2017, with
related Work Orders #8359, 8388 and 8392;

Invoice #103318 to Arluk Fisheries Ltd., dated March 6, 2017,
with related Work Order #8357.

[40] The Defendants' objection to Invoices #103329 and #103365 is that these Invoices contain charges for electrical work provided by Newfoundland Electrical Ltd., for a property situate at Winterton, Newfoundland and Labrador. This work is set out in Invoices #1793 and #1785 from Newfoundland Electrical Ltd. These Invoices referenced electrical work provided to the M/V "Inuksuk I".

[41] The Invoices were sent to Mr. Young and he incorporated them in Sealand's Invoices to Baffin, without knowing at the time that the work in question had been provided to a residence in Winterton. He became aware of those circumstances after the Sealand Invoices had been paid. The Sealand Invoices are #103329 and #103365.

[42] The Defendants' objection to Sealand Invoice #103330 is that it contains a charge for a snowmobile, allegedly obtained by fraudulent means for the personal benefit of either Mr. Garth Reid, Mr. Dudley Fowler or others.

[43] The Defendants' objection to Sealand Invoice #103336 is that it contains a Can Am Outlander ATV, with tracks, allegedly obtained by fraudulent means for the personal benefit of Mr. Reid, Mr. Fowler or others.

[44] The Defendants' objection to Sealand Invoice #103345 is that it contains two Can Am Outlander ATVs, allegedly obtained by fraudulent means for the personal benefit of Mr. Reid, Mr. Fowler or others. This Sealand Invoice is directed to Arluk Fisheries Ltd. This company is not a party to the within proceedings.

[45] Finally, the Defendants' objection to Sealand Invoice #103318 is that it contains three snowmobiles, allegedly obtained by fraudulent means for the personal benefit of Mr. Reid, Mr. Fowler or others. This Invoice as well was directed to Arluk Fisheries Ltd.

[46] One of the snowmobiles contained in Sealand Invoice #103318, a Skandic model, was acquired for the benefit of the former chair of the board of directors of Baffin, that is Mr. Jacobie Maniapik. This unit was purchased at a Northern Store in Iqaliut, Nunavut and delivered at that location.

[47] Mr. Young testified that he took instructions from Mr. Dudley Fowler, Fleet manager of Baffin, in the preparation of the narrative for Sealand's Work Orders and Invoices. Mr. Young testified that Mr. Fowler directed him not to describe the snowmobiles, ATVs and the like as such, and provided the wording to be used. Mr. Young followed these instructions, but he included serial numbers or vehicle identification numbers, for the purpose of his own accounting.

Mr. Young also included the Invoice numbers of any subcontractors involved in the supply of these goods.

[48] Mr. Young also testified that following the first request from Mr. Reid, about the supply of a snowmobile for Mr. Maniapik, he received further requests from Mr. Reid for snowmobiles and ATVs. Mr. Young went to his subcontractor and supplier, CMK Enterprises Ltd. This company is based in Paradise, Newfoundland and Labrador and sells, among other things, recreational vehicles.

[49] Mr. Young testified that he referred Mr. Reid directly to Mr. Cecil Hodder, the owner and operator of CMK, and instructed Mr. Hodder to provide what Baffin wanted. CMK Enterprises Ltd. then sent the Invoices to Sealand.

[50] Mr. Young testified that he had no concerns about the requests from Mr. Reid for the provision of these items to Baffin. At the time, Mr. Reid was the Chief Executive Officer of Baffin and Mr. Young testified that he relied upon the authority of the CEO in satisfying the requests that were made.

[51] The Sealand accounts were not paid in September 2017. Mr. Young testified that he became aware of internal “turmoil” at Baffin. He met Mr. Chris Flanagan, a representative of Baffin and acting chief financial officer, in the fall of 2017. He explained to Mr. Flanagan the manner in which various items were recorded on Sealand’s Work Orders and Invoices. He

provided Mr. Flanagan with the CMK Invoices and contact information for Mr. Hodder. He participated in a forensic audit carried out for Baffin, by Deloitte.

[52] At a meeting with Mr. Flanagan on November 2, 2017, Mr. Young recorded their conversation. A transcript of that conversation was entered as an exhibit P-12 in the trial. In the course of that conversation, Mr. Flanagan said he was satisfied with the contents of Sealand Invoice #103367, an Invoice in the amount of \$155,502.31.

[53] Also in that conversation, Mr. Flanagan indicated that this large Invoice would be paid. However, neither this Invoice nor two other Invoices were paid, leading to the institution of the within proceedings.

[54] In the course of his testimony, Mr. Young denied any complicity in a fraudulent scheme with Mr. Reid or Mr. Fowler. He denied the existence of any conspiracy, and he denied any conversion of Baffin's property to his own use.

Mr. Seamus Power

[55] Mr. Seamus Power is branch manager at Atlantic Electronics Ltd. This company supplies marine electronics for sea-going vessels. Mr. Power testified about the delivery of Scanmar sensors and related hardware to the M/V "Sivulliq", as set out in Sealand Invoice #103367.

[56] Mr. Power sent an email to Mr. Young, dated October 23, 2017, confirming the delivery of this equipment on board that vessel. A copy of that email was included in Exhibit 11, being a

collection of emails exchanged between Mr. Young, Mr. Flanagan and other employees of Baffin.

Mr. Darren Moss

[57] Mr. Darren Moss was the third witness called on behalf of the Plaintiff. He is a director of Newfoundland Electrical Limited. He testified that his former associate, Mr. Derrick Williamson, now deceased, dealt with Mr. Reid about the electrical work set out in his company's Invoices #1793 and #1795. These Invoices refer to electrical work performed on the M/V "Inuksuk I"; it is now known that the work was performed on a residential property in Winterton.

[58] Mr. Moss testified that it was not unusual for a customer to attribute the work on an invoice to a property other than the one upon which the work was performed. He also testified that he would not become "involved" unless there was an issue with the payment of an Invoice, and there were no such issues. The Invoice was paid by Sealand.

[59] When he became aware of controversy about the construction of the house in Winterton, he instructed his employees to get off the job.

V. DEFENDANTS' WITNESSES

[60] The Defendants called 5 witnesses: Mr. Cecil Hodder, Mr. Garth Reid, Mr. Dudley Fowler, Mr. Brad Reardon and Mr. Chris Flanagan.

Mr. Cecil Hodder

[61] Mr. Hodder is the owner and operator of CMK Enterprises Ltd., a vendor of recreational vehicles. He testified that most customers come to his business on the basis of a referral, that is upon the referral of someone else and he will look for the item requested. In his business relationship with Sealand, Sealand was the “referral” and Baffin was the end customer.

[62] Mr. Hodder testified that he was asked to source snowmobiles and ATVs that were suitable for heavy snow conditions, or for hauling heavy loads, or which were equipped for hunting and fishing activities.

[63] Mr. Hodder testified that he was asked by Mr. Reid to provide a quotation for shipping a snowmobile to Nunavut. When the shipping costs proved to be prohibitive, the machine was locally sourced in Nunavut.

[64] Mr. Hodder testified that he was also asked to source and supply a starter motor for a Ford F150 pickup truck. He obtained this item and delivered it to Mr. Leo Muktar, then a member of the Baffin Board of Directors, at Baffin’s offices in St. John’s.

[65] Mr. Hodder testified that the sourcing of equipment for Baffin, including snowmobiles, ATVs and dirt bikes, was mostly conducted between himself and Mr. Reid, rather than with Mr. Young of Sealand. He testified that Mr. Young’s role largely consisted of confirming that CMK should proceed to place the orders and invoice Sealand.

[66] Mr. Hodder further testified that Mr. Young was never involved with pick up and delivery of items, including two Stihl chainsaws, and that nearly always, Mr. Reid and Mr. Fowler were together when an order was placed or items were picked up or delivered.

