

Federal Court



Cour fédérale

Date: 20220921

**Dockets: T-547-20
T-755-20
T-1254-20**

Citation: 2022 FC 1311

Ottawa, Ontario, September 21, 2022

PRESENT: The Honourable Madam Justice McVeigh

Docket: T-547-20

BETWEEN:

LIBRA VOYAGE LIMITED

Plaintiff

and

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “NA 5501”,
THE BARGE “NA 5501”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “MLT 6000-
1”, THE BARGE “MLT 6000-1”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “F.W.
WRIGHT”, THE TUGBOAT “F.W.
WRIGHT”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “TYMAC
TIDE”, THE TUGBOAT “TYMAC TIDE”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT
“CHARLES H. CATES VIII”,
THE TUGBOAT “CHARLES H. CATES
VIII”,**

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT
“CHARLES H. CATES V”,
THE TUGBOAT “CHARLES H. CATES V”,
1025532 B.C. LTD., MLT CAPITAL CORP.,
TYMAC LAUNCH SERVICE LTD.,
SEASPAN ULC,
MERCURY LAUNCH & TUG LTD.,
JOHN DOE #1, JOHN DOE #2,
JOHN DOE #3, JOHN DOE #4, AND
HER MAJESTY THE QUEEN**

Defendants

and

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “NA 5501”,
THE BARGE “NA 5501”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “MLT 6000-
1”, THE BARGE “MLT 6000-1”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “F.W.
WRIGHT”, THE TUGBOAT “F.W.
WRIGHT”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “TYMAC
TIDE”, THE TUGBOAT “TYMAC TIDE”,
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THE TUGBOAT “CHARLES H. CATES V”,
1025532 B.C. LTD., MLT CAPITAL CORP.,
TYMAC LAUNCH SERVICE LTD.,
SEASPAN ULC,
MERCURY LAUNCH & TUG LTD.,
JOHN DOE #1, JOHN DOE #2,
JOHN DOE #3, JOHN DOE #4, AND**

HER MAJESTY THE QUEEN

Third Parties

Docket: T-755-20

AND BETWEEN:

**HARBOUR AIR LTD AND
WICKHAM GROUP LTD.**

Plaintiffs

and

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “NA 5501”,
THE BARGE “NA 5501”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “MLT 6000-
1”, THE BARGE “MLT 6000-1”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “F.W.
WRIGHT”, THE TUGBOAT “F.W.
WRIGHT”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “TYMAC
TIDE”, THE TUGBOAT “TYMAC TIDE”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT
“CHARLES H. CATES VIII”,
THE TUGBOAT “CHARLES H. CATES
VIII”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT
“CHARLES H. CATES V”,
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1025532 B.C. LTD., MLT CAPITAL CORP.,
TYMAC LAUNCH SERVICE LTD.,
SEASPAN ULC,
MERCURY LAUNCH & TUG LTD.,
JOHN DOE #1, JOHN DOE #2,
JOHN DOE #3, JOHN DOE #4, AND
HER MAJESTY THE QUEEN**

Defendants

and

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “NA 5501”,
THE BARGE “NA 5501”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “MLT 6000-
1”, THE BARGE “MLT 6000-1”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “F.W.
WRIGHT”, THE TUGBOAT “F.W.
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TYMAC LAUNCH SERVICE LTD.,
SEASPAN ULC,
MERCURY LAUNCH & TUG LTD.,
JOHN DOE #1, JOHN DOE #2,
JOHN DOE #3, JOHN DOE #4, AND
HER MAJESTY THE QUEEN**

Third Parties

Docket: T-1254-20

AND BETWEEN:

**VANCOUVER HARBOUR FLIGHT
CENTRE LIMITED PARTNERSHIP AND
COAL HARBOUR MARINA LIMITED**

Plaintiffs

and

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “NA 5501”,
THE BARGE “NA 5501”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “MLT 6000-
1”, THE BARGE “MLT 6000-1”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “F.W.
WRIGHT”, THE TUGBOAT “F.W.
WRIGHT”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “TYMAC
TIDE”, THE TUGBOAT “TYMAC TIDE”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT
“CHARLES H. CATES VIII”,
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1025532 B.C. LTD., MLT CAPITAL CORP.,
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SEASPAN ULC,
MERCURY LAUNCH & TUG LTD.,
JOHN DOE #1, JOHN DOE #2,
JOHN DOE #3, JOHN DOE #4, AND
HER MAJESTY THE QUEEN**

Defendants

and

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “NA 5501”,
THE BARGE “NA 5501”,**

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE BARGE “MLT 6000-
1”, THE BARGE “MLT 6000-1”,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE TUGBOAT “F.W.
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MERCURY LAUNCH & TUG LTD.,
JOHN DOE #1, JOHN DOE #2,
JOHN DOE #3, JOHN DOE #4, AND
HER MAJESTY THE QUEEN**

Third Parties

JUDGMENT AND REASONS

I. Introduction

[1] This matter involves two motions for summary trial brought by the Defendants, MLT Capital Corp (“MLT”) — barge MLT 6000-1 and 1025532 B.C. Ltd (“1025532 BC”) — barge NA 5501. The three actions result from the same series of collisions, which occurred on December 26, 2018. These Defendants seek the dismissal of the Plaintiffs’ claims against them.

[2] The allisions occurred in Coal Harbour, British Columbia. The barge, the NA 5501, was secured to another barge, the MLT 6000-1, which in turn was secured to the Delta King that was attached to the Navy Buoys in North Vancouver, British Columbia. The NA 5501 was loaded with containers. In separate and unrelated transactions on December 24, 2018, tugboats were hired to transport and tie up the barges to the Navy Buoys.

[3] Early in the morning of December 26, 2018, the barges broke loose from their moorings in North Vancouver. The barges, tied together at all times, drifted unmanned, unlit, and undetected across Vancouver Harbour into Coal Harbour, somehow missing the Chevron Gas station. Once in Coal Harbour the barges, still rafted together, collided with property and two large moored yachts, causing a trail of damage and the resulting Plaintiffs' claims. Damage resulted to the Harbour flight centre, the Coal Harbour Marina ("CHM"), and the yachts registered to Libra Voyage ("Libra") and Wickham Group Ltd. ("Wickham") respectively. The barges were found resting against the Lift restaurant in the early hours of December 26, 2018, having smashed through some windows. The tugboats then towed the two barges still rafted together back to the Navy Buoys and re-secured them.

[4] At the time of the allisions, 1025532 BC was the registered owner of the NA 5501, and MLT Capital Corp ("MLT") was the registered owner of the MLT 6000-1. The Plaintiffs have claimed *in rem* against the barges as well as the tugboat "F.W. Wright" (the "F.W. Wright"), the tugboat "Tymac Tide" (the "Tymac Tide"), the tugboat "Charles H. Cates VIII" (the "Cates VIII"), and the tugboat "Charles H. Cates V" (the "Cates V").

[5] These parties are Defendants across the three actions, among many other Defendants, Third Parties, and non-party entities.

[6] The Applicants basis for this motion is that there is no liability against their barges (although for slightly different reasons), and as such, it would be a travesty to force them to be in the trial scheduled for February, 2023.

