Federal Court Cour fédérale

Date: 20260210

Docket: T-1318-25

Citation: 2026 FC 193

Ottawa, Ontario, February 10, 2026

PRESENT: The Honourable Mr. Justice Southcott

ADMIRALTY ACTION *IN REM* AGAINST THE SHIP "QUEEN OF DIAMONDS" AND ITS SISTERSHIP "ABITIBI" AND *IN PERSONAM*

BETWEEN:

ALLIED SHIPBUILDERS LTD.

Plaintiff

and

**The Owners and all others Interested in
The Ships QUEEN OF DIAMONDS and ABITIBI and
VANCOUVERCRUISES.COM CHARTERS LTD.**

Defendants

JUDGMENT AND REASONS

I. Overview

[1] This decision addresses a motion brought *ex parte* and in writing by the Plaintiff, Allied Shipbuilders Ltd. [Allied], seeking default judgment *in rem* against the Ship "QUEEN OF DIAMONDS" and its sistership, the Ship "ABITIBI", and *in personam* against

Vancouvercruises.com Charters Ltd. [Vancouvercruises], together the Defendants, pursuant to Rules 204 and 369 of the *Federal Court Rules*, SOR 98/-106, [Rules].

[2] For the reasons explained below, this motion is allowed in part and default judgment is granted against the *in personam* Defendant, Vancouvercruises, the details of which judgment are set out later in these Reasons. The motion is dismissed as against the *in rem* Defendants, without prejudice to any future motion for judgment against those Defendants or either of them based on new facts.

II. **Background**

[3] Allied is a company incorporated under the laws of the Province of British Columbia with an office in North Vancouver, B.C., and is in the business of ship repair. The Defendant, Vancouvercruises, is also incorporated under the laws of the province of British Columbia with an address at West Vancouver, B.C., and is the registered owner of the two *in rem* Defendants, the Ship "QUEEN OF DIAMONDS" [the Defendant Ship] and the Ship "ABITIBI" [the Defendant Sistership], both of which are registered in the Port of Vancouver [together, the Ships].

[4] The Statement of Claim issued in this matter on April 25, 2025 [the Statement of Claim], alleges that Allied supplied necessaries and performed repairs to the Defendant Ship in the form of services, materials, equipment and inspections, as part of the Defendant Ship's obligatory five-year docking and inspection required to maintain compliance with the *Canada Shipping Act 2001*, SC 2001, c 26 [CSA 2001] and regulations made thereunder. Allied further alleges that,

while these repairs and necessaries were provided to Vancouvercruises and the Defendant Ship at the request of Vancouvercruises and Lloyd's Register [LR] as its agent, Allied issued invoices to Vancouvercruises, and Vancouvercruises paid those invoices in part, a principal balance of $413,291.04 remains owing to Allied, along with interest accruing at a contractual rate of 18% per annum.

[5] Allied does not allege that it supplied necessaries or services to the Defendant Sistership but rather names that vessel as a Defendant in its Statement of Claim pursuant to section 43(8) of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*], which provides that the jurisdiction conferred on the Federal Court by section 22 (i.e., the Court's maritime jurisdiction) may be exercised *in rem* against any ship that, at the time the action is brought, is owned by the beneficial owner of the ship that is the subject of the action.

[6] On dates in May 2025, Allied made efforts to serve Vancouvercruises and the *in rem* Defendants, the details and effectiveness of which will be canvassed later in these Reasons. None of the Defendants has filed a Statement of Defence in this proceeding.

[7] On September 29, 2025, Allied filed a Motion Record in support of the motion that is the subject of this Judgment and Reasons, seeking default judgment against all Defendants [the Motion], supported by affidavit evidence and written submissions. Correspondence from Allied's counsel included in the record before the Court indicates that delays were experienced in the processing of the Motion due to workload experienced by the Court's Registry. After the Motion

was processed and place before the Court, the Court issued the following Direction on January 27, 2026 [the Direction]:

> The Court has reviewed the Plaintiff's motion for default judgment, filed on September 29, 2025, and returnable in writing. To assist the Court in addressing the Plaintiff's motion for default judgment as against the Defendant Ships, the Court directs that the Plaintiff provide written submissions, within 7 days of the date of this Direction, on the following points:
>
> > (a) Taking into account Rule 479 of the *Federal Courts Rules*, SOR/98-106 [the Rules], which provides for the method of service of a statement of claim in an action *in rem*, the Court requires submissions as to the effectiveness under the Rules of the Plaintiff's service of its Statement of Claim in respect of the Defendant Ships; and
> >
> > (b) Taking into account the principles explained in *Westshore Terminals Limited Partnership v. Leo Ocean, S.A.*, 2014 FCA 231, the Court requires submissions on whether the Plaintiff is entitled to seek judgment as against both of the Defendant Ships.