[67] Mr. Hodder testified that Mr. Reid never discussed who was to be billed for the items sourced and invoiced through CMK.

[68] After September 9, 2021, Mr. Hodder was contacted by Mr. Reid about certain ATVs then located at the premises of Mr. Fowler. Mr. Reid asked Mr. Hodder to pick up these vehicles and put them in storage. The vehicles were placed in a trailer that had been purchased by Baffin in March 2017, according to the Invoice dated March 16, 2017 and entered as exhibit P-1.

[69] Mr. Hodder testified that he took the trailer containing the items, to his place of business in Paradise, unloaded the trailer and prepared an inventory. The list of items stored in the trailer was entered as exhibit D-9.

[70] Mr. Hodder testified that he delivered the items to the Baffin premises on November 20, 2017. He subsequently presented an Invoice for storage cost to Baffin. The items in storage did not include the expedition snowmobile described in CMK Invoice #1052, directed to Sealand, and entered as Exhibit D-2.

[71] According to Mr. Hodder, the CMK Invoice for storage was the only invoice related to Baffin that was not paid. The Invoice was entered as Exhibit D-9.

[72] Mr. Hodder also testified about his presence on a snowmobile trip in March 2017. Mr. Young, Mr. Fowler, Mr. Reid, and Mr. Flanagan were among those present on this snowmobile trip out on the West Coast of Newfoundland. Mr. Mike McGann, an Ottawa based consultant for Baffin, was also present on that trip.

[73] Mr. Hodder testified that he subsequently heard from Mr. McGann, asking him to ship a snowmobile to Mr. McGann in Ottawa. Mr. Hodder did not do so, he hung up the phone.

[74] Mr. Hodder further testified that some 15 or 16 months after he returned the snowmobiles, dirt bikes, ATVs and a generator to Baffin, he bought back the same. He then re-sold the goods and “made money”, although there was no evidence about the price he paid to Baffin or his profit.

Mr. Garth Reid

[75] Mr. Garth Reid was the Chief Executive Officer of Baffin at the times relevant to these actions. He was suspended from that position following a meeting of the Baffin board in September 2017. He was terminated from his position in October 2017.

[76] Mr. Reid testified about meeting Mr. Hodder of CMK, following an introduction by Mr. Young. He testified that suppliers to Baffin would go through Mr. Michael Feehan, in the procurement department, or Mr. Fowler, the Fleet Manager. He testified that Mr. David Taylor, then the Chief Financial Officer, would flag any matters of concern.

[77] Mr. Reid testified that he was aware of the purchase of snowmobiles, including the one for Mr. Maniapik. He was prepared to buy whatever the board members wanted since he considered them the owners of the company.

[78] Mr. Reid testified that he was present when Mr. Taylor instructed Mr. Fowler to record the recreational vehicles and the outboard motor, as “mechanical”. He testified that one of the snowmobiles was meant for Mr. Reid as a signing bonus and for his use in Pangnirtung.

[79] Mr. Reid also testified that a snowmobile was destined for Mr. McGann as payment for Invoices submitted for consulting work.

[80] Mr. Reid testified that the dirt bikes were supposed to be billed to him, not to Baffin. He testified that he dealt directly with CMK about these items and he did not speak with Mr. Young about the invoicing. These items are not part of the Plaintiff’s claim in these actions and are not part of Baffin’s claim for equitable set-off.

[81] Mr. Reid testified about the purchase of a pressure washer and said that this was for Baffin’s use. The situation is similar for the two Stihl chainsaws. These items are not part of the claims at issue in these proceedings.

[82] Mr. Reid testified that with the exception of the dirt bikes, the snowmobiles and ATVs were purchased for the use of members of the board, or members of the Hunting and Trapping Organizations (“HTO’s”) that make up Baffin, or for the use of Baffin employees while working

the Nunavut, or in lieu of bonuses, pay or incentives, in respect of Mr. Fowler, Mr. McGann and Mr. Reid.

[83] Mr. Reid testified that there were no limits on his spending authority at the time, to make purchases for Baffin, and he reported only to the Board of Directors. He testified that a request by a member of the Board for an outboard motor or snowmobile or ATV was consistent with the objectives of Baffin that was owned by the HTOs.

[84] Mr. Reid testified that he did not participate in the forensic audit undertaken by Baffin by Deloitte. He acknowledged that a judgment was entered against him in the Supreme Court of Newfoundland and Labrador in the amount of \$544,049.17, together with interest and costs, after he failed to defend an application for summary judgment.

[85] Mr. Reid denied that there was any fraudulent scheme or conspiracy involving Mr. Young and Mr. Fowler, or that there was any plan to convert property of Baffin.

Mr. Dudley Fowler

[86] Mr. Dudley Fowler, a former Master of the M/V “Arluk II”, was the Fleet Manager for Baffin at the time of the events that gave rise to these actions.

[87] Mr. Fowler testified that Mr. Reid and Mr. Maniapik, while traveling with them in Norway for the purchase of vessels, offered him the position of Fleet Manager. He was told that

his salary, in that position, would be lower than his salary as Master of the M/V “Arluk II” but that the company, that is Baffin, would “make it up” to him.

[88] Mr. Fowler, when questioned about telling Mr. Young the language in the Sealand Work Orders, denied any such instructions. He further testified that although he signed the Work Orders, as entered in evidence, he did so without going through each Work Order and without checking the contents. He agreed that his signature on the Work Orders, together with that of Mr. Young, was an acknowledgment that the work described in such Work Order had been completed.

[89] Mr. Fowler testified that he trusted the persons who submitted Work Orders and Invoices. He also testified that he dealt with hundreds of Work Orders and Invoices and was constantly under pressure, by the accounting department and Mr. David Taylor, a former Chief Financial Officer for Baffin, to sign them off and submit for payment.

[90] Mr. Fowler testified that he was unaware that recreational vehicles were recorded on Sealand Work Orders and Invoices as mechanical supplies for either the Defendant Ships or for the M/V “Arluk II”. He testified that on one occasion, when an outboard motor was purchased for Mr. Maniapik, Mr. Taylor, former Chief Financial Officer, told him to record the article under “mechanical” and not to mention it because other people, such as Board members, would want one.

[91] Mr. Fowler testified that he picked up the outboard motor in Clarenville and paid for it by credit card. He also testified that on another occasions, a scallop dredge was purchased and that it was to be described as “mechanical”. He testified that this was destined for Mr. Methuselah Kunuk, another Board member.

[92] Mr. Fowler testified that he was told by Mr. Taylor not to question the description of the outboard motor as “mechanical”, that this was company business.

[93] Mr. Fowler testified that Mr. Taylor told him, in the presence of Mr. Reid, to record certain items as “mechanical”.

[94] Mr. Fowler testified that the Work Orders, showing his signature, could have been signed by him in the absence of Mr. Young. However, upon cross-examination, Mr. Fowler was told that the Work Orders and Invoices are printed on “No Carbon Required” paper so that unless separated and signed by Mr. Fowler and Mr. Young alone, the Work Orders and Invoices would necessarily have been signed at the same time. Mr. Fowler did not provide any explanation in reply.

[95] Mr. Fowler testified that six Purchase Orders issued by Baffin, to the credit of Sealand in payment of Sealand Invoices, contained brief details about the materials and services provided.

[96] Mr. Fowler testified that following his suspension from employment in September 2017, there was a trailer belonging to Baffin situate at his residence. He testified that the trailer contained two ATVs. Two snowmobiles and an ATV were in his garage.

[97] Mr. Fowler testified that he received, and kept, a Can Am Outlander 850 ATV and a Summit 850 snowmobile. He testified that these vehicles were given to him as employee benefits, to compensate for the reduced salary that he took when he took the position as Fleet Manager.

[98] Mr. Fowler was questioned about receipt of a Renegade snowmobile and denied that he received such a unit.

