

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lennon v. Coal Harbour Marina Ltd.*,
2026 BCSC 619

Date: 20260410
Docket: S230311
Registry: Vancouver

Between:

Amy Rebecca Lennon

Plaintiff

And

Coal Harbour Marina Ltd.

Defendant

- and -

Docket: S238284
Registry: Vancouver

Between:

Coal Harbour Marina Ltd.

Plaintiff

And

**Amy Rebecca Lennon, The Owners and All Others Interested in The Ship
"Seascape", a Certain Ship Being a 40 Foot Custom Coastal Seacraft
Houseboat Located at The Coal Harbour Marina**

Defendants

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for Amy Rebecca Lennon,
Plaintiff in Action No. S230311 and
Defendant in Action No. S238284:

D. Williams
G. Lockhart, Articled Student

Counsel for Coal Harbour Marina Ltd.,
Defendant in Action No. S230311 and
Plaintiff in Action No. S238284:

B.D. Hughes
E.L. Brown

Place and Dates of Trial:

Vancouver, B.C.
January 5–9, 2026
February 9–11, 2026

Place and Date of Judgment:

Vancouver, B.C.
April 10, 2026

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I. INTRODUCTION

[1] Amy Rebecca Lennon in 2016 bought a float home that was moored at the marina operated by Coal Harbour Marina Ltd. (“CHM”) in downtown Vancouver. Starting in January 2016, Ms. Lennon lived on the float home, called the *Seascope*. In May 2022, CHM did not renew her license to live aboard the float home and later advised Ms. Lennon to move the boat by March 2023. Despite this, *Seascope* has continued to be moored there. Ms. Lennon argues CHM was in breach of its obligation to renew her live aboard agreement, while CHM argues Ms. Lennon is committing trespass and nuisance by leaving her boat at the marina.

[2] There are two actions. Ms. Lennon brings an action against CHM, alleging it has breached its duty of good faith and honest performance by not renewing her live aboard moorage agreement. She seeks a declaration that her live aboard agreement is still in effect and an award of damages. Pursuant to Rule 21-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR], CHM brings an *in rem* proceeding against Ms. Lennon and *Seascope*. CHM seeks a declaration that Ms. Lennon no longer has a valid moorage agreement and the presence of *Seascope* in the marina constitutes a private nuisance and trespass. CHM seeks a permanent injunction and an award of damages.

II. FACTUAL BACKGROUND

A. Evidence of Amy Rebecca Lennon

[3] Ms. Lennon is 53 years old. She has a Bachelor of Journalism from Carleton University and for 25 years she has worked in Vancouver as a digital producer. In December 2015, she made an offer to purchase *Seascope*, a two-storey, two-bedroom 40-foot float home with a rooftop deck, moored at berth F07 at the marina. The marina is located at the foot of Stanley Park, and for Ms. Lennon was an ideal location as she could enjoy views of the water and the North Shore mountains. The location suited her lifestyle, and she would not have purchased the boat if it was not moored there. Her plan was to live full-time on the boat indefinitely. Ms. Lennon retained a realtor who had experience with sales of float homes. Her offer of \$425,000

was accepted by the seller. The offer was subject to Ms. Lennon being satisfied with the marina moorage agreements, a marina survey and receiving written consent of CHM to transfer the live aboard lease from the previous owner to her.

[4] Before removing the subject clauses, Ms. Lennon and her realtor met with Steve Varley, then general manager of CHM, on December 7, 2015. At that time, she completed an application form for moorage. She testified that while she knew the marina had a discretion to renew, her understanding was her live aboard moorage would be renewed annually so long as she paid her outstanding bills and was in good standing with the marina. She testified she would not have purchased the float home if she had known her live aboard moorage would not be routinely renewed. Ms. Lennon removed the subject clauses on December 14, 2015, and the sale completed on January 12, 2016.