[7] The Applicants suggest they were named as Defendants in this action because the tugboats involved do not have enough insurance to cover the alleged damages, whereas the barges' tonnage increases the insurance amount available to the Plaintiffs to cover the damages alleged.

[8] The Applicants argue there is no liability to the Plaintiffs and Third Party Claimants for the damages caused by the NA 55011 and the MLT 6000-1, so I should therefore grant the summary trial motion and strike them as parties.

[9] The Defendant Tymac Launch Service Ltd. ("Tymac") took no position on this motion but did remark that it should be left to the trial judge to determine which entity engaged Seaspan ULC ("Seaspan"). The Plaintiffs relied on Libra Voyage's oral submissions and all of their written submissions.

[10] The parties have engaged a private firm to mediate this matter on September 21, 2022.

[11] For the reasons that follow, I dismiss the Applicants' motion for summary trial. These actions involve a complex factual matrix that require findings of fact, which will go to key issues in the trial of this matter, with a web of interrelated facts and issues. As such, it is an inappropriate basis on which to grant summary trial. Several of the enumerated grounds from *Wenzel Downhole Tools Ltd v National-Oilwell Canada Ltd*, 2010 FC 966 [*Wenzel*] and *ViiV Healthcare Company v Gilead Sciences Canada, Inc*, 2020 FC 486 [*ViiV Healthcare FC*], which weigh against granting summary trial, are present here. The issues raised are better suited for consideration before the trial judge, who will benefit from the complete and fulsome factual matrix given the meshing of events.

[12] This matter will be resolved in the relative near future, given the parties have a mediation scheduled as well as a trial date in approximately five months. Summary trial is not appropriate in this circumstance.

[13] In setting out the facts and parties in these reasons for judgment, I did not make any finding of fact. The facts remain to be proven at trial. I used on occasion terms of charter engagement or corporate relationships that the parties used in argument but the trial judge will make those findings.

I. The Parties

[14] It is first necessary to outline the parties and their respective interests in these matters, as well as entities that are not named parties but arise from the evidence.

A. *The Plaintiffs*

[15] Libra Voyage is a company incorporated under the laws of the British Virgin Islands and the registered owner of the motor yacht the “KOGO” (“Libra”). The KOGO is a steel-hulled super yacht that is approximately 72 metres in length with a gross tonnage of 1892.

[16] Harbour Air Ltd. is a company incorporated under the laws of British Columbia and the registered owner of a dock at the Harbour Air Float plane terminal in Coal Harbour, British Columbia (“Harbour Air”).

[17] Wickham is a company incorporated under the laws of the British Virgin Islands and the registered owner of the Hatteras Cruiser 85’, Azura named the KUMA. The KUMA is a luxury yacht that is approximately 26 metres in length.

[18] CHM is a federal company incorporated under the laws of Canada. CHM owns and operates the Coal Harbour Marina, known civically as 1525 Coal Harbour Quay, Vancouver, British Columbia.

[19] Vancouver Harbour Flight Centre Limited Partnership (“VHFC”) is a body corporate incorporated extra-provincially under the laws of the Province of British Columbia. VHFC operates the Vancouver Harbour Flight Centre Seaplane Terminal (the “Terminal”).

[20] In total, there are five Plaintiffs across the three actions.

B. *The Defendants*

[21] In describing the parties I have used terms with legal implication such as “demise charter” and “independent contractor.” These are terms the parties use to describe themselves in presenting their arguments in this summary trial. I have not made those legal determinations and have left that to the trial judge to determine what type of charter the barges are under, as well as other relationships.

[22] There were several John Doe defendants named in the actions related to the then unknown Masters and deckhands. Since the conclusion of the examinations for discovery all of those individuals are now known and are identified below in connection with their tugboats.

(1) Known Defendants

[23] The Defendants are common to all three claims. Each of the barges and boats listed are also Defendants to the action.

[24] 1025532 BC is the registered owner of the Barge NA 5501. The NA 5501 is a commercial container barge of approximately 80 metres in length and 22 metres in breadth. The barge is unmanned and 1025532 BC and the NA 5501 have filed one of the two motions for summary trial (the “1025532 BC Applicants”). Matthew Stradiotti and his father Henry Gino Stradiotti are the directors of 1025532 BC.

[25] MLT is the registered owner of the MLT 6000-1 (the “MLT Applicants”). The director of MLT indicated that the company is a holding company for the ownership of various vessels. The MLT 6000-1 is a commercial gravel barge of approximately 80 metres in length and 22 metres in breadth. The MLT Applicants are the second Applicant requesting the motion for summary trial. Robert Errington is one of two directors of MLT. Mr. Errington is the President, Secretary of both MLT and Mercury Launch and Tug Ltd. (“Mercury”) as well as one of two directors of Mercury.. Mr. Errington’s spouse, Anne Louise Boyle, is the Vice President and other director of MLT.

[26] The MLT 6000-1 barge is chartered and/or towed by various operators including Mercury. In December 2018, Mercury chartered the barge on daily standard rates. At that time, Mercury used it for hauling gravel between Sechelt and Lehigh Depot 28 in North Vancouver. This is evidenced by a contract between Mercury and Lehigh.

[27] There is an outstanding dispute between the parties, which arose in objections at the examinations for discovery, as to the disclosure of shareholders and other corporate matters between MLT and Mercury. Both Mercury and MLT have the same corporate address. Libra has an outstanding motion to compel in relation to the ownership of Mercury and MLT.

[28] On June 23, 2022, the Case Management Judge adjourned the Motion to Compel and ordered, amongst other things, that the Plaintiffs serve and file any reply they intended to file. The Motion to Compel has not been rescheduled as of the date of the hearing.

[29] The tugboat F.W. Wright towed the barge with gravel between Sechelt and the Lehigh Depot on December 17, 19, 21, 27, 2018. Mercury invoiced Lehigh accordingly and MLT invoiced Mercury for the use of the MLT Barge for those same dates. The F.W. Wright tied up the MLT 6000-1 on her portside to the Delta King's starboard side, which was already tied to the standing lines of the Navy Buoys.

[30] On December 27, 2018, the Direction and President of MLT and Mercury was notified that the MLT 6000-1 had become adrift by a representative of North Arm Transportation Ltd. ("North Arm").

[31] Mercury is the registered owner and operator of the F.W. Wright (the "Mercury Defendants"). An *in rem* claim is made against the F.W. Wright. The same counsel represents the Mercury and the MLT Applicants. The Barge 6000-1 has a large painted sign of "Mercury" on either side. The F.W. Wright master was Captain Troy Proudlove and the deckhand was Adam Dunsmoor.

[32] Tymac is the registered owner and sole operator of the tugboat Tymac Tide (the "Tymac Defendants"). An *in rem* claim has been made against the Tymac Tide. Tymac has filed a Responding Motion Record in response to both motions. The Master of the Tymac is Captain Lucian Laing and the deckhands were Birch Haigh and Arkady Itkovich.

[33] Seaspan is the registered owner and the operator of the tugboat Cates VIII (the “Seaspan Defendants”). An *in rem* claim is made against the Cates VIII. Captain Ronald Simonson was the master of the Cates VIII and Justin Scott was the deckhand.