[99] Mr. Fowler testified about various purchases made for members of the Baffin Board, including the purchase of clothing during the attendance of Board members at Boston Seafood Exposition in 2017. He testified about personal knowledge of the purchase of an outboard motor for Mr. Maniapik, and a snowmobile and a scallop dredge for Mr. Kunuk. He also testified about “rumors” that other Baffin employees had received personal benefits from Baffin.

[100] Mr. Fowler was questioned about a conversation that he had with Mr. Young on November 10, 2017. Unknown to Mr. Fowler, Mr. Young recorded that conversation and a transcript was entered in evidence as Exhibit P-13.

[101] In that conversation, Mr. Fowler spoke about the personal benefits mentioned above.

Mr. Brad Reardon

[102] Mr. Brad Reardon is the Chief Engineer on the M/V “Arluk II”. He testified that he had never seen the equipment described in Sealand’s Invoices #103345 and #103318, and related Work Orders, on board the M/V “Arluk II”. The Work Orders and Invoices referred to the equipment as acoustic or sonar equipment.

[103] Mr. Reardon testified that a Fleet Manager or a Master of the M/V “Arluk II” would know that such equipment would not be used on that vessel.

Mr. Chris Flanagan

[104] Mr. Chris Flanagan is currently the Chief Executive Officer of Baffin.

[105] Mr. Flanagan testified that he worked initially with Baffin as a media consultant and began working for Baffin in December 2015. In the spring or early summer of 2016, he was hired fulltime. He continued in the media consulting role and then moved on to “Economic Development and Communications”. He holds degrees in geography and journalism, as well as a Masters in Business Administration. He did not provide evidence as to his employment history prior to his employment with Baffin.

[106] In September 2017, Mr. Flanagan became the interim Chief Financial Officer of Baffin. In July or August 2018, he became the interim Chief Executive Officer. In early 2019, he became the fulltime Chief Executive Officer and testified in the trial, in that capacity.

[107] Mr. Flanagan, while still working as a media consultant, attended a Christmas party at Quidi Vidi Brewery, in St. John's, Newfoundland and Labrador. He testified that among the attendees were 6 or 7 construction workers from Quebec who spoke only in French. He testified that his wife translated for him. He also testified that he knew enough of the French language to understand what the workers were saying.

[108] Mr. Flanagan testified that he understood that the French speaking guests said that they "loved" working for Baffin. He testified that he found it "incredibly odd" that Baffin was employing construction workers from Quebec. He testified that there had been rumors within the company that Mr. Reid was building a house in Winterton, using company money.

[109] Mr. Flanagan testified about the corporate structure of Baffin. He testified that "Baffin Fisheries Coalition" is the formal name of a not-for profit corporation registered under the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23. It is owned by five HTOs, each associated with a community in Nunavut. The five communities are Pond River (*sic*), Pangnirtung, Clyde River, Kimmirut and Iqaliut. Baffin owns Niqitaq Fisheries Limited which is the operating arm of Baffin.

[110] Mr. Flanagan testified that in the course of his employment in 2016, he observed that the company was very busy, with the management of three vessels and with various projects in the North, including the construction of office buildings in Pangnirtung and Pond Inlet. He also observed that there seemed to be an "insane amount of spending on consultants and travel and

non-core business items”. He testified that his attendance at the Christmas party was an “ah-ha” moment.

[111] Mr. Flanagan testified that in 2017, when preparing an annual report, he found a document showing charges at Hindy’s Home Hardware Store in Winterton, Newfoundland and Labrador attributed to expenses for Pond Inlet, he found the document tabbed on an Excel spreadsheet. He reported to the Baffin Board his suspicions about expenditures made in Winterton that were identified as expenses for the Pond Inlet activities. He asked the Board to pursue more financial information. He did not say when he made this report and request to the Board.

[112] Mr. Flanagan testified that matters were addressed before the Board meeting in September 2017. He testified that his suspicions were explained to the Board and “in the event this was real”, senior executives should be suspended, a forensic audit should be conducted and legal advice should be sought. He testified that he and Mr. Leo Muktar would resign if no fraud or misappropriation were found.

[113] Mr. Flanagan testified that following that Board meeting, motions were passed. Apparently one motion was to suspend the Chief Executive Officer, the Chief Financial Officer and the Fleet Manager, with pay, pending the investigation. Another motion was to authorize a forensic audit.

[114] Mr. Flanagan testified that the suspensions were imposed on a Friday soon after the Board meeting and he was appointed interim Chief Financial Officer during the suspension period.

[115] Mr. Flanagan testified that Deloitte from Halifax was engaged to conduct the forensic audit and Mr. Paul Bradbury was the lead on the audit team.

[116] Mr. Flanagan testified that at this time, Mr. Nick Cline was the Chief Financial Officer, that Mr. David Taylor had resigned in March 2017, that Mr. Taylor resigned because he was not prepared to sign financial statements and to serve as the acting Chief Financial Officer while “this stuff was going on”.

[117] Mr. Flanagan testified that in September 2017, the financial situation of the company was “pretty dire”, that the company had approximately \$30,000.00 in the bank, and that it forestalled payment of its accounts receivable.

[118] Mr. Flanagan testified that he was unaware of Sealand and its outstanding accounts until some time in September 2017 when he received a phone call from Mr. Young. He testified that Mr. Young said he could identify the skidoos.

[119] Mr. Flanagan testified that he was surprised to learn about the number of ski do purchases, that Mr. Young met with him and offered to show where the skidoos and ATVs were billed, if Baffin would pay his outstanding Invoice of approximately \$155,000.00.

[120] Mr. Flanagan testified that he met with Mr. Young at the Baffin office and reviewed the Sealand Invoices. He was surprised at the number of vehicles. He went to Mr. Bradbury and “Paul was excited”.

[121] Mr. Flanagan engaged a Mr. Paul Loder, a business analyst, to put together a spreadsheet.

[122] Mr. Flanagan testified that he kept a spreadsheet on his desktop, following his meeting, with Mr. Young and he calculated the markup on the various snowmobiles, ATVs and dirt bikes to be approximately \$160,000.00. He testified that he did tell Mr. Young that Baffin would pay him if or when “we found out where all the assets were and how we can get them back”.

[123] Mr. Flanagan testified that certain recreational vehicles were returned to Baffin by CMK. The units were ultimately sold to CMK for an undisclosed price, maybe for \$7000.00 or \$8000.00 a unit.

[124] Mr. Flanagan also testified about his attendance on a salmon fishing trip some time in the summer of 2016. He testified that this trip was paid for by Niqitaq and in his opinion, this was another sign that things were not being done right by Baffin. In the summer of 2016, Mr. Flanagan was working in the area of economic development and was not in an executive position.

[125] Mr. Flanagan testified that when during Mr. Reid’s tenure as Chief Executive Officer, there were no policies in place at Baffin about personal expenses and benefits, or conflicts of

interest. He testified that there was an annual audit of Baffin every year prior to the conduct of the forensic audit in 2017.

[126] Mr. Flanagan testified about a conversation that he had with Mr. Young on November 2, 2017. Unknown to Mr. Flanagan at the time, that conversation was recorded and a transcript was entered in evidence.

[127] Mr. Flanagan testified that the transcript shows that he, that is Mr. Flanagan, agreed to pay the Sealand account of approximately \$155,000.00. However, he also testified that he later disagreed with payment.

[128] Mr. Flanagan testified that he was not satisfied with the Invoices and the mark-ups charged by Sealand. He, together with Mr. Bradbury and Mr. Loder, concluded that “what was going on here was misleading Invoices and that the company was made to pay these things without having a clue what they were, and the Invoices did not represent what we thought we were getting, so we sought legal counsel to see what we should do next”.

VI. ISSUES

[129] According to the Order issued by Prothonotary Steele on September 4, 2020, the parties agreed that the trial would address the following issues:

- (a) Did the Plaintiff and Defendants have a valid and enforceable contract for the supply of equipment and services for and on account of each of the vessel *M/V “INUKSUK I”* (T-1836-17) and the vessel *M/V “SIVULLIQ”* (T-1837-17)?