[8] On February 3, 2026, in response to the Direction, Allied filed Supplementary Submissions and a supporting affidavit.

III. **Issues**

[9] Based on the foregoing, this Motion raises the following issues for the Court's determination:

A. Has Allied effected proper service of its Statement of Claim in accordance with the Rules upon each of the Defendants?

B. If Allied has served both *in rem* Defendants in accordance with the Rules, is it entitled to seek default judgment against both *in rem* Defendants?

C. In relation to each Defendant that has been properly served, has Allied adduced evidence sufficient to support its claim and obtain default judgment against such Defendant and, if so, in what amount?

IV. **Analysis**

A. *Has Allied effected proper service of its Statement of Claim in accordance with the Rules upon each of the Defendants?*

[10] On a motion for default judgment, the Court typically has two principal questions before it: first, is the defendant in default, and second, is there evidence to support the Plaintiff's claim (*Chase Manhattan Corp v 3133559 Canada Inc*, 2001 FCT 895). As stated in *Trimble Solutions Corporation v Quantum Dynamics Inc*, 2021 FC 63 (at paras 35-37):

> 35. On a motion for default judgment pursuant to Rule 210, all of the allegations in the Statement of Claim are to be taken as denied (*Ragdoll Productions (UK) Ltd v Doe*, 2002 FCT 918 at paras 23-24). A plaintiff must first establish that the defendant was served with the Statement of Claim and has not filed a Statement of Defence within the deadline specified in Rule 204. Second, the evidence must enable the Court to find on a balance of probabilities that the plaintiff has established its claim (*Louis Vuitton Malletier SA v Yang*, 2007 FC 1179 at para 4 [*Louis Vuitton 2007*]). This is often summarized in two questions: (1) is the defendant in default? and (2) is there evidence to support the plaintiff's claim? (See, for example *Canada v Zielinski Brother's Farm Inc*, 2019 FC 1532 at para 1).
>
> 36. It must be emphasized that granting default judgment is never automatic; it is a discretionary order (*Johnson v Royal Canadian Mounted Police*, 2002 FCT 917 at para 20; *Chaudhry v Canada*, 2008 FC 356 at para 17). As in all civil cases, and particularly where the matter is *ex parte*, the "evidence must be scrutinized with care by the trial judge" and that evidence "must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*FH v McDougall*, 2008 SCC 53 at paras 45-46, cited with approval in *NuWave Industries Inc v Trennen Industries Ltd*, 2020 FC 867 at para 17).

> 37. The plaintiff's burden is to establish its case on a balance of probabilities, based on sufficiently clear, convincing, and cogent evidence. I agree with the Plaintiffs that setting a higher standard would require the judge to do for the Defendants that which they have declined to do for themselves (see *Louis Vuitton 2007* at para 4; *Microsoft Corp v PC Village Co Ltd*, 2009 FC 401 at para 12 [*Microsoft*]).

[11] While it is clear from the Court's file that none of the Defendants has filed a Statement of Defence in this matter, the Court must assess whether each of the Defendants has been properly served with the Statement of Claim in accordance with the Rules.

(1) Service upon Vancouvercruises

[12] In support of its service upon the *in personam* Defendant, Vancouvercruises, Allied has included in its Motion Record a Solicitor's Certificate of Service dated June 19, 2025, in which Ms. Christine Yan, solicitor for the Plaintiff, certifies that she caused Vancouvercruises to be duly served with the Statement of Claim by causing it to be delivered on May 7, 2025, by registered mail to its registered office, 2497 Marine Drive, West Vancouver, BC V7V 1L3 [the Service Address].

[13] Because a Statement of Claim is an originating document, it must be personally served upon a Defendant. Rule 130 provides methods of personal service upon a corporation, including (in Rule 130(1)(c)) service in the manner provided for service on a corporation in proceedings before a Superior Court in the province in which the service is being effected. Rule 4-3(2) of the British Columbia *Supreme Court Civil Rules*, BC Reg 168/2009, provides methods of personal service including (in Rule 4-3(2)(b)(iv)) personal service on a corporation in the manner provided by the *Business Corporations Act*, SBC 2002, c 57 [BCA] or any enactment relating to the service of court

documents. Section 9(1)(a) of the BCA in turn provides for service on a company by mailing the document by registered mail to the mailing address shown for the registered office of the company in the corporate register.