[34] The Seaspan Defendants are also the owner and operator of the tugboat Cates V. An *in rem* claim is made against the Cates V. An *in rem* claim is made against the Cates V. The Cates V’s mater was John Armstrong and the deckhand was Martin Pipes.

[35] His Majesty the King (“HMTK”), through the Ministry of Fisheries and Oceans and the Canadian Coast Guard, organizes and operates the marine traffic service known as Marine Communication and Traffic Services (“MCTS”). MCTS has 24/7 operations in Victoria, British Columbia. MCTS also monitors Vancouver Harbour with radar and other equipment.

C. *Third Parties*

[36] Each of the Defendants has filed a third party claim against the other Defendants in all three actions.

[37] The 1025532 BC Applicants have third party claimed against all persons already party to the action.

[38] The MLT Applicants have filed a third party claim against the other Defendants in all three actions, except for the Mercury Defendants and their tugboat the F.W. Wright.

[39] The Mercury Defendants have filed a third party claim against all persons already party to the action, except for the MLT Applicants and the MLT 6000-1.

[40] The Tymac Defendants have claimed against some of the owners and persons already party to the action. The Tymac Defendants have third party claimed against the tugboat F.W. Wright, the tugboat Charles H Cates V, MLT, Seaspan, Mercury, HMTK, Troy Proudlove, and John Armstrong.

[41] The Seaspan Defendants have claimed against some of the owners and persons already party to the action. Seaspan have third party claimed against the tugboat F.W. Wright, MLT, Mercury, HMTK, and Troy Proudlove.

D. *Entities Not Parties*

[42] In the evidence given at this summary trial, there are many other entities involved but that are not named parties in these actions. In order to understand the facts, these entities must be identified.

- (1) North Arm Transportation Ltd.

[43] North Arm is owned by the Stradiotti family. Matthew Stradiotti is the general manager of North Arm. North Arm has what they say is a demise charter of the NA 5501 with 1025532 BC.

[44] North Arm normally arranges for the movement of the NA 5501 through their dispatcher. North Arm completes the maintenance on the NA 5501. North Arm usually does all the towing for the barge but occasionally hires other tugs. Libra and Tymac allege that North Arm engaged Seaspan to perform the tow on December 24, 2018.

[45] Tymac and North Arm had no fixed contract. The companies operated on an ad hoc basis.

[46] At the time of the allisions, North Arm and DP World (Canada) Inc. (“DP World”) had a towage agreement to move the NA 5501 between Nanaimo, Vancouver Island and Centerm at the Port of Vancouver. North Arm would provide towing services to DP World with its own tugs. North Arm would also hire other tugboats from time to time. On December 24, 2018, North Arm’s tugs were occupied elsewhere and it had to hire a tugboat to tow the NA 5501.

[47] The evidence is that North Arm was not contacted nor called about the tie up; they just hired it to be done. Peter Hewlett, the North Arm dispatcher, stated that he did not direct the tug in the tie up or the tow, nor how many ropes should be used to raft the barges. He explained that all the decisions relating to the tie ups of the tug were made by the masters. 1025532 BC says that because North Arm was a demise charter, 1025532 BC did not dictate the process at all, and North Arm was acting as an independent contractor. Therefore, it is alleged that all decision authority and control remained with the independent charter and not 1025532 BC.

[48] North Arm's dispatcher was told about the incident at around 6:00 am or 6:30 am on December 26, 2018. Michael Stradiotti was informed at approximately 9:00 am on December 26, 2018.

(2) T and B Mooring LTD.

[49] T and B Moorings LTD. ("T&B") invoiced for the mooring at the Navy Buoys. The Council of Marine Carriers administer the collection of fees and maintenance of the Navy Buoys for T&B. Seaspan performs the daily checks on behalf of T&B. Evidence was produced showing T&B invoiced North Arm for moorings.

II. Facts

A. *Allision Events*

[50] The MLT 6000-1 was loaded with gravel on December 21, 2018, and then towed by the F.W. Wright to the Lehigh depot and left there. On December 23, 2018, the empty barge was towed by the F.W. Wright from Lehigh to the Navy Buoys in North Vancouver. It was rafted to the Delta King by the crew of the F.W. Wright to the western most of the four Navy Buoys, the West Buoy. The F.W. Wright was crewed by experienced Master and deckhand and were employed by Mercury at the time.

[51] The dispatcher for Mercury had told the crew of the F.W. Wright that the MLT 6000-1 would be left at the Navy Buoys over the Christmas break, and accordingly they were to make sure it was secure. The MLT 6000-1 was not moved from this position before it broke loose on

December 26, 2018, at approximately 04:40am. The MLT 6000-1, still tied to the barge NA 5501, moved undetected from North Vancouver, causing the damage to the Plaintiffs in Coal Harbour.

[52] Mercury had earlier towed the NA 5501 from Nanaimo to North Vancouver and secured it to the Navy Buoys at 2:00 am on the December 24, 2018. On December 24, 2018, at 7:00 am, Seaspan was hired to take to the barge to Centerm. The Captain had no issue when he picked up the barge and took to Centerm.

[53] Centerm was closing on Christmas Eve, so the NA 5501 needed to be removed from Centerm by noon on December 24, 2018. Peter Hewlett (North Arm dispatcher) contacted Seaspan to have a tug move it before noon. Seaspan could not, so the North Arm dispatcher contacted Tymac to move the NA 5501 before noon. There is a question of who hired Seaspan, Cates VIII as their tug met the Tymac Tide halfway there and assisted in the tow. On the morning of December 24, 2018, the NA 5501 came in from Nanaimo loaded with 139 containers to Centerm. When the NA 5501 went to the Navy Buoys it was loaded with 92 containers.

[54] At approximately 13:00 pm on December 24, 2018, the Tymac Tide and Cates VIII moored the NA 5501 by rafting it alongside the MLT 6000-1. The loaded NA 5501 was rafted by its portside to the starboard side of the MLT 6000-1.

[55] The NA 5501 and the MLT 6000-1 were not secured directly to the West Buoy in any manner. Thus, the security of its mooring of the NA 5501 was dependent upon the security of the

mooring of the MLT 6000-1 to the Delta King. The barges were not equipped with their own anchors. At examination for discovery, there was evidence as to who went directly on what barge and who checked the lines at who's direction using who's lines.

[56] Rafting to other barges is not unusual at the Navy Buoys when there is not an open buoy to use the standing line directly.

[57] None of the barges were moved on December 25, 2018.

[58] At approximately 4:30 am on December 26, 2018, the Cates V was returning from a job at IOCO to the Seaspan docks, which are close to the Navy Buoys. The Cates V passed close by the Navy Buoys. The Cates V had nothing in tow. All the Plaintiffs allege that Cates V's excessive wake, due to its high rate of speed, was the final straw that caused whatever remained of the lines between the MLT 6000-1 and the Delta King to fail.

[59] It is estimated that at 4:45 am on December 26, 2018, the barges broke loose from the Delta King and the West Buoy. The barges then drifted unattended, unlit, and undetected across Vancouver Harbour reacting to the wind, waves, and current.

