

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *MacKay Communications – Canada Inc. v. Coastal Craft Yachts Ltd.*,  
2026 BCSC 303

Date: 20260225  
Docket: 2613205  
Registry: Victoria

Admiralty Action *in Rem* Against:  
The Ship Bearing Hull No. “YYN16147K526”  
*And in Personam*

Between:

**MacKay Communications – Canada Inc.**

Plaintiff

And:

**Coastal Craft Yachts Ltd., The Ship Bearing Hull No. “YYN16147K526” and the  
Owners and all Others Interested in the Ship Bearing Hull No.  
“YYN16147K526”**

Defendants

Before: The Honourable Justice LeBlanc

## Reasons for Judgment

Counsel for Plaintiff:

D. Williams  
V. Syrma

Counsel for Defendants:

B. Stang

Counsel for the Caveator:

A. Stainer

Place and Date of Hearing:

Victoria, B.C.  
February 4, 2026

Place and Date of Judgment:

Victoria, B.C.  
February 25, 2026

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**Introduction**

[1] This proceeding relates to a custom-built 45 foot white/grey Coastal Craft sport fishing boat bearing hull no. “YYN16147K526” (the “Starfish I”).

[2] On January 8, 2026, the plaintiff was granted a warrant to arrest the Starfish I (the “Warrant”).

[3] On January 16, 2026, West Bay Shipyards Ltd. filed an admiralty caveat against the Ship (the “Caveat”).

[4] On January 23, 2026, BIM Yachting Ltd., in its capacity as “owners and all others interested” in the Starfish I (“BIM”) filed a Jurisdictional Dispute disputing that this court has jurisdiction over it.

[5] BIM filed an application on January 26, 2026, seeking an order setting aside the Warrant and Caveat and seeking to strike the *in rem* claim contained in the amended notice of civil claim, pursuant to Rules 21-8(1) or 9-5(1) of the *Supreme Court Civil Rules*. BIM also seeks costs.

[6] The plaintiff filed an application on February 2, 2026 seeking to add BIM, Mahmud Muhammed Topbas, and Promotors Otomotiv Turizm Yaticilik Tasimacilik Elektronik San Ve Dis Ticaret Ltd. STI (“Promoters”) (collectively, the “Proposed Defendants”) as defendants to the action, that the style of proceedings be amended to reflect the change, and that the plaintiff be granted leave to file a further amended notice of civil claim in the form attached to its notice of application.

[7] This matter came before me in chambers with a two-hour time estimate. The matter consumed more than two hours with the hearing concluding at 4:35 p.m. Counsel were rushed in making their submissions and did not fully address the evidence or the legal basis supporting their position. In this regard, where I did not receive submissions, I have based my decision on reviewing the legal arguments advanced by the parties in their notices of application, or their respective responses.

**Background**

[8] On February 27, 2023, Promoters entered into a vessel construction agreement with Coastal Craft Yachts Ltd. for the construction of the Starfish I, with a contract price of \$2,198,300 USD (the “Vessel Construction Agreement”). It does not appear as though the plaintiff or West Bay Shipyards Ltd. knew of the existence of the Vessel Construction Agreement until after the commencement of this proceeding.

[9] In October 2025, the plaintiff delivered marine navigation and communications equipment to the Starfish I and issued an invoice in the amount of \$38,965.50. That invoice remains unpaid and responsibility for payment is disputed.

[10] On December 10, 2025, West Bay Shipyards Ltd. commenced an action in the Vancouver Registry of the Federal Court of Canada. In the Federal Court action, West Bay Shipyards alleges it is owed \$20,214.34 relating to fiberglass, fairing, painting, carpentry, joinery, cabinetry, and other services it says were provided for the benefit of the Starfish I.

[11] On December 15, 2025, the UK Maritime and Coast Guard Agency issued a Certificate of Provisional Registration for the Starfish I.

[12] On January 8, 2026, the plaintiff filed its notice of civil claim in this court. On January 19, 2026, the plaintiff filed its amended notice of civil claim.