[14] The evidence filed in support of the Motion includes an affidavit of Chuck S. Ko, President of Allied, affirmed on September 26, 2025, which attaches a BC Company Summary for Vancouvercruises obtained from BC Registry Services [the Company Summary], identifying both the mailing address and delivery address for the registered office of Vancouvercruises to be the Service Address referenced in Ms. Yan's Solicitor's Certificate of Service.

[15] Relying on the above evidence would therefore support a conclusion that the Statement of Claim was sent by registered mail to the Service Address in May 2025, representing effective service upon Vancouvercruises. However, relying on the Solicitor's Certificate of Service is not entirely straightforward, because Rule 146 (of the *Federal Courts Rules*) provides for the use of a solicitor's certificate of service (in Rule 146(b)) as a manner of proving a document that is not an originating document. For an originating document, Rule 146(a) provides for proof of service through an affidavit of service in Form 146A.

[16] *Coath v Bruno Gerussi (The)*, 2002 FCT 385 [*Bruno Gerussi*], notes that the manner of proving service in Rule 146 is permissive. Moreover, the fact Ms. Yan is an officer of the Court might support a conclusion that, while her approach does not represent best practice, the Court should be prepared to accept her Solicitor's Certificate of Service as if it were an affidavit. However, there is an additional difficulty in that Rule 82 prohibits a solicitor from both deposing to

an affidavit and presenting argument to the Court based on that affidavit, except with leave of the Court. The Motion has not sought such leave.

[17] The Court need not grapple with these difficulties, because other evidence in the Motion Record supports a conclusion that Vancouvercruises has been properly served. Allied has filed two affidavits sworn on June 11, 2025, by Ms. Carrie-Lee Godfrey, a process server. For each of the Defendant Ship and the Defendant Sistership, Ms. Godfrey states that on May 13, 2025, she served the relevant Ship with the Statement of Claim by handing it to and leaving it with Mr. Russell Bennett, General Manager. Ms. Godfrey also states that, the time of service, Mr. Bennett admitted to being the proper person to be served in this action.

[18] I will turn shortly to my analysis as to whether this and other evidence adduced by Allied support a conclusion that it has effectively served the Statement of Claim upon the *in rem* Defendants. However, for present purposes, I note that the Company Summary indicates Mr. Bennett to be a director of Vancouvercruises, and Rule 130(1)(a)(i) provides that personal service of a document on a corporation is effected by leaving the document with a director of the corporation. I am therefore satisfied that, through Ms. Godfrey's efforts to serve the *in rem* Defendants, the *in personam* defendant, Vancouvercruises, was properly served with the Statement of Claim as of May 13, 2025. As such, it is clear that the time for it to file a Defence has passed, and I am therefore also satisfied that Vancouvercruises is in default.

(2) Service upon *In Rem* Defendants

[19] As telegraphed in the Direction, the Court has more concern about the effectiveness of Allied's service upon the *in rem* Defendants. For each of the Defendant Ship and the Defendant Sistership, Allied relies upon the affidavits of Ms. Godfrey. As noted above, she states that on May 13, 2025, she served the relevant Ship with the Statement of Claim by handing it to and leaving it with Mr. Russell Bennett, General Manager.

[20] As also previously noted, the Company Summary reflects that Mr. Bennett is a director of Vancouver services and, as Allied submits, the evidence in this motion in support of the merits of Allied's claim demonstrates that Mr. Bennett was directly involved in the relevant project, in the engagement of Allied to supply necessaries and perform repairs on the Defendant Ship, and in the subsequent payment of invoices. It would therefore be reasonable to conclude that Mr. Bennett may be a directing mind of Vancouvercruises and, potentially more relevant to service *in rem*, a person who appears to be in charge of the *in rem* Defendants.