[60] The MCTS operators of the radar system located in Victoria did not detect the large mass of two rafted barges floating through the Vancouver harbour. At the hearing, counsel for Libra explained that the radar would have had shadows, showing the barges floating across Vancouver Harbour.

[61] The barges reached Coal Harbour at approximately 6:00 am. The barges first collided with the northeast corner of the Delta pier and then the northeast corner of the Foxtrot pier at the Vancouver Harbour Flight Centre Seaplane terminal.

[62] After, the barges collided with the northeast corner of Harbour Air's West Dock, and with the west end of the Harbour Green dock.

[63] At approximately 6:30 am, the barges struck the stern of the KOGO, which was tied to the outer dock at the Coal Harbour Marina and not under power. There was evidence that the NA 5501 made contact with the stern of the KOGO. There were 15 people on board sleeping at the time but all were able to get off the damaged yacht.

[64] The barges continued to drift further into Coal Harbour and then struck the Coal Harbour Marina at Berth A1.

[65] At approximately 6:31 am, the first radio report of the barges adrift and the collision was made to the Coast Guard. MCTS was alerted and began to make arrangements for tugboats to be dispatched to assist.

[66] At approximately 6:55 am, the barges struck the KUMA, which was tied to the North to South Dock at the Coal Harbour Marina and not under power.

[67] The barges came to rest against Lift Restaurant in Coal Harbour, smashing its windows. The barges were tied together throughout the entire incident. In fact, the barges were towed back to the navy buoys still rafted together.

[68] The Vancouver Police were the lead investigative unit and a report was prepared. There have been extensive examinations for discovery, and the actions are tightly case managed.

B. *The Plaintiffs' Claims*

[69] The Plaintiffs (Respondents in this motion) claims are similar across the Statements of Claims, with the negligence & nuisance claims in relation to 1025532 BC—NA 5501, and MLT 6000-1 pertinent whether it is appropriate to do a summary trial.

[70] The Plaintiffs seek damages, jointly and severally, against the Defendants in excess of \$2,700,000 and maritime liens against the MLT 6000-1, the NA 5501, the F.W. Wright, the Tymac Tide, the Cates V, and the Cates VIII.

(1) Negligence

[71] The Plaintiffs allege that the F.W. Wright and master Captain Troy Proudlove and crew were negligent in failing to adequately, and in a good seaman like manner, secure the MLT 6000-1 to the Delta King or Navy Buoy. The Plaintiffs allege that proper securing would have prevented the MLT 6000-1 from breaking free. The Plaintiffs also contend that Mercury is liable for the fault and negligence of the F.W. Wright, Captain Troy Proudlove and crew.

[72] The Plaintiffs allege the Tymac Tide, Captain Lucian Laing, crew, and the Cates VIII, Captain Ronald Simonson, and crew, were negligent in failing to adequately, and in good seaman like manner, secure the NA 5501 to the MLT 6000-1. The Plaintiffs allege that Tymac is liable for the fault and negligence of the Tymac Tide, Captain Lucian Laing and crew. Seaspan is liable for the fault and negligence of the Cates VIII, Captain Ronald Simonson and crew.

[73] The Plaintiffs claim that the action of the Cates V caused or contributed to the failures of the rafting lines between the MLT 6000-1 and the Delta King, creating a hazard to navigation and shipping, and causing damage to the KOGO. The Plaintiffs allege the Cates V, master John Armstrong, and crew were negligent. Seaspan is liable for the fault and negligence of the Cates V, its master John Armstrong and its crew.

[74] The Plaintiffs submit that the F.W. Wright, Cates VIII, Tymac Tide, Cates V, and their respective masters and crews caused and/or contributed to complete failure and parting of the rafting lines between the MLT 6000-1 and the Delta King, through negligence.

[75] The Plaintiffs also allege that both the MLT 6000-1 and NA 5501 were responsible for, at fault, and caused the allision. The Plaintiffs submit that both were out of control, a hazard to navigation, a nuisance, and caused damage to the KOGO, KUMA, and terminal from the allision, either directly or indirectly. The Plaintiffs state that MLT was at all material times responsible for the navigation, management, fault, and neglect of the MLT 6000-1. Similarly, the Plaintiffs state that 1025532 BC was at all material times responsible for the navigation, management, fault, and neglect of the NA 5501.

[76] Lastly, the Plaintiffs allege that the MCTS officers on duty at all material times were negligent. The Plaintiffs submit that the movements of the barges from North Vancouver to Coal Harbour were clearly visible on the radar scans that were on the radar monitors available to the MCTS Officers on duty. The Plaintiffs therefore claim that Canada is vicariously responsible for the actions or inactions of the MCTS officers on duty at the material times.

(2) Nuisance

[77] The Plaintiffs assert that the barges were a hazard to navigation and a hazard to all ships in Vancouver Harbour, whether anchored, docked, or moving. In the Plaintiffs' view, the barges were a nuisance. The barges caused, directly or indirectly, damage to the marina, damage to the terminal, to CHM, to the KUMA, and the KOGO.

(3) The Particulars of the Plaintiffs' Claims

[78] At examination for discovery, NA 5501 requested particulars of the fault and neglect of the NA 5501. Specifically, at the examination for discovery of Harbour Air's witness Eric Scott, counsel for 1025532 BC and the NA 5501 requested particulars of the allegations set out in the Harbour Air and Wickham Group Statement of Claim. Similarly, Libra explains that at the examination for discovery of Mark McElwaine, counsel for 1025532 BC and the NA 5501 requested particulars of the fault and neglect of the NA 5501. The VHFC and CHM do not say in their Responding Motion Record whether 1025532 BC and the NA 5501 have requested particulars. Instead, VHFC and CHM rely on the particularizations of fault set out in the Memorandum of Fact and Law filed by Libra.

[79] As it stands currently, MLT has not requested particulars of negligence, although MLT notes that “no particulars of negligence against MLT [are] set out in the Statement of Claim.”

[80] Libra has provided the allegations of fault and neglect of the NA 5501, as well as particulars of the nuisance caused by the barges adrift in Vancouver Harbour. Likewise, Harbour Air and the Wickham Group Plaintiffs have provided the particulars of its allegation of fault and neglect, and the nuisance caused by the barges — which are “substantially similar” to the particulars provided by Libra.

III. Issues

[81] The issues are:

- A. Whether summary trial is appropriate;
- B. If this matter is appropriate for summary trial, whether the Applicants are liable to the Plaintiffs and Third Party Claimants for the damages allegedly caused by the NA 5501 and the MLT 6000-1.

IV. Analysis

A. *Summary Trial*

[82] The barges say this is just a simple question of applying the Supreme Court of Canada case of *Goodwin Johnson v The Ship (Scow) AT & B No 28*, 1954 CanLII 59 (SCC), [1954] SCR 513 [*Goodwin Johnson*] and then striking the Defendants; 1025532 BC’s barge NA 5501 and MLT’s and barge 6000-1 from the claim. The Applicants argue this saves them from needlessly

going through a four week trial when clearly there is no claim against the barges given *Goodwin Johnson*. The Applicants submit that asking this Court to apply *Goodwin Johnson* is a threshold question that does not require the Court to make any findings of facts. The Applicants further allege that the legal questions raised in this motion are relatively straightforward.