[13] On January 15, 2026, a receiver was appointed for Coastal Craft Yachts Ltd.

[14] BIM made arrangements to transport the Starfish I to Turkey on an ocean carrier scheduled between January 25 – February 10, 2026. BIM argues urgency in having a decision rendered in this matter.

[15] It is not disputed that if the Warrant and Caveat are released, the plaintiff and West Bay Shipyards Ltd. will have no remedy to collect the amounts owed as the Starfish I will be removed from Canada.

**Summary of Positions**

**Position of BIM**

[16] BIM argues that the amended notice of civil claim does not advance any *in personam* claim against the owner of the Starfish I, BIM, and a statutory right *in rem*, unaccompanied by a maritime lien, does not lie unless the personal liability of the owner of the ship is engaged.

[17] BIM further argues that the asserted statutory right *in rem* is precluded, as the beneficial owner of the Starfish I was not the same at the time the cause of action arose and when the action was commenced.

[18] When I asked counsel for BIM who it asserts was the beneficial interest holder of the Starfish I at the time the cause of action arose, I was advised that the beneficial interest holder is not identified in the record and that question may be a triable issue.

[19] BIM contends that any amounts owed to the plaintiff are the responsibility of Coastal Craft Yachts Ltd.

**Position of BIM, Mahmud Muhammed Topbas, and Promotors (the “Proposed Defendants”)**

[20] The Proposed Defendants submit that the plaintiff ought not be permitted to amend its claim as its new theory of its claim is diametrically opposed to the theory it relied on to secure the Warrant. They contend that due to Coastal Craft Yachts Ltd. being placed into receivership, the plaintiff is now seeking a new party to pursue for payment.

[21] The Proposed Defendants submit that they will suffer prejudice if the plaintiff is entitled to amend its pleadings and add them as defendants.

**Position of the Plaintiff**

[22] The plaintiff argues that there is a triable issue regarding whether Mahmud Muhammed Topbas through his corporate agents, Promotors and BIM, was the beneficial owner of the Starfish I at all material times.

[23] The plaintiff submits that the naming convention for defendants as “*The Owners and All Others Interested in the Ship*” is necessary in admiralty claims as typically the true beneficial interests of the defendant ship are unknown to the plaintiff and can be complex and discoverable only after the commencement of the action. The plaintiff submits that this is one of those cases.

[24] The plaintiff further submits that it used this naming convention to capture the beneficial interests when they became known. The plaintiff has since discovered that the beneficial interest holder of the Starfish I may be Mahmud Muhammed Topbas through his corporate agents, Promotors and BIM and seeks to add the three as defendants in this action. The plaintiff’s position is that it provided specialized marine electronics to the Starfish I for the benefit of the Starfish I, and that its claim has been satisfied. As such, it argues, the statutory requirements for an action *in rem* has been satisfied and this court has jurisdiction.

[25] The plaintiff submits that clause 3.1 of the Vessel Construction Agreement provides that Mahmud Muhammed Topbas, through his corporate agent, Promotors, was the beneficial owner of the Starfish I during all stages of construction.

[26] The plaintiff submits that it has become aware of new facts not known to it prior to filing the amended notice of civil claim, or if known, not fully understood.

**Position of West Bay Shipyards Ltd.**

[27] West Bay Shipyards Ltd. submits that it is improper for BIM to mount a collateral attack on its claim in the Federal Court in this proceeding as the Federal Court action does plead *in personam* liability of the defendant owner in the Starfish I.

[28] West Bay Shipyards Ltd. submits that there is no defect in the pleading in the Federal Court Action and release of the vessel without security, or sufficient notice, would be practically fatal to the claim of West Bay Shipyards Ltd. and a collateral attack on the Federal Court Action.