1. The 2016 Moorage Agreement

[5] On January 13, 2016, Ms. Lennon and CHM entered into a moorage license agreement (the “2016 Moorage Agreement”). The document is entitled “Coal Harbour Marina – Annual Moorage License Agreement”, and grants Ms. Lennon a license to moor *Seascope* at berth F07. The 2016 Moorage Agreement in section 1 refers to “Basic License Terms”, including the berth number (F07), the berth size (40’) and invoice length (40’), which, as I understand it, refers to the length of the boat for the purpose of determining moorage costs. Under “status”, the words “Prorated Liveaboard Annual Moorage” appear.

[6] Under “Moorage Terms”, the commencement date is January 13, 2016, and completion date is March 31, 2016. The prorated license fee is \$2,384.55, with monthly services fees of \$15 and GST.

[7] The 2016 Moorage Agreement contains the following relevant sections:

3. Term. Unless otherwise expressly provided herein, the Term of this License shall be annual, expiring on the next ensuing March 31, unless earlier terminated upon not less than thirty (30) days written notice from the Licensor. If the Berth Occupancy Date is other than the first day of the month, the License

Agreement Commencement Date shall be the earlier of the first (1st) or the fifteenth (15th) of the month.

...

18. No Living Aboard. Unless otherwise expressly provided in this agreement, no person may live aboard the vessel when moored at the berth without the prior written consent of the Licensor, which the Licensor may withhold at its sole discretion. The following is enclosed for reference purposes:

City of Vancouver License By-Law No. 4450, Section 2 - “Occupied Live-aboard Boat” means any live-aboard boat which is used as a place of abode within the City by one or more persons for a minimum of sixty consecutive or non-consecutive days during a calendar year.”

...

23. Default, Remedies. If the Licensee violates the Rules and Regulations of the Marina following written notice from the Licensor to cease and desist such violation, or, if the Licensee fails to pay Annual License Fees, Service Fees and charges, interest, Utility Fees or any amount due and payable hereunder and such failure continues for a period of three (3) days after the Licensor has given the Licensee written notice thereof, or if the Licensee fails to perform any other term, covenant or condition of this License and such failure continues for a period of seven (7) days after the Licensor has given the Licensee written notice thereof, the Licensee shall be in default hereunder. Under default, the Licensor may exercise any and all remedies available to the Licensor hereunder or otherwise provided by law. Without limiting the foregoing, the Licensor may immediately terminate this License without limiting the liability of the Licensee for all amounts due hereunder. Upon termination of this License, and if the Licensee has not already done so, the Licensor shall be authorized to remove the Vessel and all property of the Licensee from the Berth and the Marina, all at the cost, expense and risk of the Licensee. If the Vessel remains at the Berth or in the Marina following termination of the License, and without limiting the other remedies of License hereunder, the Licensee shall be deemed to be holding over pursuant to Section 20 hereof.

...

33. Terms. The Rules and Regulations attached hereto as Schedule “A” and the Additional Terms, inclusive of but not limited to the Annual Moorage Renewal documents (Schedule “C”), if any, are hereby incorporated into and form a part of this License.

[8] Schedule A – Marina Rules and Regulations is attached to the 2016 Moorage Agreement. Clause 26 of Schedule A reads as follows:

26. 10:00 PM – 7:00 AM (Quiet Time); Disorderly Conduct

Any noise audible from outside the Vessel shall be prohibited between the hours of 10:00 PM - 7:00 AM (“Quiet Time”). Disorderly or indecorous conduct by any Licensee or Licensee’s visitors that might cause harm or nuisance to any other person or damage property or harm the reputation of the Marina is prohibited. Any willful violations of these Rules and Regulations, obnoxious or

disorderly conduct by a Licensee, Vessel crew or guests which constitutes a nuisance, or a breach of the peace, or which might cause bodily injury, damage to property, or demean the reputation of the Marina shall constitute grounds for termination of this License and removal of the Vessel from the Marina. Drinking of alcoholic beverages, except in licensed premises or on private Vessels, and use of illegal drugs, are prohibited.

2. The Moorage Renewal Process

[9] The moorage renewal each year consisted of two separate processes.