[83] The Plaintiffs Libra, VHFC and CHM, Harbour Air and Wickham Group argue this is not appropriate for a summary trial, given the complexity and the interconnection of all the relevant parties. The Plaintiffs argue that this is not a simple matter, where this Court can just apply the jurisprudence and strike the barges from the claim. The trial judge has to make many complicated findings that though are not strictly credibility findings will be factual findings. Those factual findings will be used to determine who, if anyone, is negligent and responsible for the damages that the barges occasioned. The Applicants argue it is absurd to strike the very two barges who actually caused the damage before a full trial on the matter.

[84] The relevant provisions are:

Summary Trial

Motion record for summary trial

216

...

Dismissal of motion

(5) The Court shall dismiss the motion if
 (a) the issues raised are not suitable for summary trial; or
 (b) a summary trial would not assist in the efficient resolution of the action.

Procès sommaire

Dossier de requête en procès sommaire

216

...

Rejet de la requête

(5) La Cour rejete la requête si, selon le cas :
 a) les questions soulevées ne se prêtent pas à la tenue d'un procès sommaire;
 b) un procès sommaire n'est pas susceptible de contribuer efficacement au règlement de l'action.

[85] Rule 3 provides:

General principle

3 These Rules shall be interpreted and applied

(a) so as to secure the just, most expeditious and least expensive outcome of every proceeding; and

(b) with consideration being given to the principle of proportionality, including consideration of the proceeding's complexity, the importance of the issues involved and the amount in dispute.

Principe général

3 Les présentes règles sont interprétées et appliquées :

a) de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible;

b) compte tenu du principe de proportionnalité, notamment de la complexité de l'instance ainsi que de l'importance des questions et de la somme en litige

[86] The moving party bears the burden of establishing that summary trial is appropriate in the circumstances (*Premium Sports Broadcasting Inc v 9005-5906 Québec Inc (Resto-bar Mirabel)*, 2017 FC 590 at para 54). Whether summary trial is appropriate should be determined at the motion for summary trial itself (*Collins v Canada*, 2014 FC 307 at para 41, aff'd 2015 FCA 281).

[87] The Federal Court of Appeal has explained that whether a summary trial is appropriate is dependent on the circumstances. In *ViiV Healthcare Company v Gilead Sciences Canada Inc*, 2021 FCA 122 [*ViiV Healthcare FCA*], the Federal Court of Appeal stated:

[41]..... **It all depends.** The wise exercise of judicial discretion is called for: taking the words of the Rules, viewing them in light of the objectives of Rule 3 and examples in the case law, and applying them to the particular circumstances of the case.

[88] A range of factors must be considered in this particular case. A summary trial may be appropriate where there is enhanced cost and time efficiency (*ViiV Healthcare FCA* at para 38 citing with approval *Wenzel* at para 38).

[89] On the other hand, *Wenzel* provides a helpful overview of factors that weigh against directing the parties toward a summary trial (at para 38). Those include the complexity of the matter, the cost, the time, the lack of expert opinions, urgency or wasted time, and litigating in slices.

[90] This Court has also recognized other factors such as whether the litigation is extensive and whether credibility is a crucial factor: see *Wenzel* at para 37 citing *Dahl et al v Royal Bank of Canada et al*, 2005 BCSC 1263 at para 12. The considerations are particular to each case.

[91] When applied to this case, the factors enumerated in *Wenzel* weigh against granting the motions for summary trial. This is not an appropriate circumstance for a summary trial. I have provided an analysis of the factors that weigh most against granting the motion for summary trial below.

B. *Applicants' Arguments*

[92] 1025532 BC and the barge NA 5501 argue that a summary trial is appropriate in these circumstances. These Applicants submit that the issue of whether they are liable at all, given *Goodwin Johnson*, is not complex but well defined. They also argue that they will be prejudiced if they must continue to participate in the action.

[93] 1025532 BC and the barge contend that there are no issues in this matter as to credibility and the evidence regarding the tow and securing of the NA 5501. Although there is some confusion over who hired Seaspan, in 1025532 BC's view this is immaterial to the summary trial issues. In their view, the facts are highly consistent and clearly set out on this issue.

[94] MLT argues that, pursuant to Rule 216(6), a summary trial is appropriate in these factual circumstances. To demonstrate the appropriateness of summary trial, MLT relies on case law and British Columbia's jurisprudence. MLT highlights the Federal Court of Appeal's statement at paragraph 41 in *ViiV Healthcare FCA*. The Court must be satisfied that the prerequisites in the *Federal Court Rules*, SOR/98-106 [the *Rules*] for summary judgment or summary trial, understood in light of Rule 3, are met.

[95] MLT submits that there is sufficient evidence for this Court to make a decision at summary trial. MLT also asserts there is no prospect that credibility will be in issue, and regardless, the parties have a Court-ordered opportunity to cross-examine the affiants.

[96] MLT explains that the main facts on summary trial will not be in dispute and instead this Court's focus will be on the legal determination raised by the moving parties. The central consideration will be MLT's responsibility for acts or omissions of the tug and the nature of the relationship between tug and tow. MLT submits that determination has nothing to do with the liability determinations that will be made at trial. MLT also submits that severing off the issue of liability as against MLT and the MLT 6000-1 will allow the action to proceed more quickly or be resolved between the parties.

[97] MLT maintains that a summary determination should lead to a more expeditious and less expensive outcome of these proceedings, and does not involve a substantial risk of wasting time and effort. In conclusion, MLT believes that summary trial is not only appropriate but also beneficial by breaking down complex multi-party litigation in an efficient way.

[98] The Applicants argue that their motion is appropriate for summary trial because, if granted, results in less parties having to be at a full trial. Therefore, it is a cost and time saving mechanism for all the parties involved.

[99] The Applicants argue that the pleading in nuisance must fail. 1025532 BC and the barge argues that the evidence is clear that the demise charter did not know the barge was a nuisance until after it had already happened. 1025532 BC says this necessitates the failure of the nuisance claim, as a party must have knowledge of the nuisance to abate it. MLT argues that the nuisance claim similarly fails against them because MLT did not have control over the MLT 6000-1. Accordingly, the Applicants submit that this is an easy issue to make a determination on.

[100] The Applicants argue that the Plaintiffs must put their best foot forward on summary trial. The Applicants contend that the Plaintiffs cannot simply say that they could produce expert evidence or further particulars at trial, instead, they need to put the evidence in now. MLT submits that, although the litigation in totality is complex, I need only look to the narrow issues that arise in this summary trial. According to MLT, all I need to decide is whether the MLT 6000-1 should be responsible for any acts or omissions of the F.W. Wright and/or Mercury. The issue is well defined, and MLT says the issue is within the purview of summary trial. MLT

argued the summary trial has delayed nothing as examinations for discovery are complete and the trial date is set. The only effect of the summary trial would potentially mean their clients would not have to attend.