### **Analysis**

#### ***In Rem and In Personam***

[29] The *Federal Courts Act*, (RSC 1985, c F-7) outlines the Federal Court's jurisdiction *in rem* and *in personam*:

##### Jurisdiction *in personam*

43(1) Subject to subsection (4), the jurisdiction conferred on the Federal Court by section 22 may in all cases be exercised *in personam*.

##### Jurisdiction *in rem*

(2) Subject to subsection (3), the jurisdiction conferred on the Federal Court by section 22 may be exercised *in rem* against the ship, aircraft or other property that is the subject of the action, or against any proceeds from its sale that have been paid in court.

##### Exception

(3) Despite subsection (2), the jurisdiction conferred on the Federal Court by section 22 shall not be exercised *in rem* with respect to a claim mentioned in paragraph 22(2)(e), (f), (g), (h), (i), (k), (m), (n), (p) or (r) unless, at the time of the commencement of the action, the ship, aircraft or other property that is the subject of the action is beneficially owned by the person who was the beneficial owner at the time when the cause of action arose.

[30] Rule 21-1(2) of the *Supreme Court Civil Rules* (the "Rules") governs what actions may be brought *in rem* in this court:

(2) Except to the extent that jurisdiction has been otherwise specifically assigned, an action may be brought *in rem* against a ship or other property that may be brought *in rem* in the Federal Court of Canada in all cases in which a claim for relief is made under or by virtue of Canadian maritime law or any other law of Canada relating to navigation and shipping.

[31] The parties agree that there must be a personal liability (*in personam*) on the part of the ship owner(s) in order for an action *in rem* to be commenced against that ship.

[32] The law is clear that a right *in rem* may be defeated by a transfer of beneficial ownership. However, a change in legal ownership does not in itself suffice.

[33] To determine whether an *in rem* right exists, the plaintiff's application respecting the pleadings must first be considered.

### **Plaintiff's Application**

[34] As mentioned above, the plaintiff seeks to add the Proposed Defendants as defendants to its claim.

[35] Additionally, the plaintiff seeks to further amend the amended notice of civil claim. The proposed changes are significant and lengthy. As such, I have attempted to summarize the material changes here:

- a) removing the pleading that Coastal Craft Yachts Ltd. was at all material times the owner of the Starfish I and replacing it with Mahmud Muhammed Topbas, through his corporate agent, Promotors, being the beneficial owner of Starfish I at all material times;
- b) the addition of the pleading that Coastal Craft Yachts Ltd. acted as agent for Mahmud Muhammed Topbas, Promotors and BIM in the procurement of the maritime navigation and communication equipment supplied to the Starfish I for the benefit of the Starfish I and Mahmud Muhammed Topbas;
- c) the addition of the pleading that pursuant to clause 3.1 of the Vessel Construction Agreement, Mahmud Muhammed Topbas, had the right to demand proof from Coastal Craft Yachts Ltd. that maritime navigation and communication equipment procured for the Starfish I had been paid in full;
- d) the addition of the pleading that Coastal Craft Yachts Ltd., acting as agent for Mahmud Muhammed Topbas and Promotors, knew it was insolvent or verging on insolvency and knew it could not and would not pay the plaintiff for the equipment supplied, and in doing so committed a fraud on the

plaintiff while acting as agent for Mahmud Muhammed Topbas and Promotors;

- e) removing the pleading that Coastal Craft Yachts Ltd. are in breach of their contractual duties by failing to pay the plaintiff for the equipment and replacing it with Mahmud Muhammed Topbas, Promotors and BIM being in breach of their contractual duties to pay the plaintiff for the equipment;
- f) the addition of the pleading that Mahmud Muhammed Topbas, Promotors and BIM had actual knowledge that the plaintiff provided the equipment to Starfish I, that the equipment had been installed on the Starfish I and that the plaintiff has not been paid for the equipment;
- g) the addition of the pleading that Mahmud Muhammed Topbas, Promotors and BIM have never paid for the equipment, which remains beneficially and legally owned by the plaintiff and in the wrongful possession of Mahmud Muhammed Topbas and BIM on the Starfish I; and
- h) the addition of the pleading that Mahmud Muhammed Topbas and BIM intend to remove the equipment from the jurisdiction of the court to Turkey, despite that they have neither paid for nor acquired any legal or beneficial ownership of the equipment.