[21] However, Allied faces difficulty in demonstrating effective service upon the *in rem* Defendants, because Rule 479 provides for such service as follows:

Service of statement of claim	**Signification de la déclaration**
479 (1) Subject to subsection (2), the statement of claim in an action *in rem* shall be served	**479 (1)** Sous réserve du paragraphe (2), dans une action réelle, la déclaration est signifiée :
(a) in respect of a ship or cargo or other property on board a ship, by attaching a	**a)** si l'action vise un navire, une cargaison ou d'autres biens qui se trouvent à bord d'un

certified copy of the statement of claim to some conspicuous part of the ship;

[…]

Alternate service of statement of claim

(2) If access cannot be obtained to property in respect of which a statement of claim is to be served under subsection (1), the statement of claim may be served personally on a person who appears to be in charge of the property.

navire, par apposition d'une copie certifiée conforme de la déclaration sur toute partie bien en évidence du navire;

[…]

Signification au responsible

(2) S'il est impossible d'avoir accès aux biens à l'égard desquels la déclaration doit être signifiée selon le paragraphe (1), celle-ci peut être signifiée à personne à celui qui semble être le responsable des biens.

[22] As Allied acknowledges in its Supplementary Submissions, Prothonotary John Hargrave explained at paragraph 3 of *Bruno Gerussi* that personal service upon the person in charge of a defendant vessel is not effective unless, as contemplated by Rule 479(2), it is shown that access to the vessel could not be obtained.

[23] In response to the Direction seeking further submissions on this point, Allied has provided an affidavit affirmed by its counsel, Ms. Yan, on February 3, 2026, which references and attaches a May 14, 2025 email from the process server, Ms. Godfrey, to a legal assistant in Ms. Yan's firm, setting out notes as to Ms. Godfrey's efforts to serve the *in rem* Defendants on May 12 and 13, 2025. These notes culminate with a reference to Ms. Godfrey effecting service on May 13, 2025, by leaving the document with Mr. Bennett and state that, at the time of service, Mr. Bennett said that he was in charge of the vessels and could accept service for them.

[24] Relying on this affidavit, in combination with the evidence included in the Motion Record, Allied submits that the Court should find that it has complied with Rule 479 and that service against the *in rem* Defendants is therefore effective. Allied acknowledges that it remains unclear from the evidence whether Ms. Godfrey was able to access either the Defendant Ship or the Defendant Sistership before she served the Statement of Claim on Mr. Bennett as the person in charge of both vessels. The Court agrees with this assessment of the evidence. However, Allied argues that it was available to the Defendants to bring a motion under Rule 58 to challenge Allied's service as an irregularity under the Rules and the Defendants have not done so. Allied therefore submits that without evidence or argument to the contrary, the Court should find that Allied has demonstrated effective service under Rule 479(2).

[25] I find no merit to this argument. As noted earlier in these Reasons, one of the Court's tasks on a motion for default judgment, which a plaintiff is permitted to bring on an *ex parte* basis, is to assess whether the plaintiff has demonstrated that the defendant against which judgment is sought has been properly served. In the case at hand, the Plaintiff's evidence clearly does not demonstrate service by attaching the Statement of Claim to some conspicuous part of the ship in accordance with Rule 479(1). Nor does it demonstrate that the process server was unable to access the ship so as to permit Allied to rely on Rule 479(2). While Allied is correct that the Defendants have adduced no evidence on this point, Allied's argument does not succeed, because its own evidence is deficient.

[26] Allied also advances an alternative argument, asking that the Court deem that its service against the *in rem* Defendants by leaving the Statement of Claim with Mr. Bennett was effective, notwithstanding that it does not comply with Rule 479, as an exercise of flexibility pursuant to the

Court's authority under Rule 55 to vary a Rule or dispense with its compliance in special circumstances.

[27] Allied relies in particular on *Elders Grain Company Limited v Carling O'Keefe Breweries of Canada Limited*, 1997 CanLII 4751 (FC) [*Elders Grain*], in which Justice Joyal of the Federal Court, Trial Division, allowed an appeal from a Prothonotary's decision that had rejected the sufficiency of service of a statement of claim. In that case, the statement of claim had been delivered to the master of the vessel, who was on board at the time. The owners of the vessel challenged the effectiveness of this method of *in rem* service, invoking Rule 1002(5)(a) of the *Federal Court Rules*, CRC 1978, c 663, in place at that time [Former Rules], which (akin to the current Rule 479(1)(a)) provided for service *in rem* by posting the pleading on the mast of the vessel or some other conspicuous location.