(b) Did the Plaintiff supply the contracted equipment and services to the Defendants for each of the vessel *M/V “INUKSUK I”* (T-1836-17) and the vessel *M/V “SIVULLIQ”* (T-1837-17)?

(c) What is the amount owing to the Plaintiff, if any, for the work performed on the vessel *M/V “INUKSUK I”* (T-1836-17) and the vessel *M/V “SIVULLIQ”* (T-1837-17)?

(d) Has the Plaintiff participated in a fraud or converted the property of the Defendants’ corporations?

(e) Are the Defendants entitled to claim an equitable set-off in each of the files T-1836-17 and T-1837-17, and if so what is the amount of their entitlement?

[130] At the Trial Management Conference held on November 9, 2020, the parties agreed that the issues remained the same.

[131] The Plaintiff’s Motion, challenging the jurisdiction of the Court to entertain claims in fraud, conspiracy and conversion was addressed in final submissions by both parties.

VII. SUBMISSIONS

A. *The Plaintiff’s Submissions*

[132] The Plaintiff submits that it has met its burden, to show upon the balance of probabilities that it supplied goods and services to the Defendant Ships the *M/V “INUKSUK I”* and the *M/V “SIVULLIQ”*. It argues that it followed instructions from authorized representatives of the Defendant Baffin and is entitled to rely on the “Indoor Management Rule”, as codified in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, paragraph 18(1)(d), and the *Canada Not-for-profit Corporations Act*, *supra*, paragraph 19(1)(d).

[133] The Plaintiff submits that Rule 186 of the *Federal Courts Rules*, S.O.R. 98/106 (the “Rules”) does not confer jurisdiction in the Federal Court over claims in fraud, conspiracy and conversion.

B. *The Defendants’ Submissions*

[134] The Defendants argue that the Plaintiff has failed to show that it provided goods and services to the Defendant ships, to the value of the amount claimed.

[135] Further, the Defendants argue that the Plaintiff is not entitled to recover judgment because its principal, Mr. Harold Young, engaged in a scheme with Mr. Reid and Mr. Fowler, executive employees of Baffin, to defraud Baffin for their personal gain. The Defendants allege that the gain for Mr. Young was profit and the gain for Mr. Reid and Mr. Fowler was goods, that is recreational vehicles.

[136] Inherent in the allegation and argument about a fraudulent scheme is the allegation of a conspiracy among Mr. Young, Mr. Reid and Mr. Fowler.

[137] The Defendants also argue that these three individuals engaged in “wrongful conversion” of Baffin’s property.

VIII. DISCUSSION AND DISPOSITION

[138] I have outlined above the evidence given by the parties. Before setting out my factual findings, I will address the jurisdictional arguments raised by the Plaintiff and set out the legal context of these actions.

[139] In general, the Federal Court does not enjoy jurisdiction over common law torts. I refer to the decision of the Federal Court of Appeal in *Stoney Band v. Canada (Minister of Indian & Northern Affairs)* (2005), 372 D.L.R. (4th) 176.

[140] In that regard, the objections of the Plaintiff are well founded. However, the Defendants are not relying on fraud, conspiracy and conversion as causes of action, since they withdrew their Counterclaim. Instead, they raise these issues as part of their claim for a set-off of any judgment found owing to the Plaintiff, pleading that the existence of a fraudulent scheme gives rise to an equitable basis for set-off.

[141] Although the language of the Amended Defences that were filed on October 30, 2020 echoes the language of the Counterclaims that were filed on December 18, 2017, there is a significant difference between those pleadings.

[142] The Counterclaim was a claim, setting out causes of action.

[143] The claim for equitable set-off is a defence, not a cause of action. I refer to the decisions in *Pierce v. Canada Trustco Mortgage Co.* (2005), 254 D.L.R. (4th) 79, and *Grand Financial Management Inc. v. Solemio Transportation Inc.* (2016), 395 D.L.R. (4th) 529.

[144] The Plaintiff seeks recovery of monies due upon the supply of goods and services to the Defendant Ships. This claim clearly falls within the maritime jurisdiction of the Court pursuant to paragraphs 22 (2)(m) and (n) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as follows:

Maritime jurisdiction

(2) Without limiting the generality of subsection (1), for greater certainty, the Federal Court has jurisdiction with respect to all of the following:

...

(m) any claim in respect of goods, materials or services wherever supplied to a ship for the operation or maintenance of the ship, including, without restricting the generality of the foregoing, claims in respect of stevedoring and lighterage;

(n) any claim arising out of a contract relating to the construction, repair or equipping of a ship;

...

Compétence maritime

(2) Il demeure entendu que, sans préjudice de la portée générale du paragraphe (1), elle a compétence dans les cas suivants:

...

m) une demande relative à des marchandises, matériels ou services fournis à un navire pour son fonctionnement ou son entretien, notamment en ce qui concerne l'acconage et le gabarage;

n) une demande fondée sur un contrat de construction, de réparation ou d'équipement d'un navire;

...

[145] This is a civil action where the burden of proving the case lies upon the Plaintiff. The burden of proof in a civil action is proof on the balance of probabilities, a burden that was discussed recently by the Supreme Court of Canada in the decision *C. (R.) v. McDougall*, [2008] 3 S.C.R. 41, where the Court said the following:

46 Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test

...

49 In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[146] The first question for determination is whether there was a contract between the Plaintiff and Baffin for the supply of the marine goods and services described in the three Invoices in issue in these actions, that is Invoice #103366 for the M/V “Inuksuk I”, and Invoices #103367 and #103386 for the M/V “Sivulliq”.

[147] Mr. Young, Mr. Fowler, and Mr. Reid testified about the three Invoices that are the subject of these actions. Although their evidence differed in some respects, I am satisfied that there was a contact between the Plaintiff and Baffin for the supply of services and equipment for

the Defendant Ships. The existence of a contract is established by the Invoices and Work Orders submitted by the Plaintiff to Baffin, as signed by Mr. Fowler.

[148] Three Invoices are relevant to the Plaintiff's claim for payment, that is Invoice #103366, together with Work Orders, directed to Inuksuk Fisheries Ltd., entered as Exhibit P-3, Invoice #103367, together with Work Orders, directed to Remoy Fisheries Ltd., entered as Exhibit P-5, and Invoice #103386 together with Work Orders, directed to Remoy Fisheries Ltd., entered as Exhibit P-6.

[149] It is established that Invoice #103367, Exhibit P-5, contains nothing but marine equipment. The Invoice sets out the following details for the work done:

- Repairs to Global Marine Distress and Safety Services DSC
- Repairs to S Band radar system
- Repairs to trawl monitoring system.

[150] Related Work Orders #8422 and #8423 describe the following marine equipment under "Equipment Supplied":

- 2 Sailor 6222 VHF DSC
- 1 DSC VHF flush mount bracket
- 1 Standard Horizon handheld VHF radio
- 1 Sailor 6222 VHF DSC
- 1 Mercer's Marine parts
- 1 Scanmar SS door master double distance
- 2 SS4 door sensor holders (PL)
- 1 Scanmar SS4 clump sensor double/triple distance
- 1 Scanmar SS4 door slave distance
- 1 SS4 clump sensor holder
- 1 Scan charger/program unit
- 1 MS52 23G 30 kilowatt Magnetron
- 1 Scanmar SS4 grid sensor
- 28 SEA Grid
- 1 SS4 grid sensor service

- Battery, O-ring, catalyst.

[151] In the secretly recorded conversation with Mr. Young on November 2, 2017, for which a transcript was entered as exhibit P-12, Mr. Flanagan agreed that the items set out in Sealand Invoice #103367, exhibit P-5, were “verified”. I refer to exhibit P-12, page 3, lines 5-7.