***Should the plaintiff be permitted to further amend the amended notice of civil claim?***

[36] In bringing its application to further amend the amended notice of civil claim, the plaintiff relies on Rule 6-1(1)(b) of the *Supreme Court Civil Rules*:

When pleadings may be amended

(1) Subject to Rules 6-2(7) and (10) and 7-7(5), a party may amend the whole or any part of a pleading filed by the party, other than to change parties or withdraw an admission,

- (a) once without leave of the court, at any time before service of the notice of trial, or
- (b) after the notice of trial is served, only with
  - (i) leave of the court, or

(ii) written consent of the parties.

[37] The Proposed Defendants raise several grounds they say weigh against permitting the amendments which I have considered below.

***Would permitting the amendments be an abuse of process?***

[38] The Proposed Defendants submit that it is an abuse of process to subject a party to multiple rounds of amendments, precluding a party from knowing the case it must meet.

[39] The Proposed Defendants have not responded to multiple rounds of amendments. The Proposed Defendants, not previously being named as defendants in the claim, have not filed a response to civil claim. This argument does not assist the Proposed Defendants as they have not suffered any prejudice by having to previously engage in the litigation.

[40] The Proposed Defendants also submit that the plaintiff ought not be permitted to plead an allegation of fact or new claim that is inconsistent with the party's previous pleading.

[41] The Proposed Defendants raise the failure to identify the beneficial owner in the further amended notice of civil claim as a deficiency on the basis that Mr. Bailey has deposed that he knew Coastal Craft Yachts Ltd. was not the owner of the Starfish I and he understood Mahmud Muhammed Topbas to be the owner. The Proposed Defendants submit that the beneficial owner ought to be identified when the first amendment was undertaken.

[42] The evidence supports the plaintiff's position that in late January and early February 2026 it was attempting to gather information pertaining to possible additional *in personam* defendants and notified counsel for the Proposed Defendants that a further amendment would be forthcoming. What transpired was a race to the courthouse to have the applications that are before me heard.

[43] Identifying the beneficial owner of the Starfish I, at the time the action arose, has not been a simple matter for the petitioner. When I canvassed counsel for the Pleadings Respondents who the beneficial owner was, he agreed that the affidavits did not provide an answer, although his client's notice of application identifies Promotors as being the beneficial owner at the time the cause of action arose. This is, and remains, a live issue and I would not concede to the Proposed Defendants' position that the amendments come too late or ought to have occurred when the amended notice of civil claim was filed just weeks ago.

[44] Further, the Proposed Defendants argue that the plaintiff has identified Coastal Craft Yachts Ltd. as the "owner" of the Starfish I and should not be permitted to resile from that position.

[45] Although the plaintiff originally identified Coastal Craft Yachts Ltd. as the owner, it has not specifically plead who the beneficial owner was at the time the action arose. The plaintiff identified, by using the pleading naming convention, that there may be additional beneficial owners identified. Counsel for the plaintiff advises that this is typical in admiralty law, and I accept this to be the case.

[46] The plaintiff has been responding to information as it becomes known to it. The identity of the legal and beneficial owners is likely an issue that will have to be determined at trial, and the plaintiff should not be unnecessarily restricted in bringing its claim forward.

[47] The plaintiff has brought forward its application in a timely manner and has accepted that new information requires it to amend or clarify admissions contained in the notice of civil claim and amended notice of civil claim. The plaintiff comes to this conclusion following receipt of additional information that was not previously known to it. The amendments for which leave is sought are intended to correct these admissions based on recent disclosure.

[48] I do not concede to the Proposed Defendants position that the plaintiffs have abused the court's processes.