[28] Justice Joyal noted that the Former Rules contemplated flexibility, citing *inter alia*: Former Rule 2(2) (providing that the Former Rules are intended to render the substantive law effective and to facilitate normal advancement of cases); Former Rule 6 (providing that, in special circumstances, the Court may dispense with compliance with any Former Rule where it is necessary in the interests of justice); Former Rule 302 (providing guidelines on the application of the Former Rules in the face of objection or failure to comply); and Former Rule 310(1) (providing the Court the power to order substitutional service).

[29] The Court also took into account *Mona Lisa Inc v "Carola Reith" (The)*, [1979] 2 FC 633 (TD) [*Carola Reith*], which had previously considered Rule 1002(5) and concluded that service of

the statement of claim on a receptionist at the offices of one of the defendant ship's owners did not constitute proper service.

[30] Noting that the service in the case at bar had been effected by going aboard the vessel and leaving the statement of claim in the hands of the ship's master, *Elders Grain* concluded that, as the pleading had been left aboard the ship, the plaintiffs had employed a process which was substantially similar to what Former Rule 1002(5)(a) called for. Moreover, the defendants had filed a statement of defence and counterclaim, in which they acknowledged their ownership of the ship and admitted that the plaintiffs' claim was in respect of cargo carried on her. The Court found that the service in the case before it was more respectful of the spirit, and more consistent with the purpose, of Former Rule 1002(5)(a) than the service in *Carola Reith*. In the absence of any evidence as to prejudice to the defendants, Justice Joyal allowed the plaintiffs' appeal and declared the service *in rem* as proper service under the Former Rules.

[31] Allied submits that the service *in rem* upon Mr. Bennett was similarly respectful of the spirit of Rule 479. It relies on Ms. Godfrey's notes, which state that Mr. Bennett advised her on May 13, 2025, that he was in charge of the vessels and that he could accept service for them, and argues based thereon that Mr. Bennett had accepted service. Allied also relies on email correspondence exchanged between Mr. Bennett and Ms. Yan on July 17, 2025, which Allied submits demonstrates Mr. Bennett acknowledging his understanding and receipt of the Statement of Claim.

[32] I do not find this email correspondence particularly supportive of Allied's submission. Ms. Yan explains that Mr. Bennett's email to her has been redacted, because he marked his email "without prejudice". As such, the Court is not able to read what Mr. Bennett said in this

communication. Ms. Yan's affidavit states that, in his email, Mr. Bennett acknowledged receipt of the Statement of Claim. However, this adds little to what is already known from Ms. Godfrey's affidavits of service, which evidences that the Statement of Claim was served upon Mr. Bennett.

[33] As for the Ms. Godfrey's May 13, 2025 conversation with Mr. Bennett, again the evidence is not particularly compelling. While Ms. Godfrey's notes refer to Mr. Bennett saying that he can accept service for the Ships, her affidavits of service do not reflect this point. In her affidavits, Ms. Godfrey states only that Bennett admitted to being the proper person to be served in this action. This language does not refer to acceptance of service, let alone acceptance of service on behalf of the Ships.

[34] More importantly, even if the evidence established more unequivocally that Mr. Bennett purported to accept service on behalf of the Ships, Allied has not advanced a compelling argument as to why the Court should vary or dispense with compliance with Rule 479.

[35] I note Allied's argument that, as a practical consideration, acceptance of service of pleadings on behalf of a ship by counsel or another party is a typical term of a letter of undertaking [LOU] issued as security to prevent or release the arrest of the ship. Allied submits that, if the Court were to conclude that a statement of claim must be served on a ship in strict compliance with the Rules regardless of the parties' agreement otherwise, it would imperil this practice and increase otherwise avoidable costs.

[36] The Court does not dispute that an agreement respecting a method of service may form part of an LOU. However, as Allied concedes, there is no evidence before the Court as to the details of

this practice, including: whether it is typically counsel who agree in an LOA to accept service (in which case possibly Rule 134, involving acceptance of service by a solicitor, is engaged); whether, at a minimum, the acceptance of service pursuant to an LOA is performed by a representative of an insurer that has the benefit of legal advice and therefore appreciates the significance thereof; and/or whether an agreement in an LOA to accept service is typically formed in a context in which there is an intention by the insurer to defend any action that may be brought.

[37] Such practice surrounding the issuance of LOAs is not the subject of the determination the Court is required to make in this motion. Rather, to the extent that Rule 55 may permit the Court to dispense with compliance with Rule 479 and deem the process followed by Allied in this case to be effective service *in rem*, special circumstances would be required to do so.

