

CANADA / JUDGMENT

Zane v. Rohland

2024 FC 2048

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Ottawa, Ontario, December 17, 2024

PRESENT: The Honourable Mr. Justice Pamel

ADMIRALTY ACTION IN REM AGAINST THE SHIP “KINDNESS”, THE SHIP “MYSTIQUE V” AKA
THE “DESTINY” AND IN PERSONAM

BETWEEN:

INGA ZANE

Plaintiff

and

GREGORY ROHLAND, DESTINY YACHTS HOLDINGS LLC, BOUNDLASS HOLDINGS LLC, THE OWNERS AND ALL OTHERS INTERESTED IN THE SHIP “MYSTIQUE V” AKA THE “DESTINY”, THE OWNERS AND ALL OTHERS INTERESTED IN THE SHIP “KINDNESS”, THE SHIP “MYSTIQUE V” AKA THE “DESTINY” (“MYSTIQUE V”), AND THE SHIP “KINDNESS TO THE WORLD” (“KINDNESS TO THE WORLD”)

Defendants

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(d) Working on the yacht for 12 days of 8 hours each while at anchor off the Bowen Island property from May 2018 to November 2018 – total 98 hours 54

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I. Overview [1] On August 14, 2016, Boundlass, a 65-foot, 1981-built King Marine Trawler, experienced an engine fire and sank off the coast of Honduras. The yacht had recently been purchased in North Carolina by the defendant Boundlass Holdings LLC [Boundlass LLC], a limited liability company incorporated a month earlier under the laws of Florida, U.S.A. Boundlass needed some work, so the plan was to sail it to Vancouver, via the Panama Canal, where it was to be updated and refurbished, then chartered out as a business venture. On board at the time of the casualty, and lucky to escape and return to Vancouver, were the defendant Greg Rohland [Mr. Rohland], his older son Zack, his younger son Grayson, and Zack's girlfriend Tatiana. An insurance claim was filed with the underwriters for the loss of the yacht and the personal belongings of those on board at the time.

[2] The membership structure of Boundlass LLC looked like this: Orange Capital Funding LLC [Orange Capital], the managing member of which was Mr. Rohland's brother, Michael Rohland, the principal financial backer of the business venture with a 55% "profit and loss" membership interest; the plaintiff Inga Zane, with whom Mr. Rohland was romantically involved at the time, who was to oversee the refurbishing of the yacht's interior, set up the website and handle bookings and marketing for the new business venture and who had a 30% "profit and loss" membership interest; and Mr. Rohland and Michael Rohland's sister Gabriele, who was to be the chef, handling meal planning and preparation for the guests, and who had a 15% "profit and loss" membership interest.

[3] In October 2016, a few months after the loss of Boundlass, Orange Capital purchased the in rem defendant Destiny (also known as Mystique V but referred to throughout these proceedings as Destiny), a 64-foot, 73-tonne, 1986-built recreational vessel located in Florida, with a similar plan to move the yacht to Victoria, B.C., refurbish it and charter it out as a business venture. In late 2016, ownership of Destiny was transferred to the defendant

Destiny Yachts LLC [Destiny LLC], a limited liability company incorporated in December 2016 under the laws of Florida, U.S.A., which, I am led to believe, is also controlled by Michael Rohland. Ms. Zane had no membership or financial interest in Destiny LLC. In May 2017, Boundlass LLC became the manager of Destiny LLC. It is not clear if Ms. Zane still had a 30% membership interest in Boundlass LLC at that time, but no issue was made of this during the trial.

- [4] In March 2017, two months before Boundlass LLC became the manager of Destiny LLC, the insurance claim regarding the loss of Boundlass was settled by the underwriters with the execution by all members of Boundlass LLC at the time, including Ms. Zane, of a corporate resolution dated April 6, 2017, with effective date of March 20, 2017 [the Resolution]. The Resolution authorized the settlement of the insurance claim and the necessary release document in favour of the underwriters. The amount of US\$756,685 [the Insurance Proceeds] was eventually deposited into the trust account of James Perry Esq., described by defendants' counsel as Michael Rohland's lawyer in Florida.
- [5] Three weeks later, on April 27, 2017, Destiny LLC entered into an agreement to charter and eventually purchase [the charter-to-purchase agreement] the other in rem defendant Kindness to the World [Kindness], an 80-foot, 112-tonne, 2005-built recreational vessel. The idea was similar, i.e., to refurbish the yacht and charter it out. What is important in this case is that the funds required to conclude the charter-to-purchase agreement emanated from the same trust account held by Mr. Perry in which the Insurance Proceeds were deposited.
- [6] Ms. Zane's claim against the defendants is twofold. First, she claims that between 2017 and 2020, she provided crewing and other services to, purchased supplies, equipment and material for, and incurred costs for the benefit of the in rem defendants Destiny and Kindness, for which she has not been paid. Second, she claims part ownership of Kindness by way of a resultant and/or constructive trust on account of the fact that, according to Ms. Zane, her membership interest in Boundlass LLC gave her a right to 30% of the Insurance Proceeds. As the funds used to purchase Kindness emanated from the trust account in which those proceeds were deposited, Ms. Zane asserts that her claim to a beneficial interest in Kindness "derives from the principles of law pertaining to the creation and existence of a purchase money resulting trust".
- [7] For the reasons that follow, and I am granting in part Ms. Zane's claim for reimbursement of expenses for the supplies, equipment and material that she incurred and purchased for the benefit of the in rem defendants, but dismissing her claim to an equitable interest in Kindness.

II. Introductory remarks and general observations

- [8] I should mention that not all the defendants are before me. The defendant Boundlass LLC is not represented and has filed no Statement of Defence. There is some suggestion that the company was dissolved in Florida for non-filing of annual reports, but it is not clear if it has since been reinstated administratively. In any event, no motion for default judgment has been made by Ms. Zane. Therefore, going forward, reference to the defendants does not include Boundlass LLC.
- [9] The principal witnesses from whom I heard testimony were Ms. Zane, for herself, and Mr. Rohland, on behalf of the defendants. I found neither entirely credible, and in fact I found elements of Mr. Rohland's testimony and behavior to be somewhat incredible. We must keep in mind that the two were romantically involved from 2016 to at least September 2017, and continue to be entangled in other litigation that seems to be the result of a relationship that ended very poorly. The acrimony between the two individuals was palpable and was reflected in the manner in which they handled themselves during the course of these proceedings, in particular during the trial in this matter.
- [10] As for Ms. Zane's evidence, I found her to be at ease overstating her case. For example, she initially claimed moorage charges from Destiny and Kindness in the amount of \$15,750 while the yachts were tied up in the waters adjacent to her property on Bowen Island, yet I was not provided with the regulatory authority allowing Ms. Zane to claim for moorage while the yachts were in waters that did not belong to her. In any event, the claim was not seriously pursued. In addition, I found that the methodology for the calculation of her claim for unpaid wages shifted over time. I also found that Ms. Zane was apt to unduly embellish a story that might have certain elements of truth so as to maximize her claim, as she did with her claim for wages for herself and for some expenses that she later decided to drop for the expediency of the trial. I also found her to have selective memory, as she was somewhat vague about the nature of the work Mr. Rohland, as captain of the in rem defendants, supposedly contracted her to undertake, either as a member of the crew or as a service provider. I also found that Ms. Zane often spoke in generalities. On cross-examination she was forced to admit to certain errors in the identification of expenses that she claimed she incurred for the benefit of the in rem defendants. Later, she dropped certain other expenses from her claim.
- [11] Also, she was comfortable submitting an indiscriminate bundle of banking and credit card statements into evidence, expecting the Court to sift through the minutia to extract the individual bits of evidence supporting her claim for reimbursement of expenses. Notwithstanding several directions by the Court for the parties to come to terms on consolidating the evidence on damages, it was only during final oral submissions in the second half of the trial, after her evidence was closed, that Ms. Zane's counsel came forward with his attempt at consolidating the evidence of expenses for which Ms. Zane was seeking reimbursement.

- [12] As for Mr. Rohland, his defence strategy from the outset was clearly to admit to nothing that was not strikingly obvious, and even then he often denied what was clear for all to see. It was only on the last day of a six-day trial that Mr. Rohland finally conceded that many of the expenses being claimed by Ms. Zane did indeed relate to the two in rem defendants. Until then, he had consistently disregarded my directions for the parties to work together to provide admissions on damages and an annotated spreadsheet of expenses sought by Ms. Zane. As his counsel disclosed during his oral submissions, Mr. Rohland refused to work with Ms. Zane because it would seem she had systematically refused to provide supporting documents and invoices for these expenses as part of her undertakings arising from her examination for discovery. From what I can tell, Mr. Rohland knew perfectly well the nature and legitimacy of many of the expenses that appeared on Ms. Zane's credit card statements and that they were incurred for the benefit of Destiny and Kindness. In fact, for many of the expenses relating to Destiny, for example, Mr. Rohland was the one who charged Ms. Zane's credit card with these expenses, as he was in possession of her credit card at the time—a small detail that had seemingly escaped his recollection until the last day of trial when I pressed the parties to find common ground on the list of expenses claimed by Ms. Zane.
- [13] In addition, much had been made about more than 80 pages of documents referred to during the trial as the “piano documents”. These documents, which Ms. Zane found on her piano in December 2020 and which supposedly belonged to Mr. Rohland, include, amongst other things, copies of a trust ledger [the trust ledger] reflecting entries from Mr. Perry's trust account. The trust ledger reflects the receipt of the Insurance Proceeds upon the opening of the ledger and various disbursements made using those and other funds, including payment of the amounts due under the charter-to-purchase agreement for Kindness. The trial in this matter was initially scheduled for three days in May 2024, but had to be continued for three more days in September 2024. Throughout the first half of the trial, Mr. Rohland repeatedly professed ignorance as to the authenticity of the piano documents. As I set out in further detail below, it was not until the continuation of the trial in September 2024, and after I issued my decision allowing for the reopening of Ms. Zane's case and the testimony of Mr. Perry, that Mr. Rohland finally admitted to the authenticity of the piano documents, and only when it became clear that Mr. Perry was about to testify.
- [14] As for Mr. Rohland's testimony, it seemed to me that his guiding principle during much of his testimony was to never let the truth get in the way of a good story. At one point during his cross-examination, Mr. Rohland was asked whether a handwritten statement setting out the history of the relationship with his brother and the financing of Boundlass and Destiny was in his handwriting; what followed were disjointed utterances, obfuscation and misdirection. I had to intervene to insist that Mr. Rohland simply answer the question, to which he finally responded that it was not, notwithstanding that other documents in the record contained similar handwriting that he did not contest was his own.

- [15] During cross-examination, Mr. Rohland was asked whether he had received any funds from the Insurance Proceeds, specifically the amount of US\$182,500. He said no, notwithstanding the clear indication to the contrary that appeared from the trust ledger and the testimony of James Perry, who said otherwise. This is quite astonishing. In addition, Mr. Rohland was compelled, at one point, to distance himself from one of the documents upon which he apparently was intending to rely, when Ms. Zane announced that she had an expert's report to the effect that the signature purported to be hers on the document was a forgery.
- [16] Throughout his testimony, Mr. Rohland played the part of the lowly ship's captain, trying to distance himself from any financial dealings with the yachts, claiming that he was merely taking instructions from his "owners"—as if he was not part of the inner circle—and not involved in, or in any way aware of, the financial affairs of either Boundlass LLC or Destiny LLC. From what I could tell, this was nothing but a ruse and could not be further from the truth. Putting aside the fact that he would consistently refer to Destiny LLC as "we" and not "it" or "they"—which Mr. Rohland explains by saying that he recently became a member of Destiny LLC for litigation purposes because Ms. Zane had obtained a restraining order against him—the evidence overwhelmingly shows that Mr. Rohland was driving the business venture, often having to pull his brother along when Michael Rohland, who saw Destiny LLC purely as a business investment, would withdraw from the project because Mr. Rohland was not living up to his commitments to him. Mr. Rohland was the one spending all the money on the refurbishment of the yachts, and he was on the front lines of all day-to-day activity. As confirmed by James Perry, Mr. Rohland and Michael worked as a team, with Michael being more of the financial backer, and Mr. Rohland more on the daily operations side of their business venture. As stated above, after months of denial, Mr. Rohland finally admitted the authenticity of the piano documents, including the trust ledger indicating that over US\$182,500 in trust funds were in fact disbursed to Mr. Rohland himself and emails from Mr. Perry keeping Mr. Rohland apprised of developments.
- [17] Also, there is little doubt that Mr. Rohland was stickhandling the insurance settlement in respect of the loss of Boundlass and often fighting with his brother Michael regarding the continued funding of the business venture. This is not to say that Michael Rohland was not worried about his investment, having funded much if not all of it, but only that I discount any testimony from Mr. Rohland that tends to suggest that he was a lesser, more innocent player in this whole matter.
- [18] I also find that the handwritten document that Mr. Rohland disavowed as his own was in fact prepared by him, setting out the background of his relationship with his brother and the purchase of Boundlass and then Destiny. I accept Ms. Zane's testimony, as set out below, that Mr. Rohland and his brother had a falling out in 2017 and 2020, with his brother freezing Mr. Rohland out from further funds for the venture in 2020, prompting Mr. Rohland to orchestrate a coup d'état against Michael Rohland, of which Ms. Zane and Gabriele wanted no part. In addition, defendants' counsel conceded before me that instructions with respect to the present proceedings were being received from Mr. Rohland, as he was the one

authorized to lead the defence in this matter on the part of the defendants.

- [19] Ms. Zane indicated that she met Mr. Rohland online in 2015 and that the two were romantically involved from 2016 until September 2017; thereafter, their friendship was purely platonic until they had a falling out in late 2020. For his part, Mr. Rohland was adamant throughout his testimony-in-chief that he and Ms. Zane were in a romantic relationship through to 2020, the implication being that whenever the two were aboard Boundlass, Destiny or Kindness during that time, they were there as a couple, and that at no time was it agreed that Ms. Zane was to be paid, let alone hired as a crew member, to assist in refurbishing the yachts to bring them to a level where they could be properly marketed. However, in cross-examination, Mr. Rohland was confronted with two affidavits he had executed in the context of separate litigation involving him and Ms. Zane, in which Mr. Rohland swore he was not in a romantic relationship with Ms. Zane (the first dated November 22, 2018 in a case before the Supreme Court of British Columbia, Docket 204582, *Bowen Island Municipality v Inga Zane and Greg Rohland*, and the second dated November 5, 2019 in another case before the Supreme Court of British Columbia, Docket S1811991, *Inga Zane and Greg Rohland v TCC Mortgage Holdings Inc.*). Thus, Mr. Rohland found himself faced with the prospect of having to admit that he had lied about the duration of his romantic relationship with Ms. Zane, either when he swore those affidavits or during his evidence-in-chief before me. What followed was a cacophony of contradictory utterances, observations, explanations and pronouncements, the upshot of which was that Mr. Rohland no longer seemed to hold to the notion that his romantic relationship with Ms. Zane lasted uninterrupted all the way to 2020.
- [20] I also found Mr. Rohland to be too smart—or at least he thought he was—for his own good. He would often take the lead in his own testimony, independently of his own counsel, and point to exhibits and make arguments as if he was arguing the case. An example of this was when, in answer to Ms. Zane’s argument that she had a claim for unpaid crew wages and thus purportedly benefited from a maritime lien on Kindness, Mr. Rohland pointed to the “no lien” warranty given by the previous owners of Kindness when it was purchased by Destiny LLC, and began to argue during his testimony—without any leading from his counsel—that Destiny LLC became the registered owners of the yacht only in July 2019, well after Ms. Zane’s supposed claim for crew wages actually arose. What Mr. Rohland failed to mention is that Destiny LLC took control of Kindness two years earlier, in May 2017, when it entered into the charter-to-purchase agreement with the yacht’s previous owners. As stated below, Destiny LLC first operated the yacht as a charterer with the intention to purchase it and finally did so two years later, in July 2019. Mr. Rohland argues that Ms. Zane should have made a claim against the previous owners while she was purportedly crewing the vessel between May 2017 and July 2019, but she did not. The previous owners then gave Destiny LLC a “no lien” warranty once the yacht was formally transferred to it in July 2019.