[152] On the basis of the admission by Mr. Flanagan, together with the evidence of Mr. Young and Mr. Power, I am satisfied that the equipment described on Invoice #103367 was supplied to the Defendant Ship M/V “Sivulliq”.

[153] Although it appears that there is a difference in the alphanumerical number shown on Exhibit P-4, page 9, that is an Invoice from Atlantic Electrical Ltd. to Sealand, and the alphanumerical number recorded on Exhibit P-5, Sealand Work Order #8422, I accept the evidence of Mr. Power that this was a typographical error, between “G” and an “F”.

[154] Mr. Power testified that “Johan”, the Master of the M/V “Sivilliq” signed the Work Order dated September 2, 2017, included in Exhibit P-4. This signature indicated to Mr. Power that the equipment was supplied and the work done.

[155] Mr. Power referred to an email that he sent on October 23, 2017 to Mr. Young, confirming the work done per Sealand Invoice #6221921. Mr. Power testified that he sent the email in response for a request from Mr. Young who said that Baffin was looking for “proof” that the work had been done.

[156] I refer to Exhibit P-12, the transcript of the conversation between Mr. Young and Mr. Flanagan that took place on November 2, 2017 where Mr. Flanagan acknowledged that all the items on this Invoice were accounted for.

[157] Although in his evidence at trial Mr. Flanagan testified that he was not satisfied with the charges and would accept \$80,000.00 on the Invoice amount.

[158] Mr. Flanagan expressed concerns, in his testimony, about the mark-ups charged by Sealand.

[159] However, the evidence shows that Sealand had dealt with Baffin for some 10 years, without issue. There was no evidence about any concerns about Sealand's mark-ups before 2017. It was up to Baffin, as the customer, to raise such concerns.

[160] I turn now to Sealand Invoice #103366, entered as Exhibit P-3. According to the evidence of Mr. Young and Mr. Fowler, this Invoice contains dirt bikes. Sealand does not claim for the price of these units in its present action against M/V "Inuksuk I" in the present actions.

[161] Invoice #103366 refers to "Repairs to trawl monitor system".

[162] Associated Work Order #8421 describes the following marine equipment:

- 1 Scanmar trawl eye battery
- 2 ICOM OPC-599 cables
- 1 Scanmar master door sensor service and testing
- Miscellaneous labour, parts

- Scanmar servicing kit, O-rings, batteries, etc.

[163] I am satisfied, from the evidence of Mr. Young and Mr. Fowler, that the marine items described in the related Work Order #8421 and Invoice #103366 were delivered to the Defendant Ship.

[164] The Defendants have not shown that Sealand failed to provide the marine goods and services described in P-3, that is in the Invoice and supporting Work Orders. I repeat my observations about the mark-ups charged by Sealand. There is no evidence that Sealand had previously charged such mark-ups or that there was any objection taken by Baffin.

[165] On the basis of the evidence of Mr. Young and Mr. Fowler, I am satisfied that the Plaintiff has shown entitlement to judgment upon its Invoice #103366 for the non-marine items.

[166] Finally, there remains Sealand Invoice #103386, directed to Remoy Fisheries Ltd. on account of the M/V "Sivulliq". This Invoice also contains non-marine items, including a snow machine.

[167] Invoice #103386 sets out the following details:

- Supply of new equipment
- Repairs to trawl monitor system, radar and chart systems

[168] Associated Work Orders #8432 and #8433 describe the following marine equipment:

- 2 DB9 NIMA data interface cables
- 1 Marport cap sensor
- 1 Rhino RLAD-120 LED light

- 1 Scanmar grid sensor and pocket
- 2 Furuno NavNet multifunction units with domes
- 2 Iridium AC charges.

[169] Invoice #103386 includes a credit note from Sealand to Baffin for the Scanmar grid sensor and pocket, as well as the two Furuno NavNet units with domes.

[170] On the basis of the evidence of Mr. Young and Mr. Fowler, I am satisfied that the marine items, including the Scanmar system, were delivered and installed. My comments above about mark-ups apply equally here.

[171] The heart of the matter is whether Baffin is entitled to a set off of the monies due to Sealand on equitable grounds. That defence arises relative to other Invoices from Sealand submitted to and paid by Baffin, for work charged relative to the two Defendant Ships and M/V “Arluk II”. Exhibits P-7 and P-8 are examples where Sealand billed for snowmobiles, dirt bikes and ATVs under the description of fish finders and acoustic modules. The Defendants allege that Sealand, Mr. Young, Mr. Fowler and Mr. Reid jointly engaged in a scheme to defraud Baffin and convert Baffin’s property, that is money, to their own benefit.

[172] As noted above, the Plaintiff’s claims arise under paragraphs 22 (2)(m) and (n) of the *Federal Courts Act, supra*. In my opinion, the language of those provisions is broad enough for the Court to entertain the defence of equitable set-off if the Defendants can show fraud, or another equitable ground, for denial of the Plaintiff’s claim.

[173] I refer to the decision in *Federal Commerce and Navigation Ltd. v. Molena Alpha Inc.*,

[1978] 3 All E.R. 1066 at page 974 as follows:

We have to ask ourselves: what should we do now so as to ensure fair dealing between the parties? . . . This question must be asked in each case as it arises for decision; and then, from case to case, we shall build up a series of precedents to guide those who come after us. But one thing is quite clear: it is not every cross-claim which can be deducted. It is only cross-claims that arise out of the same transaction or are closely connected with it. And it is only cross-claims which go directly to impeach the plaintiff's demands, that is, so closely connected with his demands that it would be manifestly unjust to allow him to enforce payment without taking into account the cross-claim.

[174] I refer also to the decision of the Federal Court of Appeal in *Atlantic Lines & Navigation Co. v. Didymi (The)*, [1998] 1 F.C.3, where the Federal Court recognized the defence of equitable set off at paragraph 20 as follows:

On the authorities already referred to, a right of equitable set-off relies on much more than the mere existence of a cross-claim. As Lord Denning put it in *The Nanfri* in a passage already recited, it is only "cross-claims that arise out of the same transaction or are closely connected with it" and "which go directly to impeach the plaintiff's demands" such as to render it "manifestly unjust to allow him to enforce payment without taking into account the cross-claim" that may be the subject of an equitable set-off. . . .

[175] The Defendants argue that the evidence shows that the Plaintiff misdescribed items on its Invoices to conceal the purchase of recreational vehicles, chain saws, and a pressure washer, in a deliberate attempt to mislead as to the nature of goods and services provided. They submit that this is evidence of fraud against Baffin.

[176] I agree that there is evidence that snowmobiles, dirt bikes and ATVs were described in Invoices and Work Orders as other items. According to Mr. Young, the Invoices and Work Orders were prepared in this way upon the instructions of Mr. Fowler. Although Mr. Fowler denies participation in the preparation of the narrative on the Work Orders, the evidence shows that he signed the relevant Work Orders. His evidence is to the effect that by signing the Work Orders on behalf of Baffin, he was acknowledging receipt of the goods and services described.

[177] The elements of civil fraud are set out in *Bruno Appliance and Furniture Inc. v. Hryniak*, [2014] 1 S.C.R. 126. In that decision, the Supreme Court of Canada identified four elements for the tort of civil fraud: (1) a false representation made by the defendant; (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness); (3) the false representation caused the plaintiff to act; and (4) the plaintiff's actions resulted in a loss.

[178] In considering the test for the tort of civil fraud, I am not assuming jurisdiction over that tort. I refer to the test for civil fraud, as a means of assessing whether the Defendants have succeeded in establishing fraud, as the basis of their defence of equitable set-off.

[179] In my opinion, they have not.

[180] In response to the allegation of fraud, Mr. Young pleads reliance on the "Indoor Management Rule".

[181] Mr. Young testified that he relied on the apparent authority of Mr. Reid, then the CEO of the Defendants, when receiving and processing requests for orders.