[10] In December each year, CHM would send correspondence to its live aboard clients, asking if they wished to renew their live aboard status for the following year (“Live Aboard License Renewal Status Form”). If a client wished to live aboard a float home, a license issued by the City of Vancouver is required (“Live Aboard License”). These Live Aboard Licenses are issued by the city to CHM, who pays upfront initially and then invoices the clients. The Live Aboard License is for a one-year term, from January 1 to December 31. The yearly fee for a Live Aboard License was in 2016 approximately \$1,920 and in 2022 it was approximately \$2,390.

[11] For example, the Live Aboard License Renewal Status Form sent by CHM in December 2019 states “[p]lease provide confirmation of your requested 2020 Live Aboard status by completing and returning the attached form on or before **December 15th**.” If a client wished to renew, the client would need to pay the fee for the Live Aboard License. The Live Aboard License Renewal Status Form included a place to check “Request Live-Aboard Status Renewal” or “Decline Live-Aboard Status Renewal”. Under the client’s signature line, the following passage appears:

* By completing and signing this document I hereby authorize Coal Harbour Marina to apply for and incur fees related to the sourcing and provision of an annual City of Vancouver Live-Aboard Licence (January 1 – December 31) and agree to provide full compensation for said fees upon receipt of an invoice. Coal Harbour Marina makes no guarantee that a City of Vancouver Live-Aboard Licence will be made available or provided.

[12] In addition to the Live Aboard License, each spring CHM would send out notices asking its clients if they intended to renew moorage for the next year. Clients wishing to renew would complete a Moorage License Agreement Schedule C

(“Schedule C”). The moorage renewal runs for one year, from April 1 to March 31, as April is the start of the nautical season.

[13] Starting in the spring of 2016, Ms. Lennon completed and returned a Schedule C each year, together with payment for moorage for the following year from April 1 to March 31. I note the signed copies of Schedule Cs from 2016 to 2020 have not been adduced. What has been put in evidence is a blank copy of a Schedule C from spring 2020. However, there is no dispute between the parties that the Schedule Cs completed and returned by Ms. Lennon from 2016 to 2020 contained the same language as the blank copy that has been adduced.

[14] Each Schedule C in the preface states “This document comprises *Additional Terms (Item 33)* of the Coal Harbour Marina Moorage License Agreement and is hereby incorporated into and forms a part of said License.” Schedule C contains the following provision:

C. Renewal Status (Initial Selection)

_____ RECURRING ANNUAL RENEWAL (Moorage Term:
April 1 – March 31):

- Subject to the Licensee being in good standing with no outstanding amounts due, each Moorage Term shall automatically renew for subsequent periods of the same length as the initial Term unless the Licensee provides written notice of non-renewal a minimum of thirty (30) days prior to expiration of the then-current Term (March 31st).

[Emphasis added.]

[15] There is one signed copy of a Schedule C in evidence that was completed for the 2021 to 2022 term. In the spring of 2021, the wording in Schedule C changed to the following:

C. Renewal Status (Initial Selection)

_____ RENEW ANNUAL MOORAGE (Term: April 1, 2021 –
March 31, 2022):

- Subject to the Licensee being in good standing with no outstanding amounts due, each Moorage Term may be automatically renewed for subsequent periods of the same length as the initial Term unless the Licensee

provides written notice of non-renewal a minimum of thirty (30) days prior to expiration of the current Term.

[Emphasis added.]

[16] Ms. Lennon initialled next to this section, indicating she wished to renew her annual moorage for 2021 to 2022. She signed it on February 17, 2021. Above her signature on the second page of Schedule C is the following:

G. Moorage License Agreement Renewal

As detailed in *Item 4* of the Coal Harbour Marina Moorage License Agreement, I acknowledge the term of this License Agreement Renewal (*Schedule C-2021/2022 LAB*) is one (1) full year, commencing April 1 and completing March 31.

[17] Ms. Lennon paid \$13,286 by cheque dated March 31, 2021, for moorage from April 1, 2021 to March 31, 2022.

3. Events after Ms. Lennon Moved into the Seascope

[18] Ms. Lennon started living in her float home in January 2016. Her evidence was she got along well with both the staff and other clients at the marina. She testified her relationships with everyone in the marina were friendly and professional.