- [21] Clearly, Mr. Rohland is being disingenuous. The previous owners could not have known about Ms. Zane's crewing activity, just as they could not have known of Mr. Rohland's employment as captain once he and Destiny LLC took over the operations of the yacht, technically under charter, in May 2017. Any claim that Ms. Zane might have for unpaid crew wages would have accrued on Mr. Rohland's watch, and he and Destiny LLC would have been fully aware of it, notwithstanding the "no lien" warranty provided by the yacht's previous owners. Also, as stated by Mr. Perry during his testimony, the marine academies that take yachts as donations need to retain ownership for three years, but they get around that requirement by entering into charter parties with an option to purchase, with the duration of the period under charter corresponding to the period during which the marine academy must maintain ownership so as not to invalidate the initial donation. In the case of Kindness, that period seems to have been two years.
- [22] Needless to say, I had tremendous reservations about the credibility of Mr. Rohland's testimony throughout the trial in this matter. That is not to say that I accepted Ms. Zane's version of events wholeheartedly. As stated above, my sense is that she took a story with some truth to it and simply embellished it in order to increase the claim she wanted to make against Mr. Rohland in particular. It seems to me that, in her eyes, Destiny and particularly Kindness were his babies.
- [23] What became clear throughout the litigation was the degree to which Ms. Zane and Mr. Rohland's animosity for each other made them willing to be less than fully truthful to the Court and overwhelmed any sense of reasonableness on both sides that might have prompted them to streamline the litigation process, come to an agreed statement of facts, focus on the more important issues at hand, or comply with the directions given by the Court with respect to admissions on damages. All in all, Ms. Zane and Mr. Rohland would have been better served by taking their personal issues to a professional relationship counsellor. Had there been any form of cooperation between the parties or their counsel, who were supposedly simply taking instructions from their clients, three days would have been more than enough to deal with all the issues in this case.

III. Matters arising during trial

- [24] The trial in this matter began with Ms. Zane seeking relief for having served her response to the defendants' Notice to Admit late in the day, or in fact late the night before the commencement of trial. After some discussion, I ordered an extension to accommodate the service of Ms. Zane's response, and the defendants had the opportunity to call witnesses who had not initially been planned, to avoid any prejudice from the late filing of Ms. Zane's response. The defendants advised they would be calling Martin White, a previously unidentified witness, and Grayson Rohland in substitution for Michael Rohland, who had previously filed a will-say statement and was scheduled to appear. Mr. White would also address any issues that might possibly arise from the response from Ms. Zane to the defendants' Notice to Admit. In the end, Grayson Rohland was not called.

- [25] Another preliminary matter raised by Ms. Zane was a series of previously undisclosed documents served upon her by the defendants just before the commencement of trial, which apparently included an agreement filed, presumably by Mr. Rohland, in the context of separate litigation between Ms. Zane and Mr. Rohland. Ms. Zane advised that the agreement was the subject matter of an expert's report establishing that her purported signature on the agreement was a forgery. Mr. Rohland withdrew the document.
- [26] Finally, Ms. Zane also objected to the late filing by the defendants of transcripts of examinations for discovery in separate litigation involving the parties, on the basis that the transcripts were subject to an implied undertaking as to confidentiality. Given that the transcripts had entered the public domain as an attachment to a motion in the context of that other litigation, Ms. Zane withdrew her objection. In any event, little if any use of the transcripts was made by the defendants in this action.
- [27] With better preparation by counsel and cooperation of the parties, the trial of this matter should have been completed within the first three days, assuming it could not have been resolved amicably beforehand. However, at the end of those three days, Ms. Zane requested that her evidence be reopened so as to call Mr. Perry as a witness by videoconference from Florida to give evidence regarding the receipt and disbursement by his law firm of the Insurance Proceeds as set out in the trust ledger. I advised that a formal motion would be required. In addition, the defendants announced that they intended to bring a motion at the start of the continuation of the trial in relation to the authenticity of the piano documents, which they had until then denied. Consequently, I issued a scheduling order regarding the two motions the parties intended to file, and ordered that the trial continue for three days in September 2024.
- [28] On August 26, 2024, I issued my decision (2024 FC 1319) allowing Ms. Zane to reopen her evidence to call Mr. Perry. At the trial management conference held on October 3, 2024, just four days before the continuation of the trial, the defendants were still noncommittal as to whether Mr. Perry was to appear to testify by videoconference. To my surprise, Ms. Zane had not yet arranged for the issuance of a subpoena. In any event, the subpoena was finally requested by Ms. Zane and sent to Mr. Perry, who appeared by videoconference at the recommencement of trial.
- [29] As regards Mr. Rohland's motion regarding the piano documents filed prior to the continuation of the trial, in the end, Mr. Rohland actually admitted their authenticity but objected to the use of four of the more than eighty pages in the package of piano documents, including the trust ledger, which outlined the receipt and use made of the Insurance Proceeds, on the grounds that solicitor-client privilege had not been waived by Michael Rohland (Mr. Perry's client) and that, in any event, the piano documents were stolen by Ms. Zane from Mr. Rohland's car. Mr. Rohland argued that Ms. Zane should therefore be denied the use of those four pages on the basis of the doctrine of *ex turpi causa non oritur actio*. Again, this is quite incredible. At no time during the first stage of the trial did Mr. Rohland in his testimony, or his counsel at any time including during his cross-examination of Ms.

Zane, suggest that the documents that Ms. Zane testified having found on her piano were actually stolen by Ms. Zane from Mr. Rohland's car. This was yet another plot twist that had me convinced that Mr. Rohland was making up much of his evidence as he went along.

- [30] Moreover, Mr. Rohland used his motion regarding the piano documents to file yet another affidavit, looking to supplement his evidence at trial. Ms. Zane, of course, could not hold back and had to respond, and she filed her own responding affidavit, also seeking to supplement her evidence at trial. I advised the parties that this was unacceptable and that I would not consider either affidavit as evidence in this trial.
- [31] In any event, with my decision regarding the reopening of Ms. Zane's case already in hand, upon the recommencement of trial, defendants' counsel announced that his clients were all of a sudden eager to express to the Court their intention to be transparent and to show that they had nothing to hide. Michael Rohland had decided to waive any claim to solicitor-client privilege in relation to the testimony of Mr. Perry, thus opening the door for Mr. Perry to testify freely and without objection regarding the receipt and disbursement of funds from his trust account, notwithstanding that until then, transparency on those issues was exactly what was missing.
- [32] Finally, the evidence includes what I can only describe as a document drop on the Court by Ms. Zane, consisting of a sizable volume of redacted banking and credit card statements, as well as incomprehensible and conflicting spreadsheets supposedly prepared by Ms. Zane, some drawn up from time to time and provided to Mr. Rohland so as to keep account of the expenses that she was incurring for which she expected payment at some point, and others prepared for trial. With the hope of clarifying the issue of damages, I had issued a series of directions, repeated during the first segment of the trial, for the parties to meet and agree on a set of expenses regarding which, if I were to find for Ms. Zane, an order for reimbursement would be appropriate, with a simplified report to the Court. It was certainly not the role of the Court to sift through the minutia to come up with a figure that may be owing to Ms. Zane, nor was it for the Court to spend days on end looking at countless charges ranging from \$25 to \$3,000 making up Ms. Zane's overall claim for reimbursement. My directions fell on deaf ears, with each party pointing to the other to explain why repeated directions by the Court could not be fulfilled. As expected, Ms. Zane's testimony trying to explain her spreadsheets left me with more questions than answers, which may account for why the trial could not be completed in three days as scheduled. It was only during closing arguments in the second segment of trial that Ms. Zane came up with a spreadsheet of expenses, which, again, did not completely correspond with the spreadsheets that had been provided to me earlier. As Mr. Rohland's counsel had still not abided by the direction of the Court to sit down with Ms. Zane's counsel to agree on at least which expenses fell to the benefit of the in rem defendants, the work between the parties had to take place during the customary hearing breaks during trial.

IV. The evidence

- [33] I will go to some length to set out the evidence, not only to show the contradictions, but also to highlight the lack of evidence where it was needed to make out Ms. Zane's case. It is also important so as to understand the complicated relationship between Ms. Zane and Mr. Rohland and better appreciate the context of the present proceedings.
- [34] As stated, Ms. Zane and Mr. Rohland were in a romantic relationship starting in 2016, having met online the previous year. In 2016, Ms. Zane was living in a rented home in West Vancouver with her two sons, Mateo, age 11 at the time, and Max, age 10. She was earning about \$150,000 per year as vice-president of merchant relations for Wishpond, a Vancouver-based company she helped start up, reporting directly to the chief executive officer and founder. According to Mr. Rohland, he had several business ventures within the construction and marine industries over the years, was an avid yachtsman, and from what I could gather, was the captain of his own ship—literally, as he along with his brother Michael and others in the family bought, sold, managed and operated various-sized yachts and other pleasure craft over the years.
- [35] Around June 2016, Ms. Zane committed to purchasing a piece of property on Bowen Island [the Bowen Island property] in order to build a home, with the final closing taking place in November 2016. She says that financial assistance for the purchase of the property was provided by Michael Rohland, whom Ms. Zane had come to know by then through his brother. Mr. Rohland eventually helped build the home in which Ms. Zane now resides in with her sons. My understanding is that, at least at the commencement of trial in this matter, Michael Rohland, Mr. Rohland and Ms. Zane were still in litigation regarding that property.

A. The incorporation of Boundlass LLC and the purchase of Boundlass

- [36] Mr. Rohland and his wife are divorced. In 2016, the yacht owned by Mrs. Rohland was put up for public auction. Mrs. Rohland had been struck with cancer and had debts to the bank, which had foreclosed on the \$650,000 mortgage on the yacht. The idea was for Mr. Rohland to buy the yacht back from the bank, refurbish it, move it from North Carolina to Vancouver and charter it out as a business venture. Mr. Rohland had been an undischarged bankrupt since 2013, so it fell to his brother Michael Rohland to come up with the money. Although the evidence is incomplete, Mr. Rohland testified that Michael Rohland had taken assignment of other debt instruments that were owing, such as promissory notes that were outstanding and that the bank was holding—I assume against Mr. Rohland, his wife or members of his immediate family—and purchased the yacht at public auction. Although the auction price paid for the yacht was only \$250,000, the testimony of Mr. Rohland was that Michael Rohland had invested upwards of \$1.2 million in the venture, including the debt instruments that he took over from or settled with the bank, and the purchase of the yacht. There were no documents submitted to confirm the scope of Michael Rohland's investment in the business venture, but Mr. Perry also referred to a mortgage or a family loan in relation

to Boundlass in his testimony, although he did not participate in the acquisition of the yacht. In any event, in June 2016, Michael Rohland had provided Ms. Zane with \$10,000 to secure the purchase of the yacht with the auction house from which Boundlass was eventually purchased.

- [37] The incorporation of Boundlass LLC followed a month later, with Ms. Zane having a 30% “profit and loss” membership interest in the company. Ms. Zane says that she first saw the Operating Agreement for Boundlass LLC, which confirms her membership interest in the limited liability company to be 30% “profit and loss”, when she signed it in July 2016. According to her, Mr. Rohland simply told her that she was “going to be part of this yacht”, that she would undertake all the marketing for the business venture, and that Michael Rohland was part of the operation, as was Gabriele, who was to act as chef. Boundlass was the only asset of Boundlass LLC.
- [38] In mid-July 2016, Mr. Rohland, Zack and Tatiana flew from Vancouver to North Carolina where Mr. Rohland was to take delivery of Boundlass. Ms. Zane, her sons Mateo and Max, and Mr. Rohland’s younger son Grayson followed about a week later, on July 25, 2016. According to Ms. Zane, prior to heading down to North Carolina, while they were all at Ms. Zane’s home in West Vancouver, Mr. Rohland had agreed to hire Ms. Zane and her two boys as crew members aboard Boundlass, for which Ms. Zane was to be paid US\$30 per hour, and the boys, who were 11 and 10 years old at the time, were to be paid US\$10 per hour. Mr. Rohland’s son Zack ordered “Boundlass Crew” t-shirts for everyone to wear before they flew down to North Carolina. In addition, according to Ms. Zane, Mr. Rohland agreed to reimburse Ms. Zane’s travel and other expenses, including those incurred to ready the yacht. According to Mr. Rohland, such an agreement never took place. To the extent he needed crew, his sons Zack and Grayson, with whom he had sailed for years, including through the Panama Canal, were already aboard the yacht. Mr. Rohland confirms that a discussion did take place around the dinner table at Ms. Zane’s West Vancouver home, with “everybody present”. The idea was for everyone to travel to North Carolina as a group, with Ms. Zane’s boys having “a great ride” on a “wonderful journey” aboard Boundlass, and for Ms. Zane to also have the opportunity to experience the yacht, take promotional pictures, and begin the marketing strategy for the yacht to enter the charter service in British Columbia and Alaskan waters. Mr. Rohland testified that he and Ms. Zane were to cover their own expenses, with Ms. Zane contributing to common expenses such as gas and food, and that her skin in the game was limited to her 30% “profit and loss” membership interest in the venture.
- [39] In any event, the intention was to ready the yacht so that it could be taken from North Carolina to Vancouver, via the Panama Canal, where it was to be refurbished and put into service. Mr. Rohland and Grayson would live on the yacht when it was not chartered out. According to Ms. Zane, the yacht was in desperate need of repair, and once at the marina in North Carolina, where it was “on the hard”, she and her boys worked “from day up to day down” along with the others to get Boundlass into a condition to be put back in the water.

Ms. Zane accepts that most of the heavy work, including engine repairs and replacement of parts, was undertaken and paid for by Mr. Rohland, who performed the work with his sons, who were considerably older than Mateo and Max. According to Ms. Zane, her boys would run around as “mechanic’s assistants”, getting things for Zack and others, and helping out where they could. In his testimony, Mateo confirmed that, while in North Carolina, he helped clean and paint the yacht, to the extent an 11-year-old boy could help. Ms. Zane stated that she would carry boxes and supplies up and down ladders, and run out and purchase the supplies needed to get the yacht ready for charter, including new mattresses for the guest rooms, towels, sheets, and appliances. These were expenses for which Mr. Rohland was to reimburse her. As stated, the intention was for Mr. Rohland and Grayson to live on the yacht once back in Vancouver, when it was not being chartered out.

- [40] Boundlass eventually set sail for Vancouver about a week after everyone first arrived in North Carolina. According to Ms. Zane, getting the yacht ready took a little less than a week, but they had to wait an additional few days after Boundlass was put in the water before departing the marina. Ms. Zane says that, after the yacht left the marina, she and her boys were aboard for about a week before disembarking at Key West, Florida, because the boys had a two-week vacation planned with their father and therefore had to get back to Vancouver. From Ms. Zane’s expense spreadsheet, exhibit P-28, I see that she and her boys travelled back to Vancouver on August 9, 2016.
- [41] Ms. Zane testified that the intention was for her and her boys to rejoin the yacht as it was passing through the Panama Canal, after the boys returned from their vacation with their father. For his part, Mr. Rohland denies that Ms. Zane and the boys were to rejoin the Boundlass; according to him, there was never any intention for Ms. Zane, as a single mom with her boys starting a new school year a couple of weeks later, to rejoin the yacht until it arrived back in Vancouver.
- [42] In any event, Boundlass never made it to the Panama Canal. On August 14, 2016, the yacht suffered engine failure, caught fire and sank near the island of Roatán, off the coast of Honduras. Mr. Rohland, Zack, Grayson and Tatiana managed to disembark prior to the yacht sinking, and returned to Vancouver. Mr. Rohland sent Ms. Zane photographs from the local newspapers of the yacht burning in the water. Later in August or early September 2016, Mr. Rohland and Grayson returned to Vancouver. With nowhere to live, as their plan had been to live on Boundlass, they moved in with Ms. Zane and her two sons at their home in West Vancouver, where they remained until June 2017, when they moved out to live aboard Kindness.