[182] Mr. Young also testified that he relied on the apparent authority of Mr. Fowler, then the Fleet Manager, for his signing and approval of Invoices and Work Orders.

[183] The “Indoor Management Rule” is codified in two federal statutes. The *Canada Business Corporations Act*, *supra* at paragraph 18 (1)(d), provides as follows:

**Authority of directors,
officers and agents**

(1) No corporation and no guarantor of an obligation of a corporation may assert against a person dealing with the corporation or against a person who acquired rights from the corporation that

...

(d) a person held out by a corporation as a director, officer, agent or mandatary of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for a director, officer, agent or mandatary;

Prétentions interdites

(1) La société, ou ses cautions, ne peuvent opposer aux personnes qui ont traité avec elle ou à ses ayants droit ou ayants cause les prétentions suivantes:

...

d) la personne qu'elle a présentée comme l'un de ses administrateurs, dirigeants ou mandataires n'a pas été régulièrement nommée ou n'a pas l'autorité nécessaire pour exercer les attributions découlant normalement soit du poste, soit de l'activité commerciale de la société;

[184] The Rule is also codified in the *Canada Not-for-profit Corporations Act, supra*, at paragraph 19 (1)(d), as follows:

**Authority of directors,
officers, agents and
mandataries**

(1) No corporation, no guarantor of an obligation of a corporation and, in Quebec, no surety may assert against a person dealing with the corporation or against a person who acquired rights from the corporation that

...

(d) a person held out by a corporation as a director, an officer, an agent or a mandatary of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the activities of the corporation or usual for a director, an officer, an agent or a mandatary;

Prétentions interdites

(1) Les prétentions ci-après sont inopposables, de la part de l'organisation et de ses cautions ou, ailleurs qu'au Québec, ses garants, aux personnes qui ont traité avec elle ou en ont acquis des droits:

...

d) la personne que l'organisation a présentée comme l'un de ses administrateurs, dirigeants ou mandataires n'a pas été régulièrement nommée ou n'a pas l'autorité nécessaire pour exercer les attributions découlant normalement soit du poste, soit des activités de l'organisation;

[185] The meaning and scope of the Rule is that a party dealing with a corporation, acting in good faith and unaware of any defect in authority, is entitled to assume that the corporation's internal policies have been followed and adhered to. The Plaintiff cites the decision in *McKnight Construction Co. v. Vansickler*, [1931] 2 D.L.R. 743.

[186] The “Indoor Management Rule” was recently considered in the case of *Halischuk v. Color Ad Packaging Ltd.*, [2015] 6 W.W.R. 368. In the decision, the Court, referencing paragraph 18(1)(d) of the *Canada Business Corporations Act*, found for the plaintiff and held that the CEO of the defendant corporation acted within its apparent authority when entering into contracts with the plaintiff. The Court further found that whether or not the CEO was acting in good faith was irrelevant to determining whether the contract was binding on the defendant corporation.

[187] In the present proceedings, the Plaintiff relies on the apparent authority of Mr. Fowler, who signed the Invoices and Work Orders in his capacity as Fleet Manager. It also relies on the apparent authority of Mr. Reid.

[188] The evidence of Mr. Young is that he followed the instructions of Mr. Fowler and that Mr. Fowler was aware of the manner of recording non-marine items on the Invoices and Work Orders.

[189] In general, Mr. Fowler testified that he did not tell Mr. Young what to put on a Work Order. Mr. Fowler testified that he “trusted” his suppliers to properly describe the goods and services invoiced.

[190] Mr. Fowler did not recall if he reviewed the contents of all Work Orders or of back-up Invoices; he was dealing with fifteen to twenty million dollars worth of equipment for the three ships operated by Baffin and did not check every serial number.

[191] Mr. Fowler testified that he made no orders for snowmobiles and was unaware of the number of snowmobiles and ATVs purchased until after he was discharged. He testified that he had no knowledge of signing off on non-marine items.

[192] Mr. Fowler testified that at one time, he was told by Mr. Taylor, then the Chief Financial Officer, to record the purchase of an outboard motor under “mechanical”. When Mr. Fowler questioned this, he testified that Mr. Taylor told him “It’s none of your business, it’s company business”.

[193] Mr. Fowler testified that certain things were sent up North, for which he did not see the Invoices, including a scallop dredge for the Vice-President and he, Mr. Fowler, was instructed to put it under “mechanical”.

[194] Mr. Fowler also testified that he was not under particular instructions about how to invoice particular items.

[195] Mr. Fowler testified that he picked up two chainsaws but was not aware that they were put on a particular Work Order. Sealand Work Order #8432 includes a chainsaw.

[196] Mr. Fowler was asked about many Work Orders and Invoices and consistently maintained the position that he did not instruct Mr. Young how to prepare them. In spite of referring to instructions from Mr. Taylor on at least two occasions, he testified that neither Mr. Reid nor Mr. Taylor were involved in his signing off on snowmobiles or ATVs.

[197] The evidence of Mr. Reid supports, in part, the Plaintiff's position that Baffin, through its former employee Mr. Taylor, was aware that recreational vehicles were ordered and recorded as "mechanical".

[198] Mr. Reid testified that he had no problem with the provision of snowmobiles and ATVs for members of the Baffin board, having regard to the fact that these items could be used in the North, for transportation and in pursuit of the objectives of Baffin. He also testified that he saw no problem with providing the owners of the Company with what they wanted.

[199] According to the evidence of Mr. Fowler and Mr. Reid, neither one of them was subject to a limit on spending authority. Mr. Flanagan confirmed that position, too, when he testified that at the time in question, that is February to September 2017, there were no policies in place at Baffin about spending limits.

[200] Mr. Fowler denied participation in the preparation of the Work Orders and largely could not remember various interactions with Mr. Young.

[201] The evidence in the present proceeding shows that the Work Orders were created on "No Carbon Required" paper. This means that whether Mr. Fowler remembers or not, the Work Orders and Invoices were signed, at some point, by each of Mr. Young and Mr. Fowler.

[202] Mr. Young maintained his evidence that he followed the same routine with Mr. Fowler in the preparation of Work Orders, that Mr. Fowler provided the narrative and Mr. Young prepared the Work Orders on that basis.

[203] How can the Court reconcile the conflicting evidence?

[204] I refer to Exhibit P-13, the transcript of the secretly recorded conversation between Mr. Young and Mr. Fowler on November 17, 2017.

[205] I recognize that the transcript is not sworn evidence, but it has some evidentiary value insofar as it contradicts the trial evidence of Mr. Fowler.

[206] In that conversation, Mr. Fowler consistently said that he was told by Mr. Reid, then the Chief Executive Officer, to sign “what the CEO told me to sign”. Mr. Fowler said he signed the Work Orders, and that he did not know they contained recreational vehicles. He said he signed “exactly what I was told to do. No different from what David Taylor told me to do”.

[207] Mr. Fowler, in that conversation, referred to the fact that he had three people above him who “called the shots”. He said that he did not order any of these units. His job was to sign the Work Orders that came into the company.

[208] The evidence of Mr. Fowler and Mr. Young, at trial, is contradictory with respect to the preparation of the Work Orders and the signing of the Work Orders and Invoices. The contents of the transcribed conversation are contradictory to Mr. Fowler's evidence at trial.

[209] I also refer to a number of Purchase Orders that were issued by Baffin to Sealand in connection with other Sealand Invoices.

[210] It is beyond question that Sealand had no role in the issuance of Purchase Orders; the issuance of Purchase Orders was solely within the control of Baffin and its accounting department.

[211] I refer to the evidence of Mr. Flanagan whose suspicions were awoken by chance remarks at the Baffin Christmas party held in December 2016. Although he was not then employed in an executive role, rather he was working in "Economic Development and Communications" and did not define the duties of that position, his interest was peaked about spending at Baffin.