[38] I note Allied's argument that, in the context of what it describes as the material delay in the Court's processing and review of its Motion, it would be further prejudiced by delay should be required to remedy at service upon the Ships. However, while the delay in processing the Motion is regrettable, I am not convinced that such delay constitutes special circumstances that would support invoking Rule 55, particularly as the forward-looking delay is strictly a function of Allied having failed to effect service in accordance with the Rule 497 and Allied has offered no explanation for that failure.

[39] I appreciate that, notwithstanding that Former Rule 6 similarly required special circumstances in order to waive compliance, *Elders Grain* granted relief of the sort that Allied seeks without the plaintiffs in that case appearing to have offered any explanation for their non-compliance with Former Rule 1002. However, I find *Elders Grain* distinguishable, in that Justice

Joyal concluded that, because the pleading had been left aboard the ship, the plaintiffs had employed a process which was substantially similar to what Former Rule 1002(5)(a) called for. That similarity is absent in the case at hand. I also note Prothonotary Hargrave's explanation in *458093 BC Ltd v Hills* (1998), 144 FTR 236, in the context of a motion for substitutional service upon a vessel, of the benefits that physical service upon a vessel affords by giving notice of the claim to parties other than the vessel's owner.

[40] In conclusion on this issue, I find that Allied does not benefit from Rule 479(2) and that it has not identified any compelling basis for the Court to deem its method of service upon the *in rem* Defendants effective. I therefore find that those Defendants are not in default and that Allied is not presently in a position to obtain default judgment against them. Consistent with *Bruno Gerussi*, my Judgment will therefore dismiss the Motion as against the *in rem* Defendants but will do so without prejudice to any future motion for judgment against those Defendants or either of them based on new facts.

B. *If Allied has served both in rem Defendants in accordance with the Rules, is it entitled to seek default judgment against both in rem Defendants?*

[41] Based on my conclusion immediately above, it is not necessary for the Court to address this issue.

C. *In relation to each Defendant that has been properly served, has Allied adduced evidence sufficient to support its claim and obtain default judgment against such Defendant and, if so, in what amount?*

[42] It follows that, in adjudicating this final issue, I will be considering only Allied's request for default judgment against Vancouvercruises. For the following reasons, I am satisfied that Allied has adduced sufficient evidence to support its claim and obtain default judgment against that Defendant, in amounts including principal, interest and costs, which I will quantify below.

[43] In support of this aspect of the Motion, Allied relies principally on the affidavit of its President, Mr. Ko. He describes a verbal agreement made between Mr. Bennett and Mr. Ko, in or about March 2024, that Allied would supply necessaries and perform repairs to the Defendant Ship as part of an obligatory five-year docking and inspection service to ensure that the Defendant Ship remained in compliance with the CSA 2001 and regulations thereunder, as well as the hire of LR by Vancouvercruises to act as the Defendant Ship's Recognized Organization [RO] to perform inspections as part of Transport Canada's Delegated Statutory Inspection Program. Mr. Ko explains that, as with past dealings between Allied and Vancouvercruises, the work on this project was to be performed on a time and materials basis. He further explains that Allied's work was directed by Vancouvercruises or LR in its capacity as the RO for the Defendant Ship.

[44] Mr. Ko also describes and attaches as exhibits documentation generated during the course of this project, including the relevant work order issued by Allied; the results of ultrasonic testing of the Defendant Ship's hull; communications in the course of the project among Allied, Vancouvercruises, and LR; invoices issued by Allied to Vancouvercruises; and payments made by Vancouvercruises. Mr. Ko deposes that Allied's supply of repairs and necessaries took place between March 14, 2024, and May 22, 2024, and, with the benefit of details surrounding amounts

invoiced and paid, deposes that there is an outstanding balance owed by Vancouvercruises to Allied in the principal amount of $413,291.04.

[45] Based on this evidence, I am satisfied that the *in personam* Defendant, Vancouvercruises, is in default of payment for repairs and necessaries supplied to it by Allied pursuant to agreement between the parties and as directed by Vancouvercruises or LR as its agent. I am also satisfied that the principal amount owing (inclusive of taxes) is $413,291.04.

[46] Turning to interest, Allied claims both prejudgment interest from October 1, 2024, and post-judgment interest, both at 18% per annum as reflected in its invoices. I am satisfied that this contractual rate of interest applies and is therefore an appropriate rate for the Court to use in calculating interest to the date of Judgment. I am also satisfied that October 1, 2024, represents an appropriate date for the commencement of prejudgment interest. Allied's invoices state they are payable upon receipt, and it appears that its last invoice for services was dated July 31, 2024. Allied began invoicing Vancouver cruises for interest on November 30, 2024, with its invoice of that date calculating interest commencing October 1, 2024.