B. The purchase of Destiny by Destiny LLC

- [43] Ms. Zane testified that, in the meantime, Mr. Rohland travelled to the United States, looking for a yacht to replace Boundlass. She heard Mr. Rohland in her home speaking with his brother about a yacht he had found in Florida. From the evidence, it appears that, on September 8, 2016, Orange Capital, one of Michael Rohland’s companies, signed an

agreement to purchase the yacht Destiny (exhibit P-6), and that the closing of the transaction took place a few months later in December (exhibit P-7). In January 2017, Destiny was transferred to Destiny LLC for \$10 “and other good and valuable consideration”. As mentioned, Ms. Zane was not involved in the purchase or ownership structure of Destiny.

- [44] In late December 2016 or early January 2017, the yacht was transported from Florida and delivered in Victoria, B.C., where the intention was to refurbish it and make it ready to be chartered to clients. Mr. Rohland, Grayson and Mateo travelled to Victoria in January 2017 to begin preparing the yacht. Mateo confirmed during his testimony that he assisted with the cleaning and maintenance work on Destiny. A few days later, Ms. Zane travelled to Victoria and remained aboard Destiny overnight as it proceeded to the Union Steamship Marina [USSM] at Snug Cove, Bowen Island. Ms. Zane says she assisted by working on the yacht, paying for necessary parts, getting tools, cleaning the storage cabinets after mice and cockroaches, cleaning the dishes, changing the bedding in the state rooms and buying groceries. Mr. Rohland produced the initial survey for Destiny, supposedly showing that the yacht was in good condition and needed little work. I do not read the survey report as contradicting any of Ms. Zane’s evidence as to the condition of the yacht or the work that was needed to overhaul it.
- [45] According to Ms. Zane, the initial intention was that Destiny would take over the charter business that was intended for Boundlass, but they did not get to all the refurbishing that had been planned for Destiny because Kindness came along a few months later. The intention then became to sell Destiny. But at least up to that point, Ms. Zane had not been paid her wages for any services she had provided to Boundlass or Destiny, or been reimbursed for any of her expenses incurred in relation to those yachts.

C. The settlement of the insurance claim regarding Boundlass

- [46] In the meantime, in March 2017, the insurance claim regarding the loss of Boundlass was finally settled by the underwriters. Mr. Rohland, who through Mr. Perry was handling the negotiation of the insurance claim, testified as to the process that took place. Ultimately, the amount paid out for the loss of the yacht was US\$750,000. In addition, a claim for US\$14,000 was made regarding the contents aboard the yacht that were lost, although the insurance policy contained a US\$10,000 cap for personal items, with a number of exclusions. In the end, the claim for personal effects was settled for US\$6,865, hence the total settlement of US\$756,865. Ms. Zane says that she was aware that Mr. Rohland was making arrangements for the settlement of the insurance claim. They were living together at the time and she would hear him on the telephone discussing the matter, accounting for everyone’s losses, and mentioning that an insurance cap existed in relation to personal items that had been lost. Ms. Zane stated that she knew that at least Grayson and Mr. Rohland’s claims for personal effects were above the cap available under the insurance policy. As matters turned out, the Insurance Proceeds were deposited in the trust account of Mr. Perry on April 5, 2017, as confirmed in the client 10802 trust ledger. Mr. Perry testified that, because

Boundlass LLC had multiple members, the Resolution, which provided for the bank account to which the insurance funds were to be deposited (in this case at the direction of Michael Rohland), needed to be executed by all members before he could begin disbursing funds.

- [47] Ms. Zane testified that on April 6, 2017, while she was working from home, Mr. Rohland approached her in a hurry, put the Resolution in front of her, and asked her to sign it, in the words of Mr. Rohland, “so we can get the insurance”. She added in cross-examination that Mr. Rohland told her that she needed to sign the Resolution and that she would then receive \$80,000 in her account. Ms. Zane testified that this was the first time she saw the document, that she had no time to either ask any questions or read the two-page document, and that she trusted Mr. Rohland, who led her to believe that the \$80,000 “was the totality of the insurance payout” as it “finalized all of the insurance”. To her knowledge, Boundlass LLC “ended with that”.
- [48] The evidence produced by Mr. Rohland includes an email from Mr. Perry to Ms. Zane’s email address dated March 27, 2017 at 4:03 p.m., whereby Mr. Perry appears to have sent her a copy of the Resolution as well as the settlement agreement with the underwriters, and asked that she circulate the documents to “each member [of Boundlass LLC] and have same executed before a notary public”. The defendants argue that Ms. Zane was aware of the Resolution and release documents well before she signed the Resolution on April 6, 2017, and therefore had time to read and understand them. Ms. Zane testified, and I accept, that she may have had some previous dealings with Mr. Perry, who was involved in the preparation of the Resolution, but no involvement of any substance. That testimony is supported by Mr. Perry, who stated that he may have dealt with Ms. Zane a couple of times, but not many. Ms. Zane says she does not recall receiving the email or ever seeing it before, which is not surprising to her because Mr. Rohland was living with her at the time and had access to and used her email account. In fact, Ms. Zane says that, at the time of day the email was received (4:03 p.m.), she would have been out picking up her boys from school and taking them to their activities. The email seems to have been forwarded from Ms. Zane’s email address to Mr. Rohland’s email address, from which it was then forwarded to an email address used by Boundlass LLC.
- [49] I tend to believe Ms. Zane’s version of events. Although Mr. Rohland denies ever accessing Ms. Zane’s email account, there are a number of factors that tend to support Ms. Zane’s version that, in all likelihood, she never saw that email. First, Mr. Perry’s email is clearly addressed to someone who was handling the arrangements for the conclusion of the insurance claim regarding Boundlass, and we know that to be Mr. Rohland. Mr. Perry was instructing that person on what to do and how to circulate the documents for signature, and to make certain that each member of Boundlass LLC signed the documents. It should be recalled that Mr. Rohland was not a member of Boundlass LLC. If Mr. Perry was in fact knowingly addressing his email to Ms. Zane, it seems to me that he would have worded his instructions differently because he knew that Ms. Zane was a member of Boundlass LLC. In addition, it is troubling that the email chain shows only two of the three links. The

document produced by Mr. Rohland includes Mr. Perry's email to Ms. Zane's email address and Mr. Rohland's forwarding message from his email address to the email address used by Boundlass LLC. What I do not seem to see is the email in the middle, the forwarding email from Ms. Zane's email address to that of Mr. Rohland. It all looks somewhat contrived. To thicken the plot, the March 27, 2017, email was disclosed to Ms. Zane only the evening before the commencement of trial, two and a half years after the commencement of the action. Through misfortune, the original of the email was lost because Mr. Rohland's computer was not only compromised, but stolen.

- [50] In addition, Ms. Zane stated that at the time she signed the Resolution, her signature was the only one on the document; the signatures of Michael and Gabriele Rohland had not yet been affixed, and the document was not yet completed to include wire transfer instructions and banking details for the eventual transfer of the Insurance Proceeds. Ms. Zane says that in all likelihood, once she signed the Resolution, Mr. Rohland circulated it to Michael and Gabriele for signature before returning the fully executed and completed document to Mr. Perry. During his examination-in-chief, Mr. Rohland recollected vaguely that he had Ms. Zane sign the Resolution first, then he sent it to his sister for her signature, then it was sent to Michael Rohland, where it was completed to include banking details regarding where the funds were to be sent and upon whose instructions the funds were to be paid out, i.e., ultimately, the instructions of Michael Rohland. In any event, with the execution by all members of Boundlass LLC (including Ms. Zane) of the Resolution authorizing the settlement of the insurance claim with the underwriters, the next day, on April 7, 2017, Ms. Zane received the amount of \$79,985, net of bank charges, in her bank account from Orange Capital. The amount corresponds to a wire transfer of US\$60,259.11 from Mr. Perry's trust account, as confirmed by the trust ledger, on April 6, 2017, to Associated Foreign, another Michael Rohland-controlled company, from what I understand.
- [51] Ms. Zane stated that she was advised by Mr. Rohland that the funds were the remainder of the proceeds received from the underwriters to pay for everyone's losses—Zack's, Grayson's and Tatiana's—in relation to Boundlass, and that she would need to disburse the funds accordingly. Ms. Zane testified that she was kept in the dark and was led to believe by Mr. Rohland that the amount she had received was what remained of the Insurance Proceeds. From the \$79,985, Ms. Zane was instructed by Mr. Rohland to remit \$2,405 to Zack, \$39,000 to Grayson, and \$1,425 to Tatiana; the amounts paid to Zack and Tatiana are consistent with their itemized personal effects claim submission, which is part of exhibit D-3, and the amount Grayson received was to cover not only his personal effects claim (which in an email in the record Grayson calculates as being \$4,740) but also, according to Mr. Rohland, for his work overhauling the motor on Destiny, which he had done earlier that year. The remaining balance of \$37,155 was to be kept by Ms. Zane, according to her, as compensation for her personal items lost aboard Boundlass when it sank, wages earned by her and her sons, and expenses she had incurred with respect to the yacht. I should mention the claim submission made by Mr. Rohland to the underwriters did not include any items for either Ms. Zane or her sons. Also, during his testimony, Mateo confirmed that he was given money by his

mother for the work he had undertaken on Boundlass when they were in North Carolina, but was not clear whether that payment was related to the agreement with Mr. Rohland that he and his brother would get paid for their work, or whether his mother voluntarily did so.

- [52] In her testimony and on the spreadsheet she prepared, which lists, among other things, the personal items lost aboard Boundlass (exhibit P-28), Ms. Zane stated that she had lost a ring worth \$10,000 and clothes worth \$2,000, and that the \$37,155 was meant to cover those items as well. However, in cross-examination, the story changed, and Ms. Zane stated that, in fact, the ring, a watch given to her by her ex-husband at the birth of Mateo, and a necklace were on Boundlass when it sank. Her testimony regarding the nature of her wages also shifted during cross-examination. Ms. Zane initially stated that she was to be paid US\$30 per hour as a crew member to be in North Carolina and help ready the vessel, but during cross-examination, she stated that the portion of the \$37,155 attributable to her services were for the work she had done in preparation for marketing the yacht. Ms. Zane also claimed in cross-examination that one of her sons had left his iPad aboard Boundlass when they disembarked in the Florida Keys, yet the iPad does not appear on the email list of items that was submitted by Mr. Rohland to support the insurance claim for personal effects lost on board. Given that Ms. Zane and Mr. Rohland were in a romantic relationship at the time, I would have expected her son's iPad as well as Ms. Zane's personal items to be included, just as similar items had been included for those on board at the time of the casualty.
- [53] For his part, Mr. Rohland testified that the \$37,155 was to be kept by Ms. Zane for expenses she had incurred and would incur in the future in relation to Destiny. In reviewing Ms. Zane's list of expenses, Mr. Rohland agreed that some were properly claimed, such as the charges for marine insurance Ms. Zane had paid, but he disputed most of the other amounts claimed. Mr. Rohland also testified that Ms. Zane had lost nothing aboard Boundlass when it sank, as she had taken all her personal effects off when she disembarked at Key West. In addition, he claims that there was no agreement to either reimburse Ms. Zane for personal expenses or to pay her for her services for any of the yachts, including Boundlass.
- [54] On April 27, 2017, Destiny LLC entered into the charter-to-purchase agreement with the California Maritime Academy Foundation Inc. for the eventual purchase of Kindness. The agreement called for the chartering of the yacht for several months and then for its outright purchase by Destiny LLC, which took place in July 2019. Ms. Zane says that in early May 2017, Mr. Rohland travelled with Mateo to San Diego, California to see the yacht. Mr. Rohland adds he actually first travelled to San Diego in mid-April with Grayson and Mateo to inspect the yacht within the "acceptance" window permitted under the charter-to-purchase agreement. In any event, Ms. Zane says that Mr. Rohland was, until then, using funds from his brother in relation to Kindness, and the trust ledger confirms funds being withdrawn earlier in April from the trust account in which the Insurance Proceeds had been deposited, upon instructions of Michael Rohland, as well as payments around the time of the signing of the charter-to-purchase agreement to an entity described by Mr. Perry as the shipbroker, presumably for the purchase of Kindness. However, according to Ms. Zane, the brothers had

a falling out just as Mr. Rohland was travelling to San Diego in May 2017, and Michael Rohland pulled out of the project. With access to funding blocked, Mr. Rohland asked Ms. Zane to use her US dollar Visa credit card again if he needed to purchase further materials and supplies for the yacht. This fact was finally conceded by the defendants' counsel on the last day of trial. Ms. Zane agreed; according to her, as she had just been reimbursed her expenses from Boundlass, she trusted Mr. Rohland to reimburse her again. Ms. Zane's testimony regarding the falling out between Mr. Rohland and his brother seems to be confirmed by a draft table of events [the table of events] prepared by Mr. Rohland to send to his brother in September 2020 (exhibit P-29), which was provided by Mr. Rohland to Ms. Zane for her review. In it, Mr. Rohland made the following entry dated May 16, 2017: "MKR [confirmed as referring to Michael Rohland] Reniegs [sic] on Deal Greg left stranded in CA Greg now can loose [sic] \$320K".

- [55] Any issue between the brothers seems to have been resolved because, from May 18, 2017 to September 11, 2017, US\$110,000 was transferred to Mr. Rohland, as confirmed by Mr. Perry during his testimony and the trust ledger, from Mr. Perry's trust account in which the Insurance Proceeds were deposited, presumably on instructions from his client Michael Rohland. In addition, during his testimony, Mr. Perry confirmed that the charter hire and the eventual balloon payment made under the charter-to-purchase agreement for the purchase of Kindness were made from his trust account in which the Insurance Proceeds were first deposited, as evidenced by the trust ledger.
- [56] Mr. Rohland, Grayson and Mateo returned to Vancouver later in May 2017, after spending about four days in San Diego working on the yacht. Ms. Zane testified that at some point, she heard Mr. Rohland agree to pay his son Grayson \$50,000 to get Kindness up and running. Ms. Zane says that the yacht needed a lot of work and that Grayson was very much involved with refurbishing efforts and may in fact have stayed down in San Diego to continue working on the yacht. Therefore, when Mr. Rohland asked Ms. Zane and her boys to return with him to San Diego, and she had just heard Mr. Rohland agree to pay Grayson \$50,000 for his work, she told Mr. Rohland that "it's not fair that Grayson and Michael are getting paid and we're not". Mr. Rohland supposedly agreed. Ms. Zane testified, "So he agreed, he assured me, yes, you guys will be paid. He didn't give me a percentage of the vessel like he did to those two, but he told me I would be paid at the rate we had agreed". Ms. Zane confirmed the rates were still US\$30/hour for her and US\$10/hour for Mateo and Max. I should mention that there is no evidence that Grayson was given any financial interest in Kindness other than the payment of \$50,000 he was expecting from his father. It also seems to me that Ms. Zane knew that Michael Rohland had invested his own money in the project, given that she acknowledged that Michael was "getting paid".