[212] Yet, according to his evidence, Mr. Flanagan did little, if anything, to report his concerns until the Baffin Board meeting in September 2017.

[213] According to his evidence, Mr. Flanagan took part in a snowmobile trip in March 2017 and in at least one fishing excursion in the summer of 2017, in the presence of other Baffin employees, consultants and suppliers, including Mr. Young and Mr. Hodder.

[214] Once Mr. Flanagan alerted the Baffin Board to his concerns about spending, Deloitte was engaged to conduct a forensic audit. Mr. Flanagan maintained an Excel spreadsheet on his computer. Mr. Loder also prepared a spreadsheet.

[215] The forensic audit was not entered in evidence and no evidence was given about its terms of reference or the education, professional qualifications or experience of the audit team leader, Mr. Bradbury.

[216] Neither the Excel spreadsheet maintained by Mr. Flanagan nor the one prepared by Mr. Loder were entered in evidence.

[217] Both Mr. Fowler and Mr. Reid were called to testify on behalf of the Defendants, under subpoena. Although Counsel for the Defendants advised both at the Trial Management Conference and in his opening statement that he might apply to have these witnesses declared adverse or hostile, no such application was made.

[218] It follows, in my opinion, that the evidence in chief elicited from Mr. Fowler and Mr. Reid is the evidence of the Defendants, because these witnesses were called to testify on behalf of the Defendants.

[219] Counsel for the Defendants did not apply to have either or both of these witnesses declared as hostile or adverse witnesses. Their evidence is part of the Defendants' case, even if some of their evidence does not advance that case.

[220] The evidence of Mr. Fowler and Mr. Reid is consistent that Mr. Taylor told Mr. Fowler to put the outboard motor under “mechanical”. Mr. Reid was present when Mr. Taylor said this.

[221] Mr. Reid testified that he was asked by Mr. Jacobie Maniapik to obtain a snowmobile and he called Mr. Young about that. Mr. Young contacted CMK but the snowmobile was ultimately purchased at the Northern Store in Nunavut. Mr. Reid testified that he instructed to bill Baffin, as per Mr. Taylor’s instructions.

[222] Mr. Reid consistently testified that Mr. Taylor said that “snow machines”, outboard motors and “anything and everything” were to go through a contractor and be entered as “mechanical on the vessel”. This evidence was given in response to questions about P-16, the receipt for the first snowmobile purchased up North. Mr. Reid also testified that he imagined that Mr. Young was aware of this, because Mr. Fowler “obviously had to tell him this”.

[223] When asked upon examination in chief why he would go to Sealand for the supply of snowmobiles, Mr. Reid answered that this was pursuant to instructions from Mr. Taylor. Mr. Reid testified that Mr. Taylor resigned in March 2017, due to his unease with some of the financial operations of the company.

[224] Mr. Taylor was not called to testify.

[225] While the evidence of both Mr. Young and Mr. Reid tends to show that there was limited contact between the two men, the evidence of Mr. Young is to the effect that he introduced Mr.

Hodder of CMK to Baffin, at the Baffin office building, as a subcontractor for the Plaintiff. Mr. Young and Mr. Hodder testified that he, Mr. Hodder, would call Mr. Young when he received a request to purchase equipment for Baffin and Mr. Young would give the “go ahead”, with the Invoice to be sent to Baffin.

[226] Mr. Hodder testified that he was contacted by Mr. Young who said he had a customer who was looking for a snowmobile for the North. He testified that he received other calls from Mr. Young that the customer, Baffin, needed two more snowmobiles suitable for deep snow. He also testified that he received calls from Mr. Reid.

[227] Mr. Hodder also testified that Mr. Young called him about ATVs suitable for mud and snow, capable of hauling heavy loads. Mr. Hodder would give a recommendation, then Mr. Reid would contact him. Most of the units were picked up on CMK premises, by Mr. Reid and sometimes, Mr. Fowler was with him.

[228] Mr. Hodder testified that when Mr. Reid picked out the items he wanted, he would call Mr. Young who told him to proceed and to send the bill to Sealand. Mr. Hodder testified that he was not barred from sending the bill directly to Baffin but he would not step on the toes of the middleman, that is Sealand.

[229] Certain extracts from the discovery examination of Mr. Young were presented to him in cross-examination in an attempt to impeach his credibility, as permitted by Rule 291 of the Rules. The extracts from the discovery examination were entered as exhibit P-27.

[230] To the extent that these extracts largely relate to the interactions between Mr. Young and Mr. Hodder, of CMK, which were canvassed in the trial, I do not find that the differences in testimony render the evidence of Mr. Young unreliable.

[231] I am satisfied that in spite of the differences in the testimony of certain witnesses, I can conclude that certain recreational vehicles were sourced from CMK, following the referral by Mr. Young. Following recommendations by MR. Hodder, the vehicles were ordered by Mr. Reid, as the Chief Executive Officer of Baffin. Chainsaws were picked up in Clarenville by Mr. Fowler, on behalf of Baffin. Mr. Reid testified that under instructions from Mr. Taylor, such items were to be billed out as “mechanical”.

[232] Mr. Young testified that he had no concerns about recording recreational vehicles as something else, that the customer was always right.

[233] Mr. Reid testified that the units in question were either destined for the North, for the operations of Baffin in the North, or as employee benefits, in the case of Mr. Fowler, to compensate for his reduced salary.

[234] Mr. Reid also testified that some of the equipment was meant for him, as a bonus and signing incentive.

[235] Mr. Reid testified that he was assessed by the Canada Revenue Agency for several thousand dollars in respect of employee benefits. Although he referred to documents in that regard, no notices of assessment were entered in evidence.

[236] All of this goes to show, in my opinion, that the financial operations of Baffin at the time were lax, sketchy and unorthodox. There were no policies about spending. There were no limits on the Chief Executive Officer, Mr. Reid, about spending. There were no limits on the Fleet Manager, Mr. Fowler, about spending.

[237] Laxity and sketchiness do not establish fraud.

[238] Mr. Reid, the Chief Executive Officer, knew that snowmobiles, dirt bikes and ATVs were ordered and described otherwise on the Work Orders and Invoices. I accept Mr. Reid's evidence that he followed Mr. Taylor's instructions in this regard.

[239] So did Mr. Fowler, according to the transcript of the recorded conversation with Mr. Young.

[240] In these circumstances, where two executive officers of the Defendant company knew what was on the Work Orders and Invoices, there was no deception.

[241] The Defendants plead that Mr. Young, Mr. Fowler and Mr. Reid conspired to misdescribe goods on the Work Orders and Invoices.

[242] The Defendants rely upon the decision in *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, [2013] 3 S.C.R. 477, at paragraphs 72 and 73, as setting out a test for the tort of civil conspiracy as follows:

1. An agreement between two or more,
2. To use means either lawful or unlawful,
3. With the predominant object of causing injury to the plaintiff;
and
4. Causing actual damage to the plaintiff

[243] On the basis of the oral evidence at trial, I am not persuaded that these individuals made a concerted plan to defraud Baffin.

[244] Mr. Young, Mr. Fowler and Mr. Reid each denied that they had entered a conspiracy. That is not surprising, but the inquiry must go beyond the individual denials.

[245] Mr. Young had worked with and for Baffin for about 10 years prior to the events of the winter and spring of 2017. He has an established business supplying marine electronics to various marine businesses in the province of Newfoundland and Labrador. It is implausible that he would put his business and his reputation at risk, in the manner suggested by the Defendants.

[246] Mr. Fowler had worked for Baffin for several years as the Master of the M/V “Arluk II”. He was asked by Mr. Reid and Mr. Maniapik, then President of the Board, to take on the role of Fleet Manager while on a trip to Norway in 2016. He was told that his salary would be lower in that position than as a Master but that the company would make it up to him.