[101] MLT indicated that there are no credibility issues as the Plaintiffs did not cross-examine on the affidavits for this motion, and as such, the Plaintiffs cannot now say credibility is an issue. MLT suggests that this demonstrates the straightforward nature of this motion. MLT alleges the Plaintiffs are making the matter seem more complex by presenting jurisprudence that is distinguishable and that deals with the US before Canada had its own *Marine Liability Act*, SC 2001, c 6. Also, MLT argues the jurisprudence relied on by the Plaintiffs deals with supplies and has nothing to do with maritime collisions.

[102] 1025532 BC argued in reply that none of the other Defendants disputed the matter being dismissed against the barges. In 1025532 BC's view, this is telling that it is a simple issue and not contentious, when the other Defendants are against having the Applicants removed from the litigation.

C. *Respondents' (Plaintiffs') Arguments*

[103] The Plaintiffs relied on the written and oral submissions of Libra. Harbour Air and Wickham Group rely on the material contained in Libra's memorandum of fact and law in response to MLT and 1025532 BC's summary trial motions. CHM and VHFC adopt and rely upon the submissions and case authorities contained within the Libra submissions.

[104] Libra relies mostly on the same factors as the Applicants, although cites *Lululemon Athletica Canada Inc v Campbell*, 2022 FC 194, for the factors. Libra also relies on *Wenzel*, where the Federal Court held that a motion for summary trial in a complex patent infringement case would not be in the interest of justice. In *Wenzel*, the Federal Court found that the proximity of the actual trial date, the technical nature of the case, and the evidentiary considerations were not in the interest of granting the summary trial.

[105] Libra turns to British Columbia jurisprudence, arguing that this Court has accepted BC case law may be instructive and persuasive on a summary trial motion pursuant to the *Rules*. In *Greater Vancouver Water District v Bilfinger Berger AG*, 2015 BCSC 485 [GVWD], the British Columbia Supreme Court provided additional factors for consideration. Specifically, the Court held:

[110] In summary, the authorities in BC, including *Hryniak*, make clear that the factors the court must consider on applications to determine by summary trial only part of the issues in the lawsuit are:

- a) whether the court can find the facts necessary to decide the issues of fact or law;
- b) whether it would be unjust to decide the issues by way of summary trial, considering amongst other things:
 - i. the implications of determining only some of the issues in the litigation, which requires consideration of such things as:
 - (1) the potential for duplication or inconsistent findings, which relates to whether the issues are intertwined with issues remaining for trial;
 - (2) the potential for multiple appeals; and
 - (3) the novelty of the issues to be determined;

- ii. the amount involved;
- iii. the complexity of the matter;
- iv. its urgency;
- v. any prejudice likely to arise by reason of delay; and
- vi. the cost of a conventional trial in relation to the amount involved.

[106] Libra argues four main points as to why summary trial is not appropriate in these circumstances.

[107] First, Libra submits that summary trial will not dispose of all the issues in the lawsuit. The trial judge will still be required to determine extensive issues in this matter. Libra provides a non-exhaustive list of questions that will remain in this case, even if this Court grants the Applicants motion for summary trial. Libra also argues that the issues raised on these motions will likely need to be re-litigated in the context of a full trial with a full evidentiary record. An anticipated problem is that the trial judge will be limited in their findings of these complex liability matters if the requested summary trial proceeds.

[108] Second, Libra argues the issues the Applicants seek to resolve are intertwined with the remaining issues that will need to be determined at trial. Libra suggests that the success of the claims against the MLT, the MLT 6000-1, 1025532 BC, and the NA 5501 will depend on the trial judge's determination of fault. This is because of the ownership questions that Libra has raised. Libra argues that these issues are not ripe for determination on these motions.

[109] Third, Libra maintains that these motions result in the potential for inconsistent findings. Libra's main concern is that this Court's determination on whether this is an independent tug and tow case has impacts on other aspects of the ongoing litigation. On this motion, MLT and 1025532 BC argue that independent tug and tow law should apply to hold only the tugs liable and not the barges. Whereas, in response to the Motion to Compel, MLT and Mercury argue that this is not a tug and tow case. If this Court answers this question, Libra contends that there may be conflicting decisions arising out of the actions.

[110] Fourth, Libra argues that there is no benefit to summary trial. The litigation has been ongoing for over two years and the liability trial is scheduled for February 6, 2023. The Court bifurcated the issues and the trial is therefore only dealing with liability. Libra disputes the notion that these motions will shorten the trial. Libra submits that because the issues are interrelated, much of the summary trial will be based on the same evidence that will be considered at trial. Libra asserts that the summary trial will be duplicative and will result in litigation in slices.

[111] In conclusion, Libra argues that the issues in this motion are not suitable for summary trial and will not assist in the efficient resolution of the actions. The interrelationship between the issues sought to be determined on this motion and those facts that will be remaining for trial affects both whether this Court is able to find the necessary facts and whether it would be just to decide these issues by summary trial.

D. *The Matter is Complex*

[112] Although complexity is not a singular factor for a court to consider, complexity is especially relevant in the circumstances here. This extensive multi-party litigation has been ongoing for two years. There are many claims, third party claims, and six *in rem* claims. Although the Applicants believe the evidence is straightforward on this motion, I disagree. The parties have disagreed on the applicable factual circumstances, there is factual dispute on this motion, and the question of ownership has yet to be resolved.

[113] I agree that the allusions and events of December 26, 2018 are relatively straightforward. However, that does not necessitate the legal questions arising from those events also being straightforward. Disposing of this issue does not dispose of all the issues or simplify the action. Contrarily, I believe it could complicate the action.

[114] The liability matters in this case are complex. Deciding aspects of these complex matters in a separate silo, isolated from the complete factual matrix does not aid the parties. I agree with Libra that even if this Court were to decide the issues raised by the Applicants, the parties would essentially end up attempting to re-litigate the evidence in the context of the full trial. This may have the unintended consequence of essentially tying the hands of the trial judge, who may come to different conclusions and findings on a more complete factual record.

[115] While the purpose of summary trial is not to dispose of all the issues in a lawsuit, the goal of summary trial is to promote expediency and efficiency for the parties: see *ViiV Healthcare FCA* at paragraphs 36-42. Libra has raised 16 non-exhaustive questions that the trial judge will likely need to answer. In my view, making factual and legal findings on the

Applicants' liability now will generally limit the trial judge's ability to make their own findings which will be based on the entire record.

[116] The issues on this motion are intertwined with the issues that need to be determined at trial. As such, it is difficult to readily extricate the legal questions and address the Applicants' motions in full. I agree with Libra that the success of claims against the MLT, the MLT 6000-1, 1025532 BC, and the NA 5501 will depend on the trial judge's determination of fault against the other defendants and third parties. Those issues are not ripe for determination on these motions.

[117] Libra believes that an *in rem* claim against the MLT 6000-1 will succeed if the F.W. Wright and its crew are found negligent. Similarly, Libra argues that an *in rem* claim against the NA 5501 will succeed if the Tymac Tide and its crew are found negligent. Libra says the determination of ownership will bear on the outcome of these claims. While this Court is not presently in a position to find one way or another whether Libra can succeed in these claims they are arguable issues best determined at trial.

[118] These ownership issues are so intertwined with the liability issues, that even if this Court could make findings based on the evidence provided, it would be unjust for this Court to conclude on the Applicants' liability.