- [57] According to Mr. Rohland, that agreement never took place. He says that Ms. Zane was going through a great deal of stress because she had lost her job and had to move out of her home. Mr. Rohland saw that she needed a break, so he proposed that she and her boys return with him to San Diego to bring Kindness north to Vancouver. He said that it would be a wonderful trip and that Ms. Zane only had to share some of the expenses such as food and lodging, to the extent she could.
- [58] In early June 2017, Mr. Rohland and Grayson returned to San Diego, this time with Ms. Zane, Mateo and Max, and again began refurbishing the yacht. Kindness had four staterooms, each with its own bathroom. Ms. Zane says she spent the few days cleaning the interior of the yacht and changing the bedding, pillows and towels. Ms. Zane and her boys stayed about three or four days before returning to Vancouver. Mateo, age 13 by that point, was graduating from grade 7, with all the trappings of a graduation dance to be attended to. Mr. Rohland and Grayson remained in San Diego. Mr. Rohland introduced the inspection survey for the yacht, and claimed that it did not support Ms. Zane's testimony as to its condition and the work needed to overhaul it. Again, I see nothing in the survey report that would contradict the testimony of Ms. Zane. Not only does the evidence show a hydraulic system breakdown of the yacht as it was being taken north to Vancouver—more on this later—the table of events also seems to indicate that the budget Mr. Rohland had initially provided to his brother for the full refurbishing of Kindness was in the amount of US\$360,000. Clearly, the yacht needed work.
- [59] In addition, Mr. Rohland admitted during his examination-in-chief that he gave some money to Mateo and Max for helping out with the retrofitting of the engine room and crew quarter demolition. According to Mr. Rohland, that was done because he wanted to make the boys feel like part of the team, not because of a prior commitment on his part.
- [60] In late June, once Kindness was in a condition to depart the marina, Ms. Zane and her sons returned to San Diego for the trip north. Ms. Zane says that she paid for travel expenses, including those of Mr. Rohland and Grayson, rental car expenses, food and lodging, as well as yacht-related expenses such as supplies and materials. Her spreadsheet of wages and expenses (exhibit P-28) suggests that they travelled to San Diego on June 28, 2017, and confirms that they began the trip north the next day, on June 29, 2017. The entire trip north took several weeks, as they had to stop in Newport Beach, where they remained for about a week because of problems with the hydraulic pumps. Ms. Zane recalls entire systems aboard Kindness having to be redone, including the satellite telecommunication system. According to Mr. Rohland, they all had a great time, and while the mechanical problems were being dealt with, the group toured the city, watched the fireworks, had wonderful dinners, and spent the day on Balboa Island.
- [61] Ms. Zane stated that Michael Rohland and his wife joined the group at Newport Beach, and everyone enjoyed the time on the yacht together. Admittedly, Mr. Rohland was working on the engine problems, but they found time to enjoy each other's company and sightsee as well. According to Ms. Zane, Mr. Rohland had asked his brother to join them aboard

Kindness for the trip north so that he could convince his brother to buy into the project again, even though, as stated, funding from Mr. Perry's trust account for Mr. Rohland seemed to be continuing at this time. In any event, according to Ms. Zane, it seemed to work, and Michael Rohland agreed to financially support the business venture again. Another person, Matt Reece (who, according to Mr. Rohland, was a Navy Seal with significant yachting experience), also joined them in Newport Beach, worked on the yacht and enjoyed the evenings with the group. Once under way, the yacht stopped at Carmel and Monterey for day trips, before continuing north. Because of the delays in Newport Beach, the yacht had to stop again, this time in San Francisco, apparently around July 14, 2017, to have Mateo and Max disembark to take a flight back to Vancouver since the boys had another scheduled vacation with their father.

[62] Although Mr. Rohland stated that Ms. Zane had lost her job prior to flying down to San Diego, according to Ms. Zane, she found out she had lost her job at some point during the trip north. Ms. Zane stated that Mr. Rohland suggested that she move in with him on Kindness when they arrived at the USSM, and she agreed. When the yacht reached Point Roberts, Washington, towards the end of July or early August 2017, Ms. Zane disembarked to head home to pack and arrange to move out of her rental home in West Vancouver. Mr. Rohland says he and Matt Reece followed to help with the move. They rented a number of big storage containers and emptied Ms. Zane's home, in which Mr. Rohland was also living at that time, of everything, including the furniture. Ms. Zane confirmed that she and her boys rejoined the yacht at Point Roberts about a week later, apparently around the middle of August, as the boys had returned from their vacation with their father. Once they were back aboard Kindness, the yacht continued north, entered Canada at Nanaimo, proceeded up into Desolation Sound to do some early scouting for charter trips (Mr. Rohland says they went fishing, swimming and sightseeing) and then backtracked to Campbell River, where Ms. Zane and her boys disembarked to return to Vancouver, presumably in late August, as the boys were starting school. Mr. Rohland and Grayson remained on board Kindness and travelled around for a few days before joining Destiny at the USSM in September 2017, when the marina began to charge its lower, winter rates.

[63] After they disembarked Kindness in Campbell River, Ms. Zane and her boys moved out of her home in West Vancouver and moved in with her mother in North Vancouver, just as the boys began school. Mr. Rohland and Grayson lived on Kindness, which was moored at the USSM. Shortly thereafter, Ms. Zane needed money. She says she began to canvass people who were indebted to her, for seeking repayment. She testified that she approached Mr. Rohland, saying, "Greg, I need a repayment of some of my expenses and wages and work. I need some money". As a result, Ms. Zane received a trust cheque from Mr. Perry dated September 19, 2017, in the amount of US\$5,000 (appearing as a withdrawal on the trust ledger), which Ms. Zane converted to \$6,400 in Canadian funds. According to Ms. Zane, this represented a partial reimbursement of what she claims was owing for her work and reimbursement of expenses in relation to Destiny and Kindness.

- [64] Ms. Zane says that she and her boys moved aboard Kindness with Mr. Rohland and Grayson in late September 2017, when the yacht was at the USSM at Snug Cove. In cross-examination, she confirmed that in exchange for room and board for herself and her sons, she provided cooking and cleaning services. By this time, she says, she and Mr. Rohland were no longer romantically involved; problems had begun earlier in 2017 leading to an on-again, off-again relationship, but by the time she moved onto Kindness, the relationship was strictly platonic. It appears that, while she was living aboard the yacht, Ms. Zane helped with the expenses, at least relating to Destiny. From her spreadsheet of expenses, I see that she paid \$3,000 in December 2017 for moorage for Destiny at the USSM and marine insurance for the yacht totalling \$1,970.08 (\$1,159.15 in December 2017, \$410.31 in March 2018, and \$400.62 in April 2018), for a total of \$4,970.08. According to her testimony, Ms. Zane and her boys lived on Kindness for some time, although no specific date is given. However, she found it difficult for the boys to get to school in Vancouver every day from Bowen Island, so at some point, Ms. Zane and her boys moved back in with her mother in North Vancouver until the boys finished school the following year. Mr. Rohland and Grayson continued to live on the yacht.
- [65] In May 2018, Kindness was “kicked off the marina” because, according to Ms. Zane, the USSM wanted nothing more to do with Mr. Rohland. Both Destiny and Kindness were moved and tied up along the waterfront of the Bowen Island property. Given that construction was ongoing, Ms. Zane and her boys were at her property most weekends while the boys were in school and then throughout the summer of 2018, and aboard Kindness, which was tied up alongside Destiny, until November 2018.
- [66] At some point during November or December 2018, after suffering slight contact damage with Kindness, Destiny was moved to the Shelter Island Marina in Richmond, B.C., where the yacht was “put on the hard”. i.e., taken out of the water. In December 2018, Kindness was put on a trailer and brought to Point Roberts, where Mr. Rohland continued to live on the yacht. Ms. Zane said she and her boys assisted in getting Kindness out of and then back in the water at Point Roberts by tending the lines. She also said she would pick up others to drive them to the yacht and do whatever needed to be done to have the yachts moved from her property.
- [67] Ms. Zane points to two of the piano documents. On the Shelter Island Marina Dry Storage Contract, the signature, which is undated, seems to be that of “James Perry”, identified as “member”, although Ms. Zane says she saw Mr. Rohland sign that document at the marina. In addition, Ms. Zane recalls that she may have received the Shelter Island Marina Yacht Yard Rules and Regulations dated December 2018 for signature via email. The version of the document found on the piano also shows a similar signature of “James Perry”. However, of course, Mr. Perry was in Florida, and Ms. Zane confirmed that he was definitely not at the Shelter Island Marina to sign the first document, or at her home on Bowen Island to sign the second. I take it that the point Ms. Zane was making was to highlight the unscrupulous behaviour of Mr. Rohland in signing Mr. Perry’s name to the agreements.

- [68] As Ms. Zane testified, once the focus of Mr. Rohland and Michael Rohland turned to Kindness, one of the ideas was to sell Destiny. There is no evidence of whether any significant refurbishing work was undertaken to either Destiny or Kindness by the end of 2018. Mr. Rohland had been living on Kindness since September 2017, first while the yacht was at the USSM at Snug Cove from September 2017 to May 2018, then while it was tied up adjacent to the Bowen Island property from May 2018 to November 2018, and then when it was moved to Point Roberts in December 2018 until 2019.
- [69] Between the end of 2018 and late 2020, Ms. Zane and her boys continued to live with her mother because Ms. Zane had still not taken occupancy of her home on Bowen Island. Ms. Zane states that there were delays in the construction on account of liens placed on the home by Mr. Rohland's creditors, among other things. Ms. Zane's claim for expenses from January 2019 to September 2019 includes monthly marine insurance charges for Destiny, totalling \$4,079.89, as well as a charge for \$371.53 for a refrigerator she purchased for Kindness in May 2019, when the yacht was at Point Roberts, for a total of \$4,451.42.
- [70] However, a number of events occurred in the fall of 2020.
- [71] Ms. Zane says Mr. Rohland and his brother Michael had another falling out around October 2020. It would seem that Michael Rohland was no longer allowing Mr. Rohland to access, without his approval, the funds that were being held in Mr. Perry's trust account and that were to be used for the refurbishment of Kindness. Michael Rohland apparently sent an email to his brother, accusing him of trying to defraud and cheat him as regards his investment in Kindness (exhibit P-29). In the email, Michael Rohland claims to have made a further US\$240,000 injection of capital into the business venture in June 2019, when Mr. Rohland claimed to be on the verge of losing the project, and that rather than treating the venture as an investment, Mr. Rohland was treating the yacht as a "joy toy". In fact, the injection of funds by Michael Rohland in June 2019 seems to coincide with the balloon payment needed to purchase Kindness under the charter-to-purchase agreement, as noted in the trust ledger and confirmed by the Bill of Sale for the yacht (exhibit D-2) dated July 19, 2019.
- [72] According to Ms. Zane, as a result of being frozen out of further funds in October 2020, Mr. Rohland tried to have her and his sister Gabriele sign a resolution of Boundlass LLC ousting Michael Rohland (via Orange Capital) as a member in favour of a man whom Mr. Rohland had met while attending self-help classes in Vancouver and adding Mr. Rohland as a member of Boundlass LLC. He also wanted them to sign a second Destiny LLC resolution authorizing James Perry to transfer whatever funds remained in his trust account to a separate account controlled by Mr. Rohland for use on Destiny and Kindness. The two resolutions were attached to a report, described as a "Captain's Report", that Mr. Rohland handed Ms. Zane and also asked her to sign. The report stated that Michael Rohland had drawn down \$250,000 from his credit card in order to close the deal and purchase Kindness (a fact Mr. Rohland told Ms. Zane) and that Michael Rohland had defaulted on repayment of the credit card debt and had moved to Thailand. According to Ms. Zane, she was in shock,

first, because she had nothing to do with Destiny LLC, and second, because Mr. Rohland had led her to believe up to that point that Boundlass LLC had been dissolved years earlier. Ms. Zane says that both she and Gabriele refused to sign the resolutions. It was clear from Ms. Zane's attempt to mediate the dispute between Mr. Rohland and his brother, at the request of Michael Rohland, that the animosity between the brothers was insurmountable, at least at that time.

- [73] Around the same time, Ms. Zane made a decision she says she regrets, by agreeing to have Mr. Rohland and a construction company he supposedly knew, rather than independent contractors who had bid on the project, complete the construction of her home on Bowen Island. Mr. Rohland was not fulfilling his commitments, and he and Ms. Zane had a falling out. Ms. Zane testified that Michael Rohland tried to mediate the dispute between them, during which time Mr. Rohland confessed that he had an interest in the construction company that was apparently defaulting on the construction project. The revelation angered Ms. Zane. She says that she ended up signing a settlement agreement with Mr. Rohland in December 2020, but that in January and February 2021, the construction company in which Mr. Rohland had an interest and Michael Rohland began placing contractor's liens on her home to prevent her from obtaining further financing to complete the construction. Litigation between the parties continues on that front. Clearly, a lot was going on between Ms. Zane, Michael Rohland and Mr. Rohland that was not put before this Court.
- [74] Finally, in December of 2020, Ms. Zane discovered the "piano documents". As stated, they are a series of documents she says belonged to Mr. Rohland that he left on the piano of her home on Bowen Island during construction. Although Ms. Zane was still living at her mother's apartment in North Vancouver, the construction of her home on the Bowen Island property must have been close to completion, because Ms. Zane testified that Mr. Rohland would sometimes sleep there when he could not get back aboard Kindness at Point Roberts, and because over time, she moved more and more pieces of furniture from the rental containers in which they were stored after her move from her West Vancouver home in August 2017 into the home on Bowen Island, hence the piano being in the home.
- [75] According to Ms. Zane, from what she could tell from the piano documents, Boundlass LLC had not been dissolved, and in May 2017, it became the managing member of Destiny LLC, which, in January 2017, had purchased Destiny and, in April 2017, entered into the charter-to-purchase agreement for Kindness. Michael Rohland had used US\$250,000 from his credit card to finance the purchase of Kindness. At least some of the funds used to purchase Kindness emanated from the trust account in which the Insurance Proceeds were deposited, as confirmed by Mr. Perry's trust ledger, and an insurance document for the vessel Destiny dated October 2020 shows the loss payee under the policy to be Boundlass LLC, the managing member of Destiny LLC. In addition, the trust ledger shows Mr. Rohland to have received US\$182,500 (US\$148,000 from May 18, 2017 to June 28, 2019, when the balloon payment for the purchase of Kindness was made, and then US\$34,500 between then and March 20, 2020) from that same trust account, which also shows a transfer on April 6, 2017 to

an entity identified as Associated Foreign in the amount of US\$60,259.11. That amount seems to correspond to the \$79,985 received by Ms. Zane from Orange Capital on April 7, 2017. Both Associated Foreign and Orange Capital are entities controlled by Michael Rohland.

- [76] As for Mr. Perry, he testified that the trust ledger was opened to accommodate his client with respect to the receipt and disbursement of the Insurance Proceeds. In fact, apart from the payment of Mr. Perry's retainer, the first entry on the trust ledger is the deposit of the Insurance Proceeds on April 5, 2017 received from Boundlass' underwriters. There are then a number of subsequent withdrawals and deposits through to October 12, 2020, when the balance in the trust account was nil. Mr. Perry confirms that the transactions in the account begin with the receipt of the Insurance Proceeds involving Boundlass, but then, "the disbursements continue for a period of time up until the charter and the purchase of the Kindness". He also testified that the items indicated on the trust ledger, including dates, manner and amounts of disbursements, and the party to whom or to which the disbursement was made, including I presume the series of disbursements totalling US\$182,500 apparently made to Mr. Rohland, were all accurate.
- [77] When asked whether Michael Rohland would give instructions with respect to each disbursement transaction, Mr. Perry stated that the entire matter involved what he described as a family relationship, and that there were interactions between himself, Michael Rohland and Mr. Rohland over the years. Mr. Perry described Mr. Rohland as the "action guy", doing the leg work for many of the yachts and thus often requesting funds, while Michael Rohland was "more paperwork-on but less hands-on" and that consequently "a lot of the funds went to Mr. Rohland as the hands-on guy". Contrary to what Mr. Rohland stated during his testimony that he did not receive any funds from the trust account, Mr. Perry confirmed that Mr. Rohland was aware that payments were being made to him, but then again so was Michael Rohland, who was "aware of everything".
- [78] Apart from the receipt of the Insurance Proceeds, Mr. Perry was generally unable to recollect what the disbursements from the trust account related to, although he confirmed that the entity receiving the payment was properly identified on the trust ledger. He did recall that one disbursement related to the payment of insurance for Kindness during its charter period, and that certain disbursements, identified as charter fees, were made to an entity identified as "California Maritime". Mr. Perry confirmed that the ledger showed a number of charter payments made with respect to Kindness and California Maritime Academy Foundation, Inc., and then the balloon payment for the purchase of Kindness on June 28, 2019, for US\$336,032.37.
- [79] The trust ledger also shows a series of deposits on June 27 and 28, 2019 totalling US\$229,791.10 (which I suspect was US\$230,000, net of bank charges). Mr. Perry was not able to identify the source of the deposits, but stated that his trust ledger suggests that the purchase option under the charter-to-purchase agreement for Kindness was triggered, and that the deposit of US\$229,791.10 was made to top up the balance in the trust account to

make the final balloon payment. Indeed, the series of deposits into Mr. Perry's trust account seem to coincide with confirmation by Mr. Rohland and the entry in the table of events of Michael Rohland's injection of capital, apparently just in time to make the balloon payment on June 28, 2019, of US\$336,032.37 for the purchase of Kindness.