[19] In August 2016, Ms. Lennon had a seizure while she was at the marina. She had a second seizure in March 2017. After testing, she was diagnosed with epilepsy. Her neurologist advised her to go on medication and to wear a life vest while she was at the marina, until her condition stabilized. By the summer of 2017, she was no longer having seizures and was advised she could drive. She also stopped wearing her life vest while she was on the docks. The marina staff had offered to keep her life vest at the office so she can drop it off when she left and pick it up when she returned to the marina.

[20] In the summer of 2020, she testified she had a dispute with a nearby float home neighbour by the name of Greg Clarkes. While the relationship had been friendly when she first moved onto her boat in 2016, by the summer of 2020 Mr. Clarkes was demanding that she install window coverings on *Seascope*, complaining that he did not wish to see her walking around her float home. Ms. Lennon did not wish to cover

her windows, as she enjoyed the natural light. She wrote an email to Mr. Varley on August 13, 2020, entitled “escalating situation for your records”. She described the situation as Mr. Clarkes providing a “yelling ultimatum” to install sheers on her windows, or there will be a “total war”. Ms. Lennon wrote she was concerned that the parties were on a “serious downward spiral”, and that Mr. Clarkes “threatened to blast his music all day and keep his glaring deck stern lights on at night”. Ms. Lennon sent another email on September 17, 2020 to Mr. Varley, advising there was “another unsettling incident” at the end of August with bullying behaviour. She wanted to speak to Mr. Varley to provide an update. Ms. Lennon testified her dispute with Mr. Clarkes was resolved by the Fall 2020.

[21] Ms. Lennon had an incident with another neighbour that she reported to marina management. She allowed neighbour Judith Milliken access to her float home in April 2021, as Ms. Milliken was considering options to renovate her boat, and had asked if she could bring her contractor to look at the layout of *Seascape*. During the visit, Ms. Lennon observed the contractor taking photos. After the visit, Ms. Lennon testified she felt uneasy and sent an email to Ms. Milliken, asking if she visited for design ideas or if it was to gather evidence for litigation against the sellers. As I understand it, Ms. Milliken had recently purchased her float home at that location and Ms. Lennon knew the sellers, her former neighbours. Ms. Lennon blind copied her email to marina management. Ms. Lennon testified she exchanged emails with Ms. Milliken that evening and the issue was resolved between them. The next day Ms. Lennon advised marina management the issue was resolved.

[22] On January 16, 2020, Ms. Lennon slipped on ice while she was walking on the docks in the marina near Cardero’s restaurant and broke her right wrist. The next day Ms. Lennon went to the marina office to advise of her accident. On January 31, 2020, Ms. Lennon’s lawyer wrote to CHM seeking information. On February 5, 2020, Ms. Lennon emailed Mr. Varley, advising that she has contacted a lawyer. She started an action against CHM in December 2021. The Notice of Civil Claim (the “NOCC”) was served on CHM on January 10, 2022. The lawsuit was settled in September 2023 for approximately \$94,000 by CHM’s insurer.

[23] Ms. Lennon denies she engaged in public nudity or sunbathed topless on her float home. She testified that occasionally when she was sunbathing on her deck, she would lie on her front and remove the straps of her bathing suit so she would not get tan lines.

[24] While Ms. Lennon agreed that sometimes she walked around the docks with a glass of wine, she denies that she was ever intoxicated on the docks.

4. Events in Spring 2022

[25] In December 2021, Ms. Lennon returned to CHM her 2022 Live Aboard License Renewal Status Form, requesting live-aboard status renewal for 2022. However, she did not receive a new Schedule C from CHM in the spring of 2022. She made inquiries at the marina office with Charlotte Arber, an administrative assistant, in February 2022, and was told the renewal was in the works. She asked again in March and was advised the same. In May 2022, Ms. Lennon learned from her neighbours that they had received their renewal forms. She sent an email to Ms. Arber and Odai Sirri, the new general manager, on May 24, 2022, asking when she can expect her renewal notice. Mr. Varley had retired at the end of 2021 or beginning of 2022.