[47] The Motion Record includes an affidavit sworn by Lucky Herath, a paralegal employed with Allied's counsel's firm [the Herath Affidavit], which calculates the applicable interest at a rate of 18% per annum from October 1, 2024, to August 31, 2025, as amounting to $68,226.72, plus a daily amount of $203.81 thereafter. I accept those calculations. From that August 31, 2025, to the date of my February 10, 2026 Judgment represents an additional 163 days at the daily amount of

$203.81, amounting to additional interest of $33,211.03. My Judgment will therefore award prejudgment interest totaling $101,437.75.

[48] However, I am not convinced that post-judgment interest should be calculated based on the same 18% contractual rate. Other than claiming the contractual rate, Allied has provided no submissions in support of its entitlement to that rate for post-judgment interest or that might otherwise guide the Court in selecting an appropriate rate under section 37 of the *Federal Courts Act*. As reflected in *Nordea Bank Norge ASA v "Kinguk" (Ship)*, 2007 FC 434, the Court is not bound by a contractual rate in setting post-judgment interest (at para 28), even where the contract expressly contemplates post-judgment interest (at para 26) which is not the case in the matter at hand. I will employ the rate of 5%, which this Court frequently adopts for post-judgment interest in maritime matters (see, e.g., *Ehler Marine & Industrial Service Co v M/V Pacific Yellowfin (Ship)*, 2015 FC 324 at paras 80-83).

V. **Costs**

[49] Allied seeks a lump sum cost award in the amount of $10,000.00. In support of this figure, the Herath Affidavit attaches a draft bill of costs, which calculates costs based on Column III of the Tariff, totaling $1800.00, as well as a calculation of the fees incurred by Allied's counsel in this matter, totaling $18,412.80 inclusive of taxes. The bill of costs also identifies disbursements totaling $440.90. The Herath Affidavit attests that the hours and rates used in the fees calculation are accurate and provides documentary support for the disbursements.

[50] With that evidentiary support and referencing the considerations identified in Rule 400(3) to guide the Court in exercising its discretion in awarding costs, Allied argues that a lump sum costs award of $10,000.00 is justified and represents a figure falling between the Tariff B figure and the actual fees incurred.

[51] Awards of lump sum costs are finding increasing favour with the Court, particularly in commercial matters, such awards typically ranging between 25% to 50% of actual fees (*Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at paras 11, 17). I am satisfied that this approach is appropriate, but I find no basis for the award to exceed the bottom of the 25% to 50% range. Taking into account Allied's fees figure, applying a calculation of approximately 25%, and adding disbursements, my Judgment will award costs in the all-inclusive amount of $5000.00.

JUDGMENT in T-1318-25

THIS COURT'S JUDGMENT is that:

1. This Motion is allowed in part, and the Plaintiff, Allied Shipbuilders Ltd., is granted judgment against the *in personam* Defendant, Vancouvercruises.com Charters Ltd., in the amount of $413,291.04, plus interest of $101,437.75 to the date of this Judgment and post-judgment interest accruing thereafter at a simple rate of 5% per annum until the Judgment is satisfied in full, plus costs of this action in the all-inclusive lump sum amount of $5000.00.

2. This Motion, in so far as it seeks default judgment against the *in rem* Defendants, the Ship "QUEEN OF DIAMONDS" and the Ship "ABITIBI", is dismissed, without prejudice to any future motion for judgment against those Defendants or either of them based on new facts.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1318-25
STYLE OF CAUSE:	ALLIED SHIPBUILDERS LTD. v The Owners and all others interested in The Ships QUEEN OF DIAMONDS and ABITIBI, The Ship QUEEN OF DIAMONDS, The Ship ABITIBI and VANCOUVERCRUISES.COM CHARTERS LTD.

MOTION BROUGHT *EX PARTE* AND DEALT WITH IN WRITING

JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	FEBRUARY 10, 2026

WRITTEN SUBMISSIONS:

Shelley Chapelski Christine Yan	FOR THE PLAINTIFF

SOLICITORS OF RECORD:

Norton Rose Fulbright Vancouver, British Columbia	FOR THE PLAINTIFF