- [80] Ms. Zane says that the discovery of the piano documents allowed her to piece together what had happened, and that she saw for the first time that the amount of CA\$79,985 that she had received to compensate everyone for their losses following the loss of the Boundlass was far less than the Insurance Proceeds emanating from that casualty. It may in fact have been the discovery of the piano documents that was the spark that ignited the present litigation. The fact that Mr. Rohland and Michael Rohland began registering liens on the Bowen Island Property a month later most certainly did not help. Ms. Zane stated in cross-examination that her relationship with Mr. Rohland broke down in late 2020, and that despite the settlement agreement she arrived at in January of 2021 with the construction company Mr. Rohland was associated with, and despite the assistance she had provided Mr. Rohland to purchase a property with another woman, he and his brother Michael began to register liens against her property and institute proceedings against her. It was at this point that Ms. Zane lost trust that Mr. Rohland would stick to the promises he had made to pay her, hence the need to institute the underlying action. Ms. Zane commenced the present action on May 31, 2021, and arrested both Destiny and Kindness at Shelter Island.
- [81] In the end, it seems that neither Destiny nor Kindness was ever employed in the charter business. Destiny is still at the Shelter Island Marina. As for Kindness, Mr. Rohland lived on the yacht at Point Roberts, Washington, until the summer of 2019 when he returned to Canada (he went through difficulties when Canadian officials found undeclared weapons on the yacht upon entry), stayed some time in Halkett Bay on Gambier Island, moved to Galbraith Bay on Bowen Island (where he ran into problems when the municipality impounded his vehicle), and finally ended up at the Shelter Island Marina in Richmond, where Kindness remains until today, with Mr. Rohland living on the yacht.

V. My findings

- [82] As stated, Ms. Zane's claim is for unpaid wages and expenses relating to Destiny and Kindness that she asserts have not been reimbursed, as well as for an ownership interest in Kindness. According to Ms. Zane, some work was undertaken aboard the yachts, at which time she was acting as a crew member or simply providing services, for example, repairing and refurbishing the yachts. Some work was undertaken while the yachts were tied up at the dock or at anchor, all for the benefit of the yachts and thus within the jurisdiction of the Court under paragraph 22(2)(o) of the Federal Courts Act, RSC 1985, c F-7. The expenses for supplies include furnishings, supplies and equipment for the yachts, as well as moorage charges and charges for marine insurance, all of which were incurred for the benefit of the yachts and thus within the jurisdiction of this Court under paragraph 22(2)(m) of the Act. By the end of the trial, Ms. Zane had waived any claim for reimbursement of groceries, alcohol

and general expenses for the group, because such a claim, even if valid, would likely not come within the jurisdiction of this Court, and certainly would not be claimable in rem against the in rem defendants.

- [83] I want to first deal with the issue of wages, and whether Ms. Zane was to be paid either as a crew member or for services provided for the benefit of the three yachts, including Boundlass.

A. The issue of unpaid wages

- [84] Before I review the issue of wages earned in respect of the yachts, I should point out that during oral submissions, Ms. Zane conceded that she is limiting her claim for crew wages to the services she provided while the yachts were at sea, i.e., while navigating. Ms. Zane concedes that, when the yachts were anchored or tied up, her labour was in the nature of regular services provided to the yachts, and not in the nature of crew services. The distinction is important because should I find that a portion or all of the services provided by Ms. Zane were as a member of the crew, the unpaid wages portion of her claim would benefit from a maritime lien, an important benefit in the event of a priority battle.

(1) Boundlass

- [85] Ms. Zane is not claiming wages regarding Boundlass in these proceedings, however, as she says the \$37,155 that she received in April 2017 covered any crew claim for that yacht. Nevertheless, the issue is still relevant because the defendants argue that the \$37,155 received by Ms. Zane was a credit that cannot be whittled away by a purportedly fictitious claim for wages and unpaid expenses, to the detriment of the defendants.
- [86] Ms. Zane testified that, prior to everyone heading down to North Carolina in July 2016 to take delivery of Boundlass, and while they were all at her West Vancouver home, Mr. Rohland had verbally agreed to hire Ms. Zane and her two boys as crew members, for which Ms. Zane was to be paid US\$30 per hour, and her boys, who were 11 and 10 years old at the time, were to receive US\$10 per hour each; he also agreed to reimburse Ms. Zane's personal expenses and expenses incurred in relation to the cost of material purchased for Boundlass. The proposal was later extended to Destiny and Kindness. Mr. Rohland denies that anyone, including his own sons, was paid wages to bring Boundlass from North Carolina to Vancouver, and denies that he agreed to pay either Ms. Zane or her boys any wages for their assistance in readying any of the yachts, whether Boundlass, Destiny or Kindness.
- [87] I should first say that I have trouble believing Mr. Rohland as regards Mateo and Max. I find Mateo's evidence clear and convincing on this issue, to the effect that he and his brother were to get paid, and that it was his mother who eventually paid them for their work on Boundlass and Destiny from the \$37,155 she received in April 2016. In his affidavit, Mateo Zane was clear that Mr. Rohland promised to pay him and his brother US\$10/hour. In his testimony, Mateo said that later on, while he was in Victoria in January 2017 working on Destiny, Mr. Rohland increased his wages to US\$15/hour. That was also the hourly wage that

applied in April 2017 when Mateo travelled to San Diego for a few days to work on Kindness. Mateo gave detailed evidence of the work he did and the manner he assisted Mr. Rohland and his sons on the yachts, acting, in the words of Ms. Zane, as a “mechanic’s assistant”, travelling to Victoria in early 2017 to work on and sail aboard Destiny, and throughout the summer and fall of 2017 travelling to San Diego and helping with and being aboard Kindness as it sailed up to San Francisco. Mateo says that Mr. Rohland directed the three of them—him, his brother and his mother—on what work was to be done with respect to all three yachts.

- [88] I have sifted through the bits of the testimony, and my appreciation of the situation is that Mr. Rohland did indeed agree to pay the young boys prior to the group heading down to North Carolina to take delivery of Boundlass, but it seems to me only in the context of indulging the boys’ imaginary adventure of being part of the crew aboard a luxury yacht, in the same way parents often indulge their young children’s fantasies by having them be pirates on a pirate ship, and having wonderful family experiences. Ms. Zane and Mr. Rohland were in a romantic relationship at the time, the families were close, and the boys were only 10 and 11 years old. The “Boundlass Crew” t-shirts ordered by Zack soon thereafter fit right into the fantasy.
- [89] I do not, however, come to the same conclusion regarding Ms. Zane’s claim for wages. Ms. Zane’s initial calculation of damages, exhibit P-28, indicates that the amount of wages attributable to Boundlass, for her and her sons, totals \$9,088. Ms. Zane is charging 10 hours a day, from July 26, 2016, to August 8, 2016, and half-days on travel days (July 25, 2016, when they flew down to North Carolina, and August 9, 2016, when they flew back to Vancouver from Key West). However, Ms. Zane has not shown how any work she may have done in North Carolina and while aboard Boundlass before disembarking at Key West is in any way different from her marketing and promotional duties as a member of Boundlass LLC. I accept that, before the yacht was put in the water in North Carolina, there was work to be done and that Ms. Zane went out to purchase supplies, including new mattresses, loaded material from storage lockers, carried boxes, cooked and cleaned—in essence being part of the family while the others were also running around effecting repairs to the yacht. But it seems to me that Ms. Zane was present not as a paid employee but rather as someone with skin in the game, as part of the ownership group of a new start-up business venture, getting things ready while enjoying a trip with her family. I accept that Ms. Zane may have been taking pictures and sprucing up the interior of the yacht, but it seems to me that she was doing so in view of the business venture. I find it strange that Mr. Rohland would agree to pay Ms. Zane for the same work for which she was given a membership interest in Boundlass LLC.
- [90] From exhibit P-28, I see that Ms. Zane is also charging for the time on the water, from the time the yacht left North Carolina (I take it very early in August) until she and her sons disembarked on August 9, 2016, at Key West. With Zack and Grayson already aboard, and given their experience in handling yachts, having sailed for years with their father, I cannot

see why Ms. Zane's purported skills as a crew member would be needed. In any event, as mentioned, I can certainly see how Mr. Rohland would have promised to pay the boys, but they are not plaintiffs in this case, and an agreement to indulge a young boy's fantasy does not mean that there was an agreement for Ms. Zane to get paid, and certainly not as a crew member.

- [91] The other troubling aspect of Ms. Zane's story is that the evidence suggests that everyone was together at her home in West Vancouver in early July 2016 when Mr. Rohland agreed to pay her and her boys as crew members on Boundlass. However, in his affidavit and oral testimony, Mateo mentioned only that Mr. Rohland had agreed to pay him and his brother for their services; no mention is made by Mateo in either his affidavit or his testimony of any agreement for Ms. Zane to be paid US\$30/hour. If they were together at the dinner table, I would have thought that Mateo would remember that as well.
- [92] As I set out below, I find that there was no agreement to pay Ms. Zane US\$30/hour for her work in relation to Boundlass, whether as a crew member or otherwise.

(2) Destiny

- [93] Although Ms. Zane makes no allegation of unpaid wages in her Statement of Claim in relation to Destiny, she nonetheless gave testimony and provided spreadsheets in an attempt to justify that aspect of her claim. The only evidence provided by Ms. Zane regarding the work she purportedly undertook in relation to Destiny was that she travelled to Victoria in January 2017 and was aboard the yacht during the overnight run to the USSM at Snug Cove. From the spreadsheets she prepared, I see that she alleges to have continued to work on Destiny into 2018. Ms. Zane testified that she assisted by paying for necessary parts, getting tools, cleaning the yacht including changing the bedding, and buying groceries. Ms. Zane also assisted with the lines and the buoys as the yacht approached the dock and departed from it. It also seems that her credit card was used to pay for moorage at the USSM on Bowen Island, at the request of Mr. Rohland, who told her that "things would be the same as they had been with Boundlass, that she would be paid [at the same hourly rate] and that she would get reimbursed for any expenses". Mr. Rohland has a different story; he says that once the yacht arrived in Victoria, he proposed that he and Ms. Zane spend the weekend together, as couples often do, this time on the yacht. They were to take the ferry over to Victoria, have dinner, and remain on board Destiny as they sailed to Bowen Island. Mr. Rohland was adamant that there was never any agreement for Ms. Zane to be paid for her work. I am also mindful of the testimony of Ms. Zane that the intention was that Destiny would take over the charter business that was intended for Boundlass, but refurbishment of the yacht was pre-empted with the arrival of Kindness in April 2017.
- [94] One of the difficulties I have with Ms. Zane's version of events is that she tethers her claim for wages regarding Destiny to that regarding Boundlass. However, I have already found that no agreement existed for Ms. Zane to be paid for her services, whether as a crew member or otherwise, for Boundlass. I accept that when Ms. Zane used her credit card to pay for

moorage for Destiny while at the USSM, Mr. Rohland probably did tell her that “things would be the same as they had been with Boundlass, that she would be paid and that she would get reimbursed for any expenses.” However, and here is an example of Ms. Zane overstating her case, it seems to me that this was only with respect to the payment of expenses for the yachts, and not for the payment of wages. As I have already found, I do not believe that any agreement existed for payment for Ms. Zane’s services.

- [95] The other problem for Ms. Zane is that the calculation of her claim seems to have changed over time. In relation to Destiny, in exhibit P-28, Ms. Zane claimed the amounts of \$204.80 for Mateo’s labour while in Victoria, \$614.40 from the overnight crossing from Victoria to the USSM in late January 2017, and \$15,360 for labour while the yacht was at the dock in Victoria and at anchorage, for a total of \$16,179.20 for her and her two sons.
- [96] Ms. Zane had to concede that she could not claim wages for her sons as they are not parties to this action. Consequently, in her Annotated Summary of Damages submitted upon the recommencement of trial in September 2024, Ms. Zane agreed to limit her claim for wages to the time the yachts were under way, and for the expediency of the trial to abandon her claim for time “on dock and at anchor”. Thus, from the amount of \$16,179.20, she proposed a reduction of 50% to reflect such a concession, and also deducted a further 25% representing the wages for her sons, leaving a claim for wages in the amount of \$6,374.40, equivalent to 166 hours at \$38.40 (US\$30) per hour. The deductions were somewhat arbitrary, but they were made as the trial was coming to an end and, as mentioned, for the expediency of the trial. The difficulty with this new method of calculating her claim for wages on Destiny is that, after deducting the time while “on dock and at anchor” in exhibit P-28, her claim for wages was only \$614.40, representing only the overnight crossing from Victoria to the USSM at Bowen Island. However, she is now claiming over 10 times that amount, \$6,374.40, which, according to her, also accounts for her abandoning her claim for any time while the yacht was “on dock and at anchor”. There is an inconsistency in the manner in which she has chosen to present her claim.
- [97] As yet another way of calculating her claim, and in addition to exhibit P-28 and her Annotated Summary of Damages, Ms. Zane prepared and submitted a spreadsheet for the Court during the second leg of the trial, showing the location of Destiny and Kindness at various points in time, and identifying the individuals attending to the yachts at the time. The spreadsheet also provides a detailed account of the hours Ms. Zane claims she was working on Destiny. With no evidence of any repair work being undertaken for or on Destiny, and with no testimony by Ms. Zane in support of her new spreadsheet, as it was submitted after her evidence was closed, Ms. Zane claims on the spreadsheet to have worked 279 hours (the equivalent of US\$8,370 or a little under \$11,000 at US\$30/hour) in relation to Destiny. I outline her claim as set out in her spreadsheet, and my determination, as follows:

- (a) As part of the paid crew of Destiny for 2 days during the overnight crossing from Victoria to Bowen Island on January 20, 2017 – total 16 hours. [98] I cannot accept that Ms. Zane was hired as a paid crew member, as there is no reason to believe that her services as such were required. It makes more sense that she was just enjoying the overnight trip from Victoria to Snug Cove.
- (b) Working on the vessel for 18 days of 8 hours each while Destiny was at the USSM from January 2017 to April 2018 – total 144 hours [99] I have no doubt that Ms. Zane and Mr. Rohland (who were living together in her West Vancouver home at least until June 2017, when they travelled to San Diego to pick up Kindness) spent time on Destiny between January 2017 and April 2018, and that Ms. Zane paid for expenses, got tools, cleaned storage cabinets because of mice and cockroaches, cleaned the dishes, changed the bedding and bought groceries. Clearly Ms. Zane also assisted with docking and undocking the yacht. However, I do not find that this work was undertaken by Ms. Zane in any way other than to spend time with and help her boyfriend, as couples often do. I do not see why that would change because their relationship became platonic in September 2017. Putting aside that there is no evidence that any substantial work was done on Destiny after the arrival of Kindness, there was a lot going on between Mr. Rohland and Ms. Zane throughout this period, including the building of Ms. Zane's Bowen Island property. There is thus little in the way of evidence to ground any finding that Ms. Zane was working on Destiny, let alone that she was to get paid for that work.
- (c) Crewing the yacht on May 1, 2018, while shifting Destiny from the USSM to her Bowen Island property – total 2 hours [100] Again, there is no evidence as to why her services as a crew member were required. I accept that both Destiny and Kindness needed to leave the USSM, and that Ms. Zane assisted with the lines and buoys along the way, but it makes more sense that Ms. Zane would want to travel aboard Destiny as a mode of transport to get to Bowen Island, as it was being tied up in the waters adjacent to her property.
- (d) Working on the yacht for 12 days of 8 hours each while at anchor off the Bowen Island property from May 2018 to November 2018 – total 98 hours [101] Martin White confirmed during his testimony that he met Mr. Rohland and Ms. Zane when they were living aboard Kindness while it was at the USSM starting in September 2017, and that he also assisted for some time with the construction of Ms. Zane's home on Bowen Island. Mr. White confirmed that Ms. Zane and her boys would often stay on Kindness, either on weekends or during the summer of 2018, similar to Ms. Zane's testimony on the issue. But again, there is no evidence that any work was being done on Destiny, and in fact there was testimony to confirm that, given the remote location of the property, some of the construction workers were living on Destiny during the construction of Ms. Zane's home. I accept that Ms. Zane may have gone aboard Destiny from time to time, as it was tied up alongside Kindness, to check up on things and clean up or do some cooking for the construction crew, but from my understanding, the construction crew building her home on Bowen Island were living on the yacht so as to facilitate construction of the home. There is no evidence as to the nature

of what Ms. Zane was doing during the 98 hours she claims to have been retained by Mr. Rohland, let alone that she was to be paid for those hours.