[119] In *GVWD*, the British Columbia Supreme Court dealt similarly with a complex construction summary trial application. In dismissing the application for summary trial, the Court expressed concern with the complexity of the matter. There, the Court held:

[133] I am concerned that any findings I might make now will have unintended prejudicial effect on the findings that will have to be made at trial of the other contractual issues. What will the Court do at trial if the evidence leads it to conclude it misunderstood key facts as the basis for the summary trial determination? Will the Court be put in a position of having to reconsider the earlier findings, or make inconsistent findings, or will one or another party be prejudiced by the earlier incorrect findings? Because of the complexity of this case and the strong connection between the issues, I am of the view that there is a very good chance of such a dilemma arising should I decide the summary trial issues now.

[120] Similarly to the Court in *GVWD*, my conclusion is that the issues in this summary trial application are intertwined with the other issues in this case, giving rise the above concerns.

E. *Inconsistent Findings*

[121] If this Court makes finding of fact of what type of charter they are the control and ownership of the barges and tugboats involved, it could be unjust and produce inconsistent findings at trial. This is especially so in light of the pending Motion to Compel. I agree with *Libra* that the Motion to Compel could result in inconsistent findings.

[122] *MLT* and *Mercury* have refused to answer questions related to ownership based on relevance. In the Written Representation of *MLT* and *Mercury* regarding the Motion to Compel, they argue that this is not a “flotilla” case and as such there is no relevance to the shareholdings of separate corporate entities. *MLT* and *Mercury* argue that since this is not a flotilla case, common ownership is irrelevant to the limitation of liability. However, *Libra* refers to jurisprudence that disputes *MLT*’s submissions on the relevance of ownership. Thus, if this

Court determines that ownership is relevant to this motion, it will have a material and adverse impact on the subsequent Motion to Compel.

[123] I find the temporal nature of the legal relationship between the barges and the tugs, is another issue that adds to the layer of complexity that a trial judge would be more suited to determine. This relates directly to the barges.

F. *The Need for Further Evidence*

[124] As it stands currently, this Court cannot fully answer the questions raised by the Applicants on these motions. MLT says that the key determination that the Court must make is on the issue of “control.” If the Court finds that the tow was not in “control”, the law in Canada is clear that there can be no maritime lien. Conversely, if the tow is found to have been in “control” then, a determination of the liability of the F.W. Wright and its crew is likely necessary.

[125] There is a lack of evidence concerning corporate structure as well as records from T&B to make findings of fact regarding the type of charter the barges were under, which may or may not be related to the liability issue. Even the findings I am asked to make regarding the acceptability of evidence is better left to the trial judge, who will have the entire picture.

[126] It is unclear to me how this Court can make conclusions on control without understanding the ownership between the involved parties. There is currently insufficient evidence available to answer this question. If this Court were to make such findings on an incomplete evidentiary

record, it is likely that this could have a material impact on other issues at trial. In order to determine the type of charter more evidence is needed.

[127] In this motion there was no expert evidence filed and yet it would seem necessary at trial to determine a number of issues. Though the Defendant was correct that the Plaintiffs are to put their best foot forward at a summary trial, the absence of expert evidence, again, is an indicator that this is best left to a full trial and is not a distinct issue that promotes efficiency.

[128] The complexity that results here does not arise from the Plaintiffs' failure to advance their best case but rather from the legal complexity itself. Although there could have been more available evidence, I find that this results partially from the trial preparation process, as opposed to an intentional failure by the Plaintiffs to put their best foot forward.

G. *Litigation in Slices*

[129] Finally, these motions for summary trial would result in litigation in slices. The summary trial does not resolve all the issues in the case. Conversely, to the Applicants' submissions, this summary trial does not shorten the issues, nor save money and time. Much of the summary trial will be based on much of the same evidence that will be present at trial so would be best heard by the trial judge without some pieces of the puzzle already determined in isolation. The issue is not as distinct as the Applicants ask me to believe and is woven with many other factual determinations that the trial judge will make at a full trial. To answer the liability questions raised by the Applicants, the Court has to consider the available evidence in its totality.

[130] I agree with the Plaintiffs that determining the application does not eliminate the need to call evidence on related issues and as such, there is no significant saving of time. It is also likely that these issues will be duplicated at trial.

[131] Summary trial is intended to provide parties with a timely resolution of a dispute and reduce delays. Yet, the trial of these actions is now less than six months away. These motions act as more of a hindrance, as opposed to method of speedy and inexpensive determination. In addition the parties have a mediation scheduled September 21, 2022. Having all the parties before the mediator will be beneficial.

[132] Although counsel for 1025532 BC and the barge has concerns that he will be forced to sit through a long trial, which he believes does not relate to his client, I am more concerned with the outcome he seeks. Removing 1025532 BC and the barge will tie the hands of the trial judge and limit their fact-finding powers on the issues before them. It would indeed be a perplexing trial if the barges that caused the damages were no longer parties to the action. With the liability of the barges already pre-determined, the trial judge would be left to sort through the connected parties.

[133] Seemingly, removing the barges from this action is like pulling a thread from a sweater. It is not a removable, single thread that you can pull safely away but instead will unravel the sweater in its entirety. Even though the moving parties say the determination of liability is not at issue here, they are asking the Court to sever the thread that holds together the sweater. That simply cannot be done; the determination of the other parties' liability rests on their relationships

and connectedness to the barges. It is not possible to remove the barges, nor view their liability in a silo, and to do so would result in an unjustness to the other parties in the matter.

H. *Prejudice is Likely to Arise as a Result of Delay*

[134] Given the mediation is set to take place September 21, 2022 and the trial is set for February, 2023, there will be no prejudice as a result of the delay. Especially as all the examinations for discovery have already taken place.

I. *Novelty*

[135] The Applicants submit that this issue is not novel as the *Goodwin Johnson* set out the law regarding barges in 1955 and has been used since.

[136] The Plaintiffs argue that the overall liability issues are novel and should not be left to a summary trial on paper.

[137] Although it is perfectly acceptable for novel questions of law to be decided on summary trial, they must be dealt with as easily as they would be after a full trial (*0871768 BC Ltd v Aestival (Vessel)*, 2014 FC 1047 at para 58). That is not the case here.

V. Conclusion

[138] I will dismiss the two motions as this matter is not suited to be determined by summary judgment for the reasons above.

[139] If findings were made in relation to the present motions for summary trial, they would be made in a factual and legal vacuum unconnected to other outstanding issues. There is a multitude of facts relevant to liability that should be left to the trial judge. I do not accept the Applicants' submissions that it is possible to look at the legal questions raised on this motion alone. The totality of these actions are complex and intertwined, with a potential to tie the trial judge's findings. Therefore, this is an inappropriate circumstance to grant summary trial.

VI. Costs

[140] MLT and the MLT 6000-1 sought costs on Column 4.

[141] 1025532 BC and the NA 5501 sought costs.

[142] Libra sought costs in the event of the cause Column 3 of B.

[143] VHFC and CHM sought costs.

[144] Harbour Air and Wickham Group sought costs under Column 3.

[145] Tymac Tide took no position but did not seek costs.