[26] On May 25, 2022, Mr. Sirri responded by email, advising Ms. Lennon that her live aboard status has not been renewed for 2022 and the cheque she had provided in December for the city's Live Aboard License had not been cashed. Mr. Sirri advised she could enter a new moorage agreement if she wished to keep her float home moored at CHM and sent as an attachment a blank copy of a moorage agreement for her to complete.

[27] Ms. Lennon testified she was in a panic upon receipt of Mr. Sirri's email. She was confused and concerned that she may not have a place to moor *Seascape*. She responded by email on May 26, 2022, asking for a meeting. The parties agreed to meet on May 31, 2022.

[28] Ms. Lennon testified she tried to find a lawyer to assist her before the meeting. She wanted to know how she can get her live aboard status back. She called several

maritime lawyers but she was not able to obtain any legal assistance. She spoke to a lawyer at her current counsel's firm on May 25, 2022. While initially she testified she did not have any legal assistance in preparing the questions for her meeting with the general manager, she later clarified that the lawyer she consulted had helped her prepare the questions.

[29] The meeting was attended by Ms. Lennon and Mr. Sirri at the marina office on May 31, 2022. Ms. Lennon testified Mr. Sirri did not provide her any explanation for why her live aboard status was not being renewed, other than that the decision to renew was at the discretion of CHM. At the meeting, Ms. Lennon asked questions about the new moorage agreement that she was sent. She testified she was told by Mr. Sirri that it was for recreational moorage and she cannot stay more than 59 nights on the float home.

5. The 2022 Moorage Agreement

[30] The new moorage license agreement (the "2022 Moorage Agreement") is almost identical to the 2016 Moorage Agreement. The only relevant difference is in the 2022 Moorage Agreement, status in section 1 states "Annual Pre-paid Moorage" whereas in 2016 the status was "Prorated Liveaboard Annual Moorage". The commencement date is from April 1, 2022 to completion date of March 31, 2023. Next to clause 18, the No Living Aboard section, the wording is the same as in 2016. Ms. Lennon initialled the section and signed the 2022 Moorage Agreement on June 9, 2022. She paid \$10,741 in moorage fees. The amount paid was approximately \$2,000 less than for live aboard moorage fees. Mr. Sirri signed on behalf of CHM on June 10, 2022.

[31] While she was not provided any deadline to complete the new moorage agreement, Ms. Lennon testified she felt pressured to sign it, as she did not have another place to moor her float home. She was hopeful that by signing, she could buy herself more time to figure out how she can resolve her issue with the marina and regain her live aboard status.

[32] On July 7, 2022, Ms. Lennon received an email from Mr. Sirri, advising that she was overstaying her allotted 59 nights on the float home. The email advised that further non-compliance will result in immediate termination of her moorage agreement.

[33] Ms. Lennon responded on July 11, 2022, advising that she had only stayed 16 nights on *Seascape* since signing the 2022 Moorage Agreement.

[34] Mr. Sirri responded on July 21, 2022, advising that as the 2022 Moorage Agreement started on April 1, 2022, the 59 nights had to be counted from April 1, 2022.

[35] Ms. Lennon testified that at the meeting on May 31, 2022, Mr. Sirri had advised her the 59 nights started from when she signed the agreement. She testified that July 21, 2022 was the first time she was advised the 59 nights started from April 1, 2022. After July 7, 2022, Ms. Lennon testified she no longer stayed overnight on *Seascape*.

[36] On August 31, 2022, Mr. Sirri sent Ms. Lennon an email, advising that her moorage with CHM will end on March 31, 2023, and will not be renewed. He asked that her float home vacate the marina by 1:00 p.m. on March 31, 2023.

6. Events Post March 2023

[37] Ms. Lennon started an action against CHM in January 2023. CHM started its action against Ms. Lennon and *Seascape* in December 2023.

[38] On December 13, 2023, a story about the lawsuit ran in two local newspapers. The headline read “Vancouver’s Coal Harbour Marina sues, wants to ban ‘obnoxious’ houseboat owner”.

[39] In April 2024, she filed a claim with the British Columbia Human Rights Tribunal, alleging CHM discriminated against her by not renewing her live aboard license on the basis of her physical disability and her gender.