- (e) Assisting with the departure of Destiny from her property to proceed to the Shelter Island Marina in November 2018 – 3 hours [102] I have no doubt that Ms. Zane may have assisted with the lines of the yacht as it departed from her property, but it is more likely than not that she was simply helping out with no expectation of payment.
- (f) Assisting with tarping, cleaning, securing Destiny over 2 days of 8 hours each while the yacht was at the Shelter Island Marina in 2019 – total 16 hours [103] Again, there is no evidence that assisting with the securing and tarping of the yacht from time to time would entail a promise of payment from Mr. Rohland. Again, I think Ms. Zane has simply overstated her case.

[104] For the same reasons as those regarding Boundlass, I am not convinced that Ms. Zane was supposed to get paid for her assistance with Destiny, or that Ms. Zane was on board the yacht for any reason other than the fact she was Mr. Rohland's friend and the mother of two young boys who were also spending time on the yacht, whether in Victoria when it was picked up, while it was at the USSM, or while it was tied up at their Bowen Island property as the construction crew were building their home. Ms. Zane says that she assisted with tending the lines and buoys as the yacht was departing Victoria and arriving at the USSM, but that is not inconsistent with anyone enjoying a yacht trip, and there is nothing that Ms. Zane testified to that would have me believe that she acted as a crew member, or for that matter, as a service provider for which she would have been paid. As was the case with Boundlass, I find that there was no agreement to pay Ms. Zane wages, whether as a crew member or as a service provider, in relation to Destiny.

(3) Kindness

[105] Exhibit P-28 simply outlines wages purportedly earned by Ms. Zane and her two sons relating to Kindness, in the amount of \$85,504. The Annotated Summary of Damages presents the same form of generalized calculations as were undertaken with respect to Destiny, and arrives at a figure of \$30,144 for Ms. Zane alone (the equivalent of 785 hours at \$38.40/hour). In addition, with the new spreadsheet submitted to the Court during the second leg of the trial showing the location of Destiny and Kindness at various points in time, Ms. Zane provides a further detailed account of hours during which she argues she was working on Kindness. Although the spreadsheet contains gaps and some double entries, from what I can tell, Ms. Zane is claiming to have worked 140 days of 8 to 10 hours, for an amount of about \$48,000 at the same \$38.40/hour rate, from the time they travelled to San Diego in June 2017 to January 2020 in Point Roberts. This would include travel north from San Diego, the time at Newport Beach and San Francisco, travel from Point Roberts up to Desolation Sound, the time the yacht was at the USSM at Snug Cove between September 2017 and April 2018, the time the yacht was tied up at Ms. Zane's Bowen Island property in 2018 (May to November), and the period the work on the yacht was purportedly done in

2019 and 2020 while it was at Point Roberts. No significant details of the nature of the work are provided on the spreadsheet, other than either “working” on the yacht or “crewing” the yacht. Also, Ms. Zane does not seem to give credit for the period of time the yacht was at the USSM, notwithstanding that, during her cross-examination, she confirmed that in exchange for room and board for herself and her sons aboard Kindness during this time, she provided cooking and cleaning services.

[106] It is not necessary for me to undertake the same review as I did regarding Destiny. Suffice it to say that I see nothing in the spreadsheet to have me believe that Ms. Zane attended or was aboard Kindness other than simply to enjoy the experience of yacht living, or to spend weekends and many summer days with her boys, while being involved with her Bowen Island property as it was being built. Ms. Zane’s counsel had to concede that the evidence as to the nature of the supposed work that Ms. Zane performed while Kindness was moored off of her Bowen Island property was thin; I agree. Under the circumstances, although I have little doubt that Ms. Zane tended to Kindness from time to time, it was not in a paid capacity.

[107] I also note that, although Ms. Zane kept a very meticulous record of expenses and occasionally sent it to Mr. Rohland so as to keep him up to date with what was owing to her, she kept no record of time spent aboard the yachts, and at no time during the four years she says that she worked aboard the three yachts did she ever document her claim by way of an occasional email to Mr. Rohland. Ms. Zane says she trusted Mr. Rohland. That may be true, but at some point, a reckoning was supposedly expected, at least according to Ms. Zane, who was certainly not too shy to ask Mr. Rohland for the repayment of some of the money she was owed, leading to the US\$5,000 cheque she received in September 2017. But as regards her claim for wages, there was no tally, notations or any attempt at separating the parts of the trips that were for family pleasure from the parts of the trips that were supposedly undertaken on a to-be-paid basis.

[108] The only document Ms. Zane was able to point to that may support her position is an email to Mr. Rohland, to which she attached, at some point, a record of all the expenses she incurred and that were purportedly owing to her, and which she ends with a somewhat cryptic comment that the total of the expenses does not include wages. From my perspective, the comment may just as well have been referring to the wages that were owing to Mateo and Max, and does not establish that Ms. Zane was to be paid the wages she claims in these proceedings.

[109] All in all, Ms. Zane has simply not convinced me, the burden being upon her that Mr. Rohland, as representative of Boundlass, Destiny and Kindness, committed to paying her for her services, whether as a crew member or otherwise.

B. Nature of the payment of \$37,155

[110] This brings me to the assessment of the funds received by Ms. Zane in April 2017, which were part of the Insurance Proceeds from Boundlass. As stated, Ms. Zane is making no claim in these proceedings for payment of wages or reimbursement of expenses incurred regarding Boundlass, as she claims that she and her boys were fully paid from the proceeds from the insurance received following its loss. It is “ancient history”, as she puts it, which is not relevant to the claim she is making today. I cannot agree. There is a dispute as to what the \$37,155, i.e., the remaining balance of the \$79,985 payment, represented. Mr. Rohland claims that the amount was a credit, to be used by Ms. Zane for expenses she was expected to incur for Destiny and then, as matters turned out, for Kindness. As mentioned above, Ms. Zane states that this amount was to be kept by her and meant to cover her wages, including wages for her boys, expenses and items she had lost when Boundlass sank. In one of her spreadsheets prepared for the purpose of the litigation (exhibit P-28), Ms. Zane sets out the following regarding Boundlass:

Boundlass Insurance Payment – received \$37,155:

Less \$10,907.90 for travel and other refurbishing expenses related to Boundlass;

Less \$12,000 for ring (\$10,000) and clothes (\$2,000) lost aboard Boundlass when it caught fire and sank;

Less \$9,088 in wages for her and her sons as crew members of the Boundlass;

Less \$5,000 for preparation work, marketing research for Boundlass.

Unused total: \$159.10

[111] There is no dispute that Ms. Zane received a net amount of \$37,155 in April 2017, which was the amount of \$79,985 transferred to her, less the distributions to Grayson, Zack and Tatiana. There is also no suggestion that the \$37,155 was meant to represent Ms. Zane’s membership share in Boundlass LLC. What is clear is that the \$37,155, although emanating from the Insurance Proceeds, did not represent a claim under the insurance policy for lost wages or expenses. I have not been shown how the insurance policy would have covered such things as lost wages or expenses incurred by crew members or any service provider in refurbishing the yacht, or for Ms. Zane’s personal effects purportedly left on board Boundlass at the time of the casualty. Unlike the payout to Grayson, Zack and Tatiana for the loss of their personal effects covered by the insurance policy, Ms. Zane’s personal effects such as a ring, watch, necklace and clothes purportedly left on board did not form part of the insurance claim submitted by Mr. Rohland. Consequently, the balance of \$37,155 that Mr. Rohland instructed Ms. Zane to keep must have been for reasons unconnected to the underwriters’ settlement of the insurance claim.

(1) Travel and other expenses of \$10,907.90

- [112] As regards what Ms. Zane has characterized as refurbishing expenses of \$10,907.90, a review of the spreadsheet and the backup credit card statements suggests that the expenses incurred by Ms. Zane between July 25, 2016, when she and her boys travelled to North Carolina, and August 9, 2016, when she disembarked with her boys in Florida and they returned to Vancouver, were more in line with travel expenses, and mostly meal expenses while in the United States. From what I can tell from the confusing spreadsheets, Ms. Zane's expenses for yacht supplies may be under \$1,000. However, I accept her testimony over Mr. Rohland's that the agreement was that all her expenses would be reimbursed as business expenses to be deducted in relation to Boundlass. Consequently, I find that Mr. Rohland had, at least, agreed to reimburse Ms. Zane's expenses for her and her boys to join Boundlass, and that these expenses were incurred for the benefit of the yacht, given the assistance and services she and her sons provided for the benefit of Boundlass, independently of the issue of the payment of wages.
- (2) Deduction for the ring and clothes of \$12,000 [113] As regards the \$12,000 deduction for the ring and clothes supposedly lost aboard Boundlass when it caught fire and sank, normally such a claim should have been included as part of the insurance claim that was made against the underwriters following the loss of the yacht. However, from the email exchanges in the record, none of the itemized claim submissions made at the time (for Grayson, Zack and Tatiana) were for Ms. Zane. Mr. Rohland testified that there was an insurance cap on personal items and that the insurance policy had exclusions for jewelry. In fact, Ms. Zane testified that she was aware of the insurance cap, at least as regards the claims made by Grayson and Greg. In any event, Mr. Rohland testified that Ms. Zane took her belongings off the yacht when she disembarked in Florida with her boys to return to Vancouver. Ms. Zane says she left personal items on the yacht because she was intending to rejoin the yacht with her boys at the Panama Canal after the boys had returned from their two-week vacation with their father. Mr. Rohland says that cannot be, as the boys were soon starting a new school year, and that it was not possible for them to return to the yacht when he, Grayson, Zack and Tatiana were going through the Panama Canal.
- [114] For my part, I have trouble accepting Ms. Zane's account. She testified that the "plan was that [Mr. Rohland] would continue with the remaining crew [presumably Zack, Grayson and Tatiana] down to Panama and I would join him in Panama and the crew and help them to get through the locks in the Panama Canal, and then assist them with coming up the coast". Elsewhere in her testimony, she said that the plan was for her and her boys to return to the yacht in Panama. Mr. Rohland testified that he had 30 years' experience in operating yachts, that he had captained yachts that would run from Alaska to the British Columbia coast, and that he had sailed around the world, through the Panama Canal and up the U.S. coast to Boston. He also testified that many of those trips were undertaken with his sons Zack and Grayson, who were considerably older than Ms. Zane's boys, and who have significant yachting experience in their own right. This testimony was not contested. As a result, I have difficulty understanding why Ms. Zane's services would be needed, other than simply as a guest helping out with the lines from time to time.

- [115] In any event, although no dates or transit times were given other than the date of the loss of Boundlass, the spreadsheets of expenses for Boundlass submitted by Ms. Zane suggest that she and her sons disembarked from the yacht on August 9, 2016 (when the vessel was in the Florida Keys). The date of August 9 is consistent with the other evidence: Ms. Zane mentioned that it took about a week for the yacht to depart North Carolina after they arrived around July 25, so they would have departed North Carolina around August 2 or 3, and then had to proceed down to the Florida Keys, roughly 625 nautical miles in 6 or 7 days. This is consistent with Ms. Zane's testimony that she was on the yacht about a week before she and her boys disembarked. In addition, once Ms. Zane and her boys disembarked on August 9, Boundlass would then reasonably have taken a few more days to reach the island of Roatán—roughly 510 nautical miles in 5 days—where it caught fire and was lost, which we know was on August 14, 2016.
- [116] If Ms. Zane and her boys disembarked in Florida on August 9, 2016, the earliest that the vacation with their father would have reasonably started would have been August 10 or 11, 2016, after she and her boys arrived back in Vancouver. The vacation was to last two weeks, so even in Ms. Zane's best-case scenario, she and her boys would have been ready to fly down to Panama to rejoin the yacht only around August 24 or 25, 2016, at the earliest.
- [117] As for Boundlass, it appears from the evidence that the yacht was making a little over 100 nautical miles per day, on average. Therefore, it is reasonable to think that it would have taken, but for the casualty, around 6 to 7 days to fight the winds and choppy waters of the Atlantic Ocean to cover the over 600 nautical miles from Roatán to the entrance of the canal at Colón, Panama, and then about 4 to 6 days for incidentals (including registration at Colón, surveying (including measuring) of the yacht, and the assignment of a transit date). Then they would have the actual transit time through the canal to arrive at the western end, at Panama City on the Pacific side, towards the end of August. All in all, I would think that Ms. Zane and her boys could reasonably have rejoined Boundlass as it exited the canal on the Pacific side towards the end of August 2016, after the boys' vacation with their father.
- [118] However, Ms. Zane's boys were just about to start a new school year, and as previous years show, Ms. Zane was always in Vancouver for her boys at that time of year. Once having exited the Panama Canal on the Pacific side, Boundlass would still have the nearly 4,800-nautical-mile run north to Vancouver, with no evidence that the yacht would do better than 100 nautical miles per day, on average, or whether they would need to make stops along the way. Nor was any mention made that Ms. Zane and her boys intended to disembark from the yacht again at some intermediate point to fly back to Vancouver. In fact, Ms. Zane's testimony was that she would "then assist them with coming up the coast". Therefore, it does not seem reasonable to me, from the evidence, that Ms. Zane intended to rejoin Boundlass as she stated, as it would have taken between 45 and 50 days for Boundlass to arrive in Vancouver, also accounting for any intermediate stops for fuel, victuals and incidental side trips.

[119] In any event, I can only speculate as to why Ms. Zane would have left a \$10,000 ring aboard the yacht when she flew back to Vancouver on August 9, 2016. Overall, although I have trouble with much of Mr. Rohland's testimony, I find that Ms. Zane has not convinced me, the burden being on her, that she left any personal items aboard Boundlass when she and her boys disembarked at Key West to return to Vancouver.

(a) Wages for Ms. Zane and her boys – \$9,088 [120] As regards the \$9,088 charge for wages for Ms. Zane and her sons as crew members of the Boundlass, as stated, I accept only the portion intended for her sons. From the manner Ms. Zane undertook her calculations, it seems to me that the boys' portion is 40% of the total, thus \$3,635.20. I accept that Ms. Zane paid her sons this amount, which Mr. Rohland apparently agreed to pay them, from the \$37,155 she had received from Mr. Perry. As mentioned, I find that there was no agreement for Ms. Zane to be paid, whether as a member of the crew or for other services, at least as regards Boundlass, independently of the issue of reimbursement of expenses. Therefore, I find that only \$3,635.20, i.e., the wages Ms. Zane paid to her sons, should be deducted from the \$37,155.

(b) Preparation work and marketing research – \$5,000 [121] The same reasoning applies to Ms. Zane's claim of \$5,000 for preparation work and marketing research, which is inconsistent with her testimony as to why she was given a membership interest in Boundlass LLC to begin with. In any event, there is no supporting justification for this figure. I am not convinced that this amount should be deducted from the amount received by Ms. Zane in April 2017.

[122] Consequently, from the amount of \$37,155, I accept that \$10,907.90 is to be allocated to expenses to be reimbursed to Ms. Zane regarding Boundlass, and \$3,635.20 allocated as wages for Mateo and Max properly paid by Mr. Zane. This leaves an amount of \$22,611.90 held by Ms. Zane as a credit for expenses not yet allocated. Further credits include, as conceded by Ms. Zane, the payment of US\$5,000 (\$6,400) made to Ms. Zane by Mr. Perry in September 2017, as well as a credit of \$7,288.48, which Ms. Zane confirms was a payment made by Mr. Rohland, apparently on her behalf, for a total credit amount in favour of the defendants of \$36,300.38.

C. Expense claim regarding Destiny

[123] As mentioned, until the final days of trial, the parties had been incapable of coming together to provide the Court with an agreed summary of the expense claim being made by Ms. Zane or of indicating to what extent the defendants, if I found for Ms. Zane, could agree that such expenses indeed related to either Destiny or Kindness. During his testimony, Mr. Rohland conceded only the charges for marine insurance for Destiny that Ms. Zane was claiming as properly owing. In the end, Ms. Zane's counsel did provide me with a Revised Annotated Summary of Expenses Claimed by the Plaintiff totalling \$37,910.77, a reduction from the amount of \$50,234.25 that appeared in her initial spreadsheet, exhibit P-28. In the revised spreadsheet, Ms. Zane also agrees to abandon certain expenses totalling just over

\$1,400, for the expediency of the trial. Consequently, the claim for reimbursement of expenses of Ms. Zane as regards Destiny and Kindness, as per the final spreadsheet, totals about \$36,500.