[247] Mr. Fowler considered the Summit snowmobile and the ATV to be that “compensation”. He also considered that the Board members were entitled to what they requested, he considered them to be the “owners” of the company.

[248] Mr. Fowler’s view of the “entitlements” of the Board members may be naïve, but it is not evidence of a conspiracy with Mr. Young and Mr. Reid, or of a fraud against Baffin.

[249] Upon considering the evidence, I am not satisfied that the circumstantial evidence, relied upon by the Defendants, establishes an agreement between any two of Mr. Young, Mr. Fowler and Mr. Reid, with the “predominant object” of causing harm to Baffin, upon the civil burden of proof. It is not necessary for me to go further.

[250] The Defendants, in their Amended Defence, plead “unlawful conversion” of Baffin’s property. This plea cannot succeed.

[251] In the first place, there is no tort of “unlawful conversion”. As a matter of law, “conversion” is the unlawful use of another person’s property. I refer to the decision of *McLean v. Bradley* (1878), 2 S.C.R. 535, where the Supreme Court of Canada referred to the definition of conversion as follows:

A conversion is defined to be a taking of chattels with an intent to deprive the Plaintiff of his property in them, or with an intent to destroy them or change their nature.

[252] The allegation of conversion is related to the allegations of fraud and conspiracy which I have found not to be established.

[253] The evidence shows that the Plaintiff has been in business for more than 20 years. The evidence shows that Mr. Young, as an individual, has worked in the field of marine electronics for more than 30 years.

[254] Litigation exposes a person to risk of reputational harm. Why would Mr. Young pursue litigation, with its attendant risks, in the face of the serious allegations of fraud, conspiracy and conversion?

[255] The Defendants present a theory, but the evidence does not support that theory, upon the applicable burden of proof.

IX. CONCLUSION

[256] These two actions were commenced to recover monies due on account for goods and services supplied to the Defendant Ships. The Defendants denied that monies were owing to the Plaintiff.

[257] The Defendants pleaded the defence of equitable set-off because there was evidence that certain recreational vehicles and other non-marine items were “buried” in other invoices presented by the Plaintiff and paid by Baffin, that were purchased as part of a fraudulent scheme perpetrated by Mr. Young, Mr. Reid and Mr. Fowler for their personal benefit.

[258] The evidence consists of the *viva voce* evidence of eight witnesses and several documentary exhibits.

[259] The evidence of Mr. Power, Mr. Moss and Mr. Hodder was straight-forward. The evidence of Mr. Young, Mr. Reid, Mr. Fowler and Mr. Flanagan was less direct.

[260] Nonetheless, I am satisfied that the Plaintiff has shown that it delivered the goods and services set out in its Invoice #103366, Exhibit P-3; Invoice #103367, Exhibit P-5; and Invoice #103386, Exhibit P-6.

[261] Although the Defendants object to the Plaintiff's mark-ups, that is not a matter for the Court to adjudicate.

[262] I am satisfied that judgment should enter in favour of the Plaintiff in the amounts claimed.

[263] I am not satisfied that the Defendants have established their defence of equitable set-off. That defence rests upon allegations of civil fraud, conspiracy and conversion.

[264] The Plaintiff is entitled to rely on the "Indoor Management Rule", as it relates to Mr. Young's interactions with both Mr. Fowler and Mr. Reid, to defeat the allegations of fraud.

[265] I am satisfied that the Defendants did not prove conspiracy, on the balance of probability.

[266] I am also satisfied that the Defendants failed to prove that the Plaintiff converted any property of the Defendants.

[267] The basis for the Defendants' defence of equitable set-off is a fraud committed by Mr. Young, Mr. Reid and Mr. Fowler, acting in concert, that is by way of a conspiracy. The Defendants pleaded that these actions amounted to a conversion of their property.

[268] In my opinion, the failure to establish fraud means that the Defendants cannot succeed on the defence of equitable set-off.

[269] The fact that Baffin obtained judgment against Mr. Reid upon an undefended application for summary judgment has little relevance, in my opinion, to the issues raised in these actions. The Defendants produced, as Exhibit D- 11, a copy of the judgment granted by the Supreme Court of Newfoundland and Labrador on December 17, 2019, without any supporting reasons for that judgment.

[270] Evidence of a judgment against Mr. Reid in a different legal process undertaken by Baffin does not add to the resolution of the issues raised in the Plaintiff's Statements of Claim in these actions, nor to the Defendants' defence of equitable set-off.

[271] The evidence shows that Mr. Young knew Mr. Fowler from their respective involvement in the fishing industry, Mr. Fowler as a provider of marine electronics to fishing vessels and Mr. Fowler's past employment as a Master of fishing vessels, including the M/V "Arluk II".

[272] There is evidence that Mr. Young sold a house to Mr. Fowler and that Mr. Fowler received funds from Baffin, secured by a promissory note, to buy that house. That purchase and sale transaction proves nothing in the way of a fraud or conspiracy.

[273] The fact that Mr. Fowler defaulted on repayment of the loan to Baffin is not relevant to the issues raised in these actions. The fact that Mr. Fowler is now an undischarged bankrupt is likewise irrelevant, in my opinion.

[274] The evidence shows that Mr. Young, Mr. Fowler and Mr. Reid took part in outdoor activities, that is a skidoo trip in March 2017 and at least one salmon fishing trip , in the summer of 2017.

[275] In my opinion, these events are not evidence of fraud or of a conspiracy or of a conversion.

[276] There is evidence that fishing gear was purchased for some other participants in the fishing trip. That evidence is not relevant to the issues at hand.

[277] There is evidence that two of the three Sealand Invoices, that are the subject of these actions, contain charges for recreational vehicles that are described as marine electronic equipment. It is clear that these items were not part of the Plaintiff's claim in this Court and are not for consideration in these actions.

[278] At the relevant time, there were no limits on the spending authority of Mr. Reid, as Chief Executive officer, nor on Mr. Fowler, the Fleet Manager. Each referred to instructions given by Mr. Taylor, the former Chief Financial Officer. Neither party called Mr. Taylor to testify.

[279] The Plaintiff's case meets the applicable civil burden of proof. The Defendants' defence does not.

[280] In the usual course, costs follow the event.

[281] The parties asked for the opportunity to make submissions on costs. A Direction will issue in that regard.

JUDGMENT in T-1836-17 and T-1837-17

THIS COURT’S JUDGMENT in T-1836-17 is that the Plaintiff’s action is allowed and judgment is granted against the Defendants in the amount of \$13,368.06 including HST together with interest and costs, costs to be determined following submissions from the parties, in accordance with a Direction to be issued.

THIS COURT’S JUDGMENT in T-1837-17 is that the Plaintiff’s action is allowed and judgment is granted against the Defendants in the amount of \$171,396.46 including HST together with interest and costs, costs to be determined following submissions from the parties, in accordance with a Direction to be issued.

“E. Heneghan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1836-17
T-1837-17

STYLE OF CAUSE: SEALAND MARINE ELECTRONICS SALES AND SERVICES LTD. v. THE OWNERS, CHARTERERS AND ALL OTHERS INTERESTED IN THE SHIP M/V “INUKSUK I” AND INUKSUK FISHERIES LTD. AND BAFFIN FISHERIES COALITION AND SEALAND MARINE ELECTRONICS SALES AND SERVICES LTD. v. THE OWNERS, CHARTERERS AND ALL OTHER INTERESTED IN THE SHIP M/V “SIVULLIQ” AND REMOY FISHERIES LTD. AND BAFFIN FISHERIES COALITION

PLACE OF HEARING: ST. JOHN’S, NEWFOUNDLAND AND LABRADOR (IN PERSON)

DATES OF HEARING: JANUARY 18-22, 25-27, 2021

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATES OF HEARING: FEBRUARY 25-26, 2021

JUDGMENT AND REASONS: HENEGHAN J.

DATED: AUGUST 26, 2021

APPEARANCES:

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