[146] I will award costs in the cause to the Plaintiffs in the event of the cause.

JUDGMENT T-547-20, T-755-20 and T-1254-20

THIS COURT'S JUDGMENT is that:

1. The motion is dismissed;
2. Costs in the cause.

"Glennys L. McVeigh"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS: T-547-20, T-755-20 AND T-1254-20

DOCKET: T-547-20

STYLE OF CAUSE: LIBRA VOYAGE LIMITED v THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “NA 5501”, THE BARGE “NA 5501”, THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “MLT 6000-1”, THE BARGE “MLT 6000-1”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “F.W. WRIGHT”, THE TUGBOAT “F.W. WRIGHT”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “TYMAC TIDE”, THE TUGBOAT “TYMAC TIDE”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES VIII”, THE TUGBOAT “CHARLES H. CATES VIII”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES V”, THE TUGBOAT “CHARLES H. CATES V”, 1025532 B.C. LTD., MLT CAPITAL CORP., TYMAC LAUNCH SERVICE LTD., SEASPAN ULC., MERCURY LAUNCH & TUG LTD., JOHN DOE #1, JOHN DOE #2., JOHN DOE #3, JOHN DOE #4, AND, HER MAJESTY THE QUEEN AND THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “NA 5501”, THE BARGE “NA 5501”, THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “MLT 6000-1”, THE BARGE “MLT 6000-1”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “F.W. WRIGHT”, THE TUGBOAT “F.W. WRIGHT”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “TYMAC TIDE”, THE TUGBOAT “TYMAC TIDE”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES VIII”, THE TUGBOAT “CHARLES H. CATES VIII”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES V”, THE TUGBOAT “CHARLES H. CATES V”, 1025532 B.C. LTD., MLT CAPITAL CORP., TYMAC LAUNCH

SERVICE LTD., SEASPAN ULC., MERCURY LAUNCH & TUG LTD., JOHN DOE #1, JOHN DOE #2., JOHN DOE #3, JOHN DOE #4, AND, HER MAJESTY THE QUEEN

AND DOCKET:

T-755-20

STYLE OF CAUSE:

HARBOUR AIR LTD AND, WICKHAM GROUP LTD. v THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “NA 5501”, THE BARGE “NA 5501”, THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “MLT 6000-1”, THE BARGE “MLT 6000-1”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “F.W. WRIGHT”, THE TUGBOAT “F.W. WRIGHT”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “TYMAC TIDE”, THE TUGBOAT “TYMAC TIDE”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES VIII”, THE TUGBOAT “CHARLES H. CATES VIII”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES V”, THE TUGBOAT “CHARLES H. CATES V”, 1025532 B.C. LTD., MLT CAPITAL CORP., TYMAC LAUNCH SERVICE LTD., SEASPAN ULC., MERCURY LAUNCH & TUG LTD., JOHN DOE #1, JOHN DOE #2., JOHN DOE #3, JOHN DOE #4, AND, HER MAJESTY THE QUEEN AND THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “NA 5501”, THE BARGE “NA 5501”, THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “MLT 6000-1”, THE BARGE “MLT 6000-1”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “F.W. WRIGHT”, THE TUGBOAT “F.W. WRIGHT”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “TYMAC TIDE”, THE TUGBOAT “TYMAC TIDE”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES VIII”, THE TUGBOAT “CHARLES H. CATES VIII”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES V”, THE TUGBOAT “CHARLES H. CATES V”, 1025532 B.C. LTD., MLT CAPITAL CORP., TYMAC LAUNCH SERVICE LTD., SEASPAN ULC., MERCURY LAUNCH & TUG LTD., JOHN DOE #1, JOHN DOE

#2,, JOHN DOE #3, JOHN DOE #4, AND, HER MAJESTY THE QUEEN

AND DOCKET:

T-1254-20

STYLE OF CAUSE:

VANCOUVER HARBOUR FLIGHT CENTRE LIMITED PARTNERSHIP AND, COAL HARBOUR MARINA LIMITED v THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “NA 5501”, THE BARGE “NA 5501”, THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “MLT 6000-1”, THE BARGE “MLT 6000-1”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “F.W. WRIGHT”, THE TUGBOAT “F.W. WRIGHT”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “TYMAC TIDE”, THE TUGBOAT “TYMAC TIDE”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES VIII”, THE TUGBOAT “CHARLES H. CATES VIII”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES V”, THE TUGBOAT “CHARLES H. CATES V”, 1025532 B.C. LTD., MLT CAPITAL CORP., TYMAC LAUNCH SERVICE LTD., SEASPAN ULC., MERCURY LAUNCH & TUG LTD., JOHN DOE #1, JOHN DOE #2,, JOHN DOE #3, JOHN DOE #4, AND, HER MAJESTY THE QUEEN AND THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “NA 5501”, THE BARGE “NA 5501”, THE OWNERS AND ALL OTHERS INTERESTED IN THE BARGE “MLT 6000-1”, THE BARGE “MLT 6000-1”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “F.W. WRIGHT”, THE TUGBOAT “F.W. WRIGHT”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “TYMAC TIDE”, THE TUGBOAT “TYMAC TIDE”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES VIII”, THE TUGBOAT “CHARLES H. CATES VIII”, THE OWNERS AND ALL OTHERS INTERESTED IN THE TUGBOAT “CHARLES H. CATES V”, THE TUGBOAT “CHARLES H. CATES V”, 1025532 B.C. LTD., MLT CAPITAL CORP., TYMAC LAUNCH SERVICE LTD., SEASPAN ULC., MERCURY LAUNCH & TUG LTD., JOHN DOE #1, JOHN DOE

#2,, JOHN DOE #3, JOHN DOE #4, AND, HER
MAJESTY THE QUEEN

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: AUGUST 31, 2022

JUDGMENT AND REASONS: MCVEIGH J.

DATED: SEPTEMBER 21, 2022

APPEARANCES:

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Darlene Crimeni
Madison Vonk

FOR THE PLAINTIFF,
Libra Voyage Ltd.

Or Regev

FOR THE PLAINTIFFS,
Harbour Air Ltd. And Wickham Group Ltd.

Roger Watts

FOR THE PLAINTIFF,
Vancouver Harbour Flight Centre Limited Partnership
and Coal Harbour Marina Limited

Peter Swanson
Nicholas Wilson

FOR THE DEFENDANTS/THIRD PARTIES,
1025532 B.C. Ltd., The Owners and All Others
Interested in The Barge "NA 5501", The Barge "NA
5501"

Kim Wigmore
David Fung

FOR THE DEFENDANTS/THIRD PARTIES,
MLT Capital Corp. and Mercury Launch & Tug Ltd.

Braeden Stang

FOR THE DEFENDANTS/THIRD PARTIES,
The Owners and All Others Interested in The Tugboat
"Tymac Tide", The Tugboat "Tymac Tide", and Tymac
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“Tymac Tide”, The Tugboat “Tymac Tide”, and Tymac
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“Charles H. Cates VIII", The
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FOR THE DEFENDANT/THIRD PARTY,
Her Majesty the King in Right of Canada