- [124] I should mention that the moorage expenses incurred from September to November 2016 regarding Destiny seem to have been omitted from the spreadsheet, apparently in error, paid by Ms. Zane while the yacht was still in Florida and before it was transported to Victoria, in the amount of \$4,717. This seems to coincide with the purchase of Destiny in September 2016 by Orange Capital and the closing of the deal in December, at which time, I take it, the yacht was loaded aboard the yacht carrier for transport to Victoria, where it arrived in January 2017. I accept that this is a reimbursable expense for Ms. Zane incurred for the benefit of the yacht.
- [125] From February to May 2017, Ms. Zane paid \$11,146.46 for the moorage at the USSM, and \$1,299.33 for marine insurance, for a total of \$12,445.79. The defendants do not dispute that these charges were paid by Ms. Zane for the benefit of Destiny. Therefore, I cannot accept Mr. Rohland's testimony that these expenses, save for the marine insurance, made up part of Ms. Zane's fair allocation of costs. Clearly, there was no incentive for Ms. Zane to pay for Destiny's moorage charges or expenses for marine insurance, other than the request of Mr. Rohland. It should be kept in mind that Mr. Rohland was living with Ms. Zane in her West Vancouver home at the time and until the summer of 2017, when everyone travelled to San Diego to take delivery of Kindness, which entered the USSM in Snug Cove in September 2017, when Ms. Zane and her boys moved aboard. I accept that the amount of \$12,445.79 is a reimbursable expense for Ms. Zane to have incurred for the benefit of the yacht.
- [126] Ms. Zane is also claiming for marine insurance she paid for Destiny in July and August 2017 in the amount of \$809.27. Again, there was no incentive for Ms. Zane to voluntarily pay this amount for a yacht she had no interest in. I find that this amount is owing to her as having been incurred for the benefit of the yacht.
- [127] From September 2017 until April 2018, Destiny was still at the USSM, alongside Kindness, on which Mr. Rohland, Grayson, Ms. Zane and her two boys lived, at least until Ms. Zane and her boys moved into her mother's home because of the difficulties of getting the boys to school every morning from Snug Cove. No date is given as to when Ms. Zane moved off Kindness, but during this period, Ms. Zane paid \$3,000 for moorage at the USSM and \$1,970.08 in marine insurance for Destiny. Even if I were to accept Mr. Rohland's version that Ms. Zane had agreed to pay her fair share of expenses while living on Kindness with her boys, there is no explanation why she would voluntarily pay expenses attributable to Destiny. I therefore find that the payment of \$4,970.08 is owing to her as reasonably incurred for the benefit of the yacht.
- [128] Ms. Zane claims that, between May 2018 and September 2019, including the period the yachts were tied up in the waters adjacent to Ms. Zane's Bowen Island property (May to November 2018), she paid for marine insurance for Destiny totalling \$6,135.03. Of that

amount, \$2,055.14 represents payments made from May to November 2018, during which time the evidence shows construction workers living on Destiny so as to facilitate access to the property during that period. I can certainly see a benefit for Ms. Zane in having Destiny tied up alongside her property. Consequently, I accept that Ms. Zane would probably have agreed to pay for the marine insurance for Destiny while it was tied up to her property. As for the payments made after November 2018, again, I see no incentive for Ms. Zane to have voluntarily assumed those costs. Therefore, I find that the payment of \$4,079.89 is owing to her as a service for the benefit of the yacht.

[129] Accordingly, I find that Ms. Zane is entitled to \$27,022.03 in expenses incurred for the benefit of Destiny.

D. Expense claim regarding Kindness

[130] Ms. Zane is claiming expenses charged to her credit cards by Mr. Rohland during the month of May 2017 in the amount of \$4,175.68, while he was in San Diego working on Kindness. Up to the last day of trial, Mr. Rohland denied any knowledge of what these expenses related to, until the revelation that Ms. Zane's US Visa card, to which nearly all of these expenses were being charged, was in his possession while he was in San Diego. As a result, I have no hesitation in finding that these expenses were incurred for the benefit of Kindness.

[131] For the period from June to September 2017, when Kindness was being readied for the trip north, and during that trip up, until the time the yacht was put into the USSM at Bowen Island, Ms. Zane claims reimbursement of \$6,385.55 for Kindness. This amount excludes expenses she had been claiming but dropped on the last day of the trial, but it includes roughly \$1,600 in airfare for the trips to San Diego in early and late June 2017, and about \$840 at Costco in Newport Beach, \$1,750 in marine fuel, \$390 for marine insurance and \$1,715 in marine supplies. As I had come to expect, Mr. Rohland conceded only the fuel charge and marine insurance for Kindness, along with marine insurance for Destiny as relating to the in rem defendants. For my part, I find that all expenses relate to and were incurred by Ms. Zane for the benefit of Kindness, for a total of \$6,385.55.

[132] For the period in early September 2017, just prior to when Ms. Zane and her boys were living on Kindness while it was at the USSM, she is claiming expenses for marine supplies of \$1,318.25 and marine insurance of \$393.05 related to the yacht. There is no evidence as to when the supposed agreement between Mr. Rohland and Ms. Zane took effect in relation to sharing expenses while she and her boys lived on Kindness, so I am inclined to give Ms. Zane the benefit of the doubt and allow her claim for \$1,711.30 as a charge for the benefit of Kindness.

[133] As mentioned, both in rem defendants were moved and tied up in the water adjacent to the Bowen Island property between May and November 2018. Mr. Rohland and Grayson were living on Kindness, and Ms. Zane and her boys would spend weekends at the property, aboard the yacht, while Ms. Zane's boys were in school and throughout most of the summer

of 2018. It will be remembered that Ms. Zane bought the property in 2016, but it is not clear when construction began to build her home. Initially, as part of these proceedings, Ms. Zane was claiming \$15,750 for moorage charges while the yachts were tied up in the waters adjacent to her property, but this claim was not seriously pursued. In any event, I would have difficulty seeing how Ms. Zane could justify such a charge when she has no proprietary or contractual rights to the waters in which the yachts were tied up.

- [134] I also accept Ms. Zane's testimony, denied by Mr. Rohland, that they had connected Shaw Cable to Kindness during this period. The photographs of the yachts show what looks to be a cable line running from the property to one of the yachts. From the evidence, I see that between May and October 2018, Ms. Zane paid a total of \$435.21 for cable and the amount of \$666.40 for a dishwasher for Kindness. Ms. Zane also claims to have paid \$371.53 for a freezer for the yacht in May 2019. I am not inclined to award any amount to Ms. Zane in relation to the Shaw Cable expenses; it would seem that the cable, which was paid monthly, was being enjoyed by everyone, particularly as Ms. Zane and her boys were often on the property throughout the summer of 2018. I am, however, inclined to award Ms. Zane for the dishwasher and freezer for Kindness; unlike the situation during which she was living on Kindness while at the USSM a few months earlier, it does not seem reasonable to me that Ms. Zane would gratuitously equip Kindness with a dishwasher and freezer that would presumably stay on the yacht even after it was moved from her property. Therefore, I would allow \$1,037.93 of expenses as a benefit to the yacht.
- [135] Accordingly, I find that Ms. Zane is entitled to \$13,310.46 in expenses incurred for the benefit of Kindness. Adding the expenses I have allowed regarding Destiny in the amount of \$27,022.03, the total allowable expenses owing to Ms. Zane in relation to the in rem defendants are \$40,332.49. Deducting from that amount the credit of \$36,300.38, Ms. Zane is owed \$4,032.11 in expenses, with \$1,330.68 being allocated to Kindness and \$2,701.43 being allocated to Destiny.

E. Claim relating to ownership interest in Kindness

- [136] Putting aside for the moment the issue of whether I even have jurisdiction to hear Ms. Zane's claim as to an ownership interest in Kindness, her argument is straightforward. She argues that she had a 30% interest in Boundlass LLC, which had only one asset, the yacht Boundlass, and that when the yacht was lost at sea, the asset was liquidated or monetized, and its value crystallized at US\$765,975, the amount of the Insurance Proceeds. With no evidence of any debts of the company, which Ms. Zane concedes would have had to be satisfied before any distribution to members, had the company been dissolved at that point, she would have had a right, to the extent that her 30% "profit and loss" membership interest would have allowed, to a certain portion of those funds. However, without her knowledge or consent, those funds were used to invest in another asset, the yacht Kindness, in which she was not given any interest, to the detriment of the rights she had in the Insurance Proceeds.

- [137] Ms. Zane argues that her claim to an ownership interest in Kindness rests on the factual premise that money in which she had an interest was used fraudulently, to purchase a vessel in the name of another, in circumstances that give rise, citing the Supreme Court decision in *Rawluk v Rawluk*, [1990] 1 SCR 70, 1990 CanLII 152 (SCC), to a remedial constructive trust, a purchase money resulting trust, or a substantive constructive trust. It is more likely one of the latter two, according to Ms. Zane, given the decision by the Federal Court of Appeal in *Harry Sargeant III v Al-Saleh*, 2014 FCA 302 [Sargeant], which suggests that this Court has no jurisdiction to consider a claim by a party for ownership in a vessel based solely on a remedial constructive trust, as such a claim does not fall within the ambit of paragraph 22(2)(a) of the Federal Courts Act. Ms. Zane seeks to distinguish Sargeant and argues that the proprietary claim that is made in the present case is not governed by the reasons provided by the Federal Court of Appeal. In any event, she asserts that it is most likely the principles relating to a substantive constructive trust that apply to the circumstances of this case.
- [138] Whatever concept of trust she claims to benefit from, Ms. Zane concedes that for any of the three trust principles outlined in her argument to apply, I must first find, as a question of fact, that some type of fraud or breach of a fiduciary obligation has been perpetrated against her, i.e., that the funds to which she claims to be entitled were used as ill-gotten gains by Destiny LLC to purchase Kindness. In this case, I am afraid the facts do not line up in favour of Ms. Zane.
- [139] The first step is to determine whether Ms. Zane had an interest in the Insurance Proceeds. With the evidence before me, I cannot find that she did. Boundlass LLC is a creature of statute, and it seems to me that the rights of any member of a limited liability company to any revenue, assets or proceeds of the company is governed by the applicable statute or governing law. As I alluded to in my decision of August 26, 2024, allowing Ms. Zane to reopen her evidence, I would have expected Ms. Zane to have established that entitlement under Florida law by way of expert evidence. Here, there is no evidence of foreign law—presumably Florida law—on the issue. As noted in paragraph 21 of my earlier decision, Ms. Zane acknowledged that no expert evidence on foreign law would be tendered, but she stated that any rights to the Insurance Proceeds would be established by other means, including the constituting documents of Boundlass LLC. However, the only reference to those constituting documents is to the Operating Agreement of Boundlass LLC, which identifies Ms. Zane’s membership interest as “profit and loss share: 30%”, which Ms. Zane asks that I interpret as being similar to common shares in a corporation. In fact, Ms. Zane asks that I somehow make a leap of faith that, as a member of a limited liability company, she would be entitled to the assets of the company upon dissolution to the extent of her percentage allocation. I am not prepared to do that. Expert evidence of Florida law, the law under which Boundlass LLC was created, would be required.

- [140] For completeness, I should mention that no argument was led to clarify what was meant by Ms. Zane having a “profit and loss” membership in Boundlass LLC, as the term was used by the parties before me. From my own experience, although I am somewhat familiar with limited liability companies in the United States having “members” or “managing members”, I am unfamiliar with the concept of a “profit and loss” member being part of any statutory scheme in Florida law under which limited liability companies are created. In fact, looking at the Operating Agreement for Boundlass LLC, article 5 identifies Ms. Zane as a “member”, without referring to any percentage. It is article 6, which deals with the management of the company, that identifies the three members (Orange Capital, Ms. Zane and Gabriele Rohland), and then allocates to each of them a certain percentage of “profit and loss share”. In the case of Ms. Zane, she is shown in article 6 to have a “profit and loss” share of 30%. The extent to which such an indication would give Ms. Zane a 30% interest in the Insurance Proceeds, which arguably is not earned profit, is unclear. Clarification by way of expert evidence on Florida law would have been necessary.
- [141] In any event, Ms. Zane then states that the Insurance Proceeds were misappropriated as ill-gotten gains and that the purchase of Kindness was done in secret, as she was led to believe that the amount of insurance money she received in April 2016 was the total amount of the insurance settlement. She asserts that her romantic relationship with Mr. Rohland may have ended just before she and her sons moved aboard Kindness in September 2017, but that they continued to be friendly at least until the end of 2020. The two spent considerable time together; they were together on Kindness in May and June 2017 coming up the U.S. Pacific coast from San Diego, lived together on the yacht for a few months starting September 2017, and would see each other regularly throughout 2018 and 2019 as Ms. Zane’s home on Bowen Island was being built. According to Ms. Zane, there was ample opportunity for Mr. Rohland to have informed her that Kindness was purchased with the insurance money from Boundlass.
- [142] For my part, I have trouble accepting that Ms. Zane allowed herself to believe that the amount of US\$79,985 she received in her bank account on April 7, 2017, was the full amount of the insurance proceeds emanating from the total loss of Boundlass. Ms. Zane was an executive, a professional with serious responsibilities commanding a handsome salary in a highly competitive industry. Her comportment during her testimony was poised, responsive and alert, putting aside my appreciation at times of the content of her testimony. She and Mr. Rohland were romantically involved at the time she received US\$79,985, and she knew she was part of the partnership group of Boundlass LLC. Ms. Zane knew of the settlement of the insurance claim for Boundlass in April 2017. She testified that she heard Mr. Rohland, with whom she was living at the time in her West Vancouver home, discussing the issue, and also discussing with his brother that he had found Kindness. In fact, Ms. Zane acted as the facilitator for the deposit of the US\$10,000 to secure Boundlass from the auction house, with the eventual purchase being US\$250,000. I have difficulty believing that she did not have a better idea of the approximate value of the only asset of the company of which she was now a significant member, as well as the amount needed to

insure it.

- [143] More importantly, when Ms. Zane signed the Resolution, even though hers was the first signature, the document clearly provided for the direction and use of the funds emanating from the insurance settlement once the settlement was concluded. Those sections would eventually be filled in. I do not accept that Ms. Zane simply trusted Mr. Rohland and, in essence, signed over to him what was tantamount to a blank cheque to monies she was rightly owed. Putting aside that Ms. Zane has not made out the case that the funds were rightly owing to her, the fact remains that she knew that Michael Rohland had a sizable investment in Boundlass LLC, given his 55% “profit and loss” membership, and even if she did not know the extent of that investment, she most definitely knew that the US\$79,985 did not in any way go to satisfy even a portion of it. If in fact the amount received by Ms. Zane on April 7, 2017 was the full extent of the insurance settlement, it would only make sense that part of those funds, if not all, would have gone to Michael Rohland. However, Ms. Zane was asked to use those funds to pay Zack, Grayson and Tatiana for their losses, and according to her, keep the rest for herself for what she claims were her losses, with nothing to be given to Michael Rohland for his investment loss. That makes no sense to me. For Ms. Zane to now say that she allowed herself to be led to believe that the amount of money she received on April 7, 2017, represented the full extent of the insurance funds simply strains credulity.
- [144] In support of her claim of misuse of funds by Michael Rohland and Mr. Rohland, Ms. Zane asserts that the defendants’ argument was that Boundlass LLC was in debt and those debts needed to be paid before she could be allocated the remainder of any proceeds of insurance, namely, the US\$79,985 she received in April 2017. However, Ms. Zane argues that there seem to be no funds from Mr. Perry’s trust account that went to satisfy any debt of the company. Therefore, she asserts that Boundlass LLC had no debts to speak of, and should have allocated the full amount of the Insurance Proceeds to its members, in accordance with their respective share. I feel that Ms. Zane may have misunderstood the argument being made by defendants. It was not that Boundlass LLC had accumulated debts that one would have expected to be settled from the Insurance Proceeds, but rather that Michael Rohland had financed the business venture by taking on debt instruments from the bank holding the mortgage on the yacht, and thereafter purchasing Boundlass from the auction house, thereby making an investment upwards of \$1.2 million in Boundlass LLC, justifying his control and appropriation of the Insurance Proceeds as repayment of that investment. In fact, such direction and control was what was called for in the Resolution once the blanks were properly filled in. It is true that Michael Rohland, or the companies that he controlled, do not appear to have directly received a significant portion of the Insurance Proceeds in repayment of any debt—assuming one characterizes his investment as a debt of Boundlass LLC owed to Michael Rohland—but that is not the full story. It seems to me that the story from the trust ledger is that Michael Rohland simply redirected his investment from Boundlass to Kindness, leaving Ms. Zane out of the ownership structure along the way. The question is whether he was justified in doing so.