***Do the proposed amendments advance a claim?***

[49] The Proposed Defendants submit that the proposed amendments do not advance a claim against them and ought to be refused on that basis. They say that (a) the proposed pleading is internally inconsistent; (b) no material facts are plead to support the alleged agency relationships; (c) the agency arguments are speculative and fanciful; (d) the conversion claim is inconsistent; and (e) the proposed pleading fails to include the necessary particulars.

[50] The Proposed Defendants argue that the proposed amendments are internally inconsistent. Having considered the submissions on this matter, it appears that the Proposed Defendants seek further particulars arising from the proposed pleadings. If further particulars are sought, there is a process available for further particulars to be demanded.

[51] With respect to the Proposed Defendants' submission that there are no material facts to support the alleged agency relationship or those claims are speculative and fanciful. The Proposed Defendants rely on a lack of evidence, or inconsistencies in the evidence for asserting this. With respect to the plaintiff's application, they are not required to establish all of the evidence necessary to make out a claim. A party is not required to adduce evidence in support of a pleading before trial.

[52] Lastly, the Proposed Defendants argue that the proposed pleading fails to include the necessary particulars of the alleged misrepresentation and fraud. The parties did not argue this matter before me, and I am not aware of what particulars the Proposed Defendants say ought to be there to sustain a claim. On this basis, I cannot fully consider this argument and will base my decision on the pleadings sustaining a claim of misrepresentation and fraud.

***Conclusion***

[53] I find that the proposed amendments are necessary to adjudicate the claim against the Proposed Defendants and I would exercise my discretion to permit the amendments and add the Proposed Defendants as defendants.

[54] In making this decision, I find that the Proposed Defendants have failed to demonstrate any prejudice by permitting the amendments and adding them as defendants.

[55] In rendering my decision, I have not foreclosed the Proposed Defendants from applying in the future to strike the alleged misrepresentation and fraud claims, as I was unable to consider this matter based on the inadequacy of time and submissions.

[56] For the reasons set out above, I grant paragraphs 1 – 4 of the plaintiff's application filed on February 2, 2026.

**Should the *in rem* claim be struck and dismissed?**

[57] BIM argues that the plaintiff's claim is not one that could be brought *in rem* in the Federal Court and therefore cannot be brought in this court.

[58] BIM's main argument is that the only *in personam* claim advanced by the plaintiff is against Coastal Craft Yachts Ltd.

[59] Having granted the relief sought by the plaintiff to permit the amendments and add the Proposed Defendants as defendants, BIM's application must fail.

[60] BIM has not put evidence before the court that would allow the court to make a finding that one of the Proposed Defendants was not a beneficial owner at the time that claim arose and when the claim was filed. There is at least some evidence before me to suggest that one of the Proposed Defendants was the beneficial owner at all material times. However, I make no finding in this regard as that is a matter that should be decided at trial when all of the evidence is available.

[61] The evidence that BIM has put forward suggests a change in legal ownership of the Starfish I, however, that is not sufficient to satisfy the requirements of the *Federal Courts Act*, which considers the beneficial ownership.

[62] I find that it would be improper at this early stage in the absence of any compelling evidence to set aside the Warrant and Caveat.

[63] It is clear to me that the question of whether a right *in rem* and *in personam* is a triable issue and the plaintiff should not be foreclosed at this early stage from advancing its claim.

[64] Should BIM wish to remove the Starfish I from the jurisdiction it can do so by posting security for the claims advanced by the plaintiff and West Bay Shipyards Ltd.

[65] For these reasons, the application of BIM is dismissed. The plaintiff and West Bay Shipyards Ltd. will have their costs in the cause.

**Conclusion**

[66] For the reasons outlined above, I make the following orders:

- a) The application of BIM filed on January 28, 2026, is dismissed with the plaintiff and West Bay Shipyards Ltd. being granted their costs in the cause;
- b) The plaintiff is granted the relief sought in paragraphs 1, 2, 3, and 4 of its notice of application filed on February 2, 2026.

“LeBlanc, J.”