- [145] That, of course, presupposes that Michael Rohland had in fact taken on \$1.2 million in debt through the debt instruments he assumed and the purchase price paid for Boundlass, as well as, I take it, the further injection of cash allowing for the satisfaction of the balloon payment for the purchase of Kindness. Ms. Zane argues that all there is in evidence is the testimony of Mr. Rohland, whose credibility is seriously in question. The defendants chose not to produce any records of such indebtedness or to call Michael Rohland to give his own evidence on the issue, and simply took the position that it was up to Ms. Zane to make proof to the contrary. Therefore, Ms. Zane asks that I draw a negative inference from the fact that Michael Rohland was not called to give evidence on this issue. I cannot agree with Ms. Zane. It is true that no documents were submitted by the defendants evidencing what Michael Rohland's skin in the game truly was, and that it was entirely in the hands of the defendants to come up with that evidence. However, Mr. Rohland's admittedly short testimony on this issue was also not significantly challenged in cross-examination. In addition to the possibility of raising this issue during examinations for discovery, the opportunity to test Mr. Rohland's testimony on this issue presented itself to Ms. Zane; she simply did not take it. To this, I also add that Mr. Perry, although not altogether clear during his testimony, did allude to there being issues of a mortgage and the taking on of family debt when he spoke about Michael Rohland's involvement in the disbursements from his trust account. In the end, it may not have been necessary for Ms. Zane to know the full extent of Michael Rohland's skin in the game. As I stated, even assuming she did not know the extent of that investment, she most definitely knew that the US\$79,985 did not in any way go to satisfying even a portion of it.
- [146] Finally, from the testimony of Mr. Perry, I accept that many of the disbursements from his trust account related to the chartering and eventual purchase of Kindness by Destiny LLC in fulfillment of its obligations under the charter-to-purchase agreement. However, the evidence simply does not allow me to identify exactly what percentage of the Insurance Proceeds was directed to Kindness, keeping in mind that the Insurance Proceeds were not the only funds in the trust account. It is also clear that the US\$230,000 injection of fresh capital into the trust account by Michael Rohland, as conceded by Ms. Zane, was used to finalize the balloon payment for the purchase of Kindness. There were also additional deposits into the trust account totalling US\$5,298.85, of which Ms. Zane makes no mention. Ms. Zane states that considering that an adjustment needs to be made to take into account the replenishing of Mr. Perry's trust account, an allocation to her of a 20% equitable interest in Kindness is appropriate. Under the circumstances, I cannot agree with Ms. Zane.
- [147] Moreover, although I agree with Ms. Zane that Mr. Rohland's denial that he received US\$182,500 as set out in the trust ledger is a "wilful untruth"—from my perspective yet another deviation from the path of honesty that Mr. Rohland owed the Court when he swore to tell the truth at the commencement of his testimony—such reprehensible behaviour on the part of Mr. Rohland does not equate to a finding that the funds he received from Mr. Perry's trust account were used for Kindness. Any suggestion that the funds were used to refurbish and repair Kindness is speculation at this point. In fact, other

than the payments for charter hire and the balloon payment for the purchase of Kindness, Mr. Perry was unable to confirm the use made of any of the remaining disbursements from his trust account, including the payments to Mr. Rohland.

[148] In the end, I need not determine which if any of the remedial trust mechanisms being sought by Ms. Zane is to apply. Under the circumstances, Ms. Zane has established neither that she is entitled to the insurance proceeds, nor that either Michael Rohland or Greg Rohland misappropriated the funds and used ill-gotten gains to her detriment. Moreover, it seems to me that Ms. Zane must have either known or should have known that the Insurance Proceeds were disbursed by the underwriters, and that those funds were to be taken by Michael Rohland in satisfaction of his initial investment, while allowing for a portion of those funds, in this case US\$79,985, to be disbursed to others. Under the circumstances, there is no evidence on the record before me to establish any deceitful activity, fraud or breach of fiduciary obligations perpetrated against Ms. Zane as regards the Insurance Proceeds, or any misappropriation of funds for the purchase by Destiny LLC of Kindness. Therefore, I have not been convinced that I should exercise my discretion, as Ms. Zane concedes is what she is asking me to do, to find that she has an equitable proprietary interest in Kindness.

F. The defence of the misdirected arrow, the issue of jurisdiction, and the time bar

[149] As their first argument, the defendants raise what I can only call the defence of being hit by a misdirected arrow. The defendants argue that if Ms. Zane has a claim, which the defendants deny, it is against Boundlass LLC or Michael Rohland, and not against the pleading defendants. Therefore, as Boundlass LLC has not filed a defence and Michael Rohland was not even named as a defendant, it is for Ms. Zane to pursue her claim against those parties. In fact, the defendants argue that Michael Rohland should have been named as a defendant so that he could appear and answer the claim for purportedly having misused the Insurance Proceeds.

[150] I cannot agree with the defendants. Putting aside that Ms. Zane concedes that no remedies are being sought against Mr. Rohland personally even though he is a named defendant, the fact remains that Ms. Zane's claim is squarely against the in personam defendant Destiny LLC as registered owner of the in rem defendants. Her claim is for services and material provided for the benefit of the two yachts, as well as for an ownership interest in Kindness arising from the purported misappropriation of funds and breach of a fiduciary duty she asserts was owed to her by those in charge of Destiny LLC, including Michael Rohland. Michael Rohland was scheduled to appear as a witness, and in fact provided a will-say statement. The only reason he did not appear was the tactical decision made by the defendants not to call him. From what I can tell, the fact that Ms. Zane's claim of having an interest in the Insurance Proceeds stems from her membership in Boundlass LLC, or that it was indeed Michael Rohland who somehow breached a purported fiduciary duty towards her, is simply grist for the mill. No remedy is being sought against Boundlass LLC or

Michael Rohland in these proceedings. The issues are whether Ms. Zane provided goods and services to Destiny and Kindness for which she was not paid, and whether funds in which she had an interest by way of her membership interest in Boundlass LLC or otherwise were used by Michael Rohland or someone else in a manner that would justify the Court exercising its discretion to grant her the relief she seeks by way of an equitable interest in Kindness. Ms. Zane may also have an independent right of action against Boundlass LLC and Michael Rohland. However, that does not limit her recourse against the pleading defendants.

- [151] Another issue raised by defendants during oral arguments was that Mr. Rohland went out of his way to try to find the records of Boundlass LLC, now a defunct company, to establish whether Boundlass LLC had any assets and liabilities or debts of any kind, including, I would think, the extent of Michael Rohland's investment in the company, yet the Court refused to consider the evidence somehow unearthed by Mr. Rohland on that issue and included in his affidavit that was filed in respect of the authenticity of the piano documents. I take this more as a complaint than an argument, as if Mr. Rohland—the person who was recently made a member of Destiny LLC for the purposes of speaking for the defendants in these proceedings, as mandated by Michael Rohland—was somehow an outsider, at arm's length from his brother and Mr. Perry, and detached from the affairs of Boundlass LLC, and as if he was somehow simply the captain of the yacht and was involved in only a limited way with the purchase of Boundlass from the bank and his brother's investment in the business venture of Boundlass LLC. The ruse continues.
- [152] As for the jurisdiction of this Court to even entertain Ms. Zane's claim to an equitable interest in Kindness, the defendants cite the decision of Justice Strickland in *General MPP Carriers Ltd. v SCL Bern AG*, 2014 FC 571 [The SCL Bern] for the proposition that the court has no jurisdiction to hear a claim arising from a shareholders' dispute, and argues that as the crux of the present case is tantamount to a shareholders' dispute, the Court should decline to hear the matter. I disagree. The issue in *The SCL Bern* involved a dispute between shareholders of a company which just happen to own the ship that was arrested by one of the shareholders to secure his claim. However ownership of that ship was never in dispute; the claim was for the recover of money allegedly owing under the shareholders' agreement, and the fact that the company owned a ship, as opposed to a building or a factory, was but a coincidence. Here, on the other hand, Ms. Zane is seeking a declaration that she has an equitable ownership interest in Kindness; her claim is one with respect to "title, possession or ownership of a ship or any part interest therein" (subsection 22(2)(a) of the Federal Courts Act). I therefore cannot see how *The SCL Bern* is helpful to the defendants. In any event, I need not address the issue of this Court's jurisdiction to hear Ms. Zane's claim on this issue given that Ms. Zane, on the facts of the matter, has not convinced me that I should exercise my discretion so as to find that she has an equitable proprietary interest in Kindness. That having been said, I do not read the Federal Court of Appeal decision in *Sargeant* as standing for the proposition that the Federal Court could never have jurisdiction where a constructive trust is at issue; rather, I read the decision in *Sargeant* as

establishing a roadmap, or the elements necessary for the Court to consider the enforcement of a constructive trust in relation to maritime property.

- [153] The defendants have also raised a defence of time bar, relating mostly to Ms. Zane's claim for wages and expenses. For contractual claims, as in the case here, where the cause of action arises wholly within the Province of British Columbia (*Apotex Inc. v Pfizer Canada Inc.*, 2004 FC 190 at para 14), in accordance with subsection 39(1) of the Act, the parties agree that the limitation is three years, being comprised of the two-year statutory limitation in that province plus the one-year suspension of time during the COVID pandemic. For causes of action that did not arise wholly within British Columbia, the time bar is six years, in accordance with subsection 39(2) of the Act. Ms. Zane filed her Statement of Claim on May 31, 2021. Consequently, any claim for wages and expenses arising prior to May 31, 2018, is statute-barred. This, of course, does not apply to those expenses Ms. Zane is able to set off against the \$36,300.38 credit. In the end, I find that Ms. Zane is entitled to reimbursement of expenses in the amount of \$4,032.11 left owing once the full amount of the credit is exhausted. Considering that, working backwards from the institution of the action, more than \$4,032.11 of expenses were incurred by Ms. Zane wholly within the Province of British Columbia between May 31, 2018, and the institution of the action, the issue of time bar becomes moot.

G. Interest payable and the award of costs

- [154] Regarding pre- and post-judgment interest, the parties propose that, in the event I find in favour of Ms. Zane, even in part, I set pre- and post-judgment interest to run at the rate fixed by the registrar under British Columbia's Court Order Interest Act, R.S.B.C. 1996, c. 79.
- [155] As stated by Justice Heneghan in *Sealand Marine Electronics Sales and Services Ltd. v the Ship M/V Inuksuk I*, 2022 FC 1013 at paragraph 33, the Act recognizes in subsection 36(7) that an award of interest in admiralty proceedings attracts special considerations. In admiralty matters, as is the case here, interest is owed as a function of damages from the time the debt became payable (*Canadian General Electric Co. v The "Lake Bosomtwe" et al.* [1970] Ex CR 552, 1970 CanLII 1701 (Can Ex Ct), at 558, affirmed in *Canadian General Electric Co. Ltd. v Pickford & Black Ltd.* (1971), [1972] SCR 52 (SCC), 1971 CanLII 154 (SCC) at 56 and 57). As stated by Justice Harrington in *Kuehne + Nagel Ltd. v Agrimax Ltd.*, 2010 FC 1303 [Agrimax] at paragraph 24:
- [24] The provisions with respect to pre-judgment interest set out in section 36 of the Federal Courts Act do not, as provided in subsection 7 thereof, apply in respect to claims under Canadian maritime law. There is a great wealth of jurisprudence which establishes that pre-judgment interest in maritime cases is a function of damages, is at the Court's discretion, and if properly pleaded runs from the date the debt was due.

[Emphasis added.]

- [156] The issue therefore arises as to the time pre-judgment interest begins to run. Ms. Zane, in the context of arguing the issue of time bar, made the point that because she had never actually demanded payment of her wages and expenses, the debt she was owed was in the nature of a demand obligation, in which case limitation would begin to run only from the time she demanded payment. I believe the same point can be made in the context of determining when pre-judgment interest begins to run. Here, it is true that Ms. Zane never actually demanded payment of her expenses - putting aside the request made and payment received in September 2017 of US\$5,000 - until she actually instituted the present action. Under the circumstances, and considering that in maritime matters, pre-judgment interest is a function of damages and runs from the date the debt became due, I feel it appropriate to order that pre-judgment interest be paid, but only from the time of the institution of the present action. Moreover, there being no evidence of a commercial interest rate, I consider it appropriate and just, as did Justice Harrington in *Agrimax*, to award pre-judgment and post-judgment interest at the legal rate of five per cent, as specified in the Interest Act, RSC 1985, c I-15.
- [157] Finally, the parties agree that costs should follow the cause, with Ms. Zane saying she would be satisfied with costs under Column 3 of Tariff B, including costs under my decision of August 26, 2024, for which I reserved on costs. As I mentioned to both counsel at the conclusion of the trial in this matter, my impression of the testimony on both sides was a web of hyperbole and half-truths. The Court was left to deal with two personalities who have ongoing family law issues and who were at each other's throats, with their lawyers being unable, as the adults in the room, to have them work reasonably and cooperatively to simplify the issues for the Court. Under the circumstances, I exercise my discretion not to award costs to either party. I believe it is clear from my reasons that the conduct of neither party was even close to the exemplary standard the Court should have expected.

H. The final chapter

- [158] As a parting blow, Mr. Rohland produced three invoices supposedly issued by Destiny LLC to Ms. Zane, the first for US\$880 dated January 2019 for assisting Ms. Zane in moving her 20-foot Bayliner on a trailer to the Shelter Island Marina, the second for US\$1,800 for the purported charter of Kindness by Ms. Zane in April 2019 for her mother's birthday celebration while at the dock in Point Roberts, and the third for US\$10,600 for a two-day charter tour to Roche Harbor marina in Washington State, which Ms. Zane supposedly took. Ms. Zane, of course, denied owing the money when the invoices were put to her during cross-examination. Other than simply producing the invoices, Mr. Rohland provided no backup evidence regarding the invoices. In addition, Ms. Zane advised the Court that, after she instituted the present action, Destiny LLC took a separate action in B.C. Small Claims Court for recovery of these invoices, although that action is not progressing. In any event, I give no credence to these invoices and find that they were submitted by Mr. Rohland as a bargaining chip in these proceedings. In any event, and putting aside any argument of *litis pendens*, Destiny LLC has not counterclaimed for any amounts purportedly owing by Ms.

Zane, no argument of set-off has been made in the Statement of Defence, and the invoices were first provided to Ms. Zane only shortly before the trial. From my perspective, this is simply another example of Mr. Rohland resorting to obfuscation to better his chances in these proceedings.

JUDGMENT in T-879-21

THIS COURT'S JUDGMENT is that:

The defendant Destiny Yachts Holdings LLC is to pay the plaintiff the amount of \$4,032.11—with \$1,330.68 being allocated to the in rem defendant Kindness to the World and \$2,701.43 being allocated to the in rem defendant Mystique V (also known as Destiny)—with interest at the rate of 5% per annum calculated from May 31, 2021, until final payment.

In the event the amount ordered to be paid to the plaintiff is not paid in full, the plaintiff may seek the judicial sale of the in rem defendants in respect to any outstanding claim relating thereto, upon application to this Court.

No costs are awarded to either party.

"Peter G. Pamel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-879-21

STYLE OF CAUSE:

INGA ZANE v GREGORY ROHLAND, DESTINY YACHTS HOLDINGS LLC, BOUNDLESS HOLDINGS LLC, et al

PLACE OF HEARING:

vancouver, british columbia

DATES OF HEARING:

May 7, 8, 9, 2024 and october 7, 8, 9, 2024

JUDGMENT AND REASONS:

PAMEL J.

DATED:

december 17, 2024

APPEARANCES:

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