[40] In the summer of 2022, Ms. Lennon stayed at her parents’ home in North Vancouver. In the Fall of 2022, she moved into a house owned by a company

controlled by her family. Initially she was not charged any rent as renovations were being done but starting in July 2023 she paid rent of \$2,000 a month. She estimates she paid \$54,854 for rent and utilities from July 2023 to June 2025. She has since moved into a residence that she purchased in downtown Vancouver.

[41] She testified she has contacted approximately 22 marinas to inquire about moorage opportunities. She has not had any success finding an alternative marina. Most marinas have no availability and no or long waitlists. She testified that due to the specifics of her float home, there are not many places where she can moor it. As *Seascope* has no propulsion, moving it is more complex and requires a tug and insurance. Ms. Lennon testified she prefers to live close to the Lower Mainland. She believes the media coverage of the lawsuit has hindered her ability to find alternative moorage.

[42] *Seascope* remains moored at berth F07 at CHM. Ms. Lennon has not paid any moorage fees since June 2023.

B. Evidence of Odai Sirri

[43] Mr. Sirri has been working in marinas since 2009. He became the general manager of CHM in late November 2021, taking over from Mr. Varley who retired.

[44] CHM has approximately 250 clients for annual moorage. About 14 to 15 of these clients live aboard their boats. Mr. Sirri describes CHM as a highly sought after marina in a downtown location.

[45] When he started at CHM, due to Mr. Varley's impending departure, Mr. Sirri did not have sufficient opportunity to learn about the marina operation from him. Mr. Sirri met with staff one on one and as a group to learn more about how things were working and to hear their concerns. The staff brought up to him concerns about live aboard clients. He testified that all staff advised him of problems with Ms. Lennon pertaining to intoxication, complaints about nudity, and ongoing tensions between her and Mr. Clarkes that negatively impacted the marina environment. He was told by staff that the previous general manager did not deal with the situation.

[46] Mr. Sirri testified he met with staff on January 11, 2022. The group discussed three problematic clients at the marina: Ms. Lennon, Mr. Clarkes and another individual. Mr. Sirri was gathering information to decide if these clients would be permitted to continue living at the marina.

[47] He also reviewed the emails sent by Ms. Lennon about her issues with Mr. Clarkes and Ms. Milliken. In his view, the emails about the tensions with Mr. Clarkes show the conflict between them escalating. He believed the information he gathered showed the situation was beyond repair, and that it was not sustainable for the marina to continue to have them as clients. Ms. Lennon in a later email referenced another incident with Mr. Clarkes and an accusation from her that Mr. Clarkes was engaging in inappropriate behaviour. He believed these emails show the situation between them was not resolved. In his view, the email from Ms. Lennon about Ms. Milliken showed paranoia on the part of Ms. Lennon.

[48] One of the main issues relayed to him by all staff was concerns about Ms. Lennon's intoxication at the marina. Mr. Sirri testified this was a common theme and no staff member disputed it. The staff reported to him that Ms. Lennon was difficult to deal with when she was intoxicated.

[49] Mr. Sirri made the decision to not renew Ms. Lennon's live aboard status. He testified the decision was based on Ms. Lennon's persistent intoxication on the docks and in the marina; the conflict between her and Mr. Clarkes which was beyond reconciliation; her criticism of staff; and her emails demonstrating paranoia. At his examination for discovery, Mr. Sirri stated that Ms. Lennon's health condition was also a factor in his decision not to renew. He testified all staff members were unanimous in their views that they did not want her and Mr. Clarkes to continue their live aboard status. He described staff members expressing frustration that their concerns about Ms. Lennon had not been dealt with by the previous general manager. Mr. Sirri testified it was clear that Ms. Lennon was not suitable to be a live aboard client at the marina. He also declined to renew Mr. Clarkes in 2022, though Ms. Arber testified that occurred in 2023.

[50] Mr. Sirri did not speak to Ms. Lennon or Mr. Clarkes before he made his final decision to not renew. Due to the nature and extent of staff complaints about them, he believed their relationship with the staff was not salvageable. Mr. Sirri testified all the staff members wanted Ms. Lennon and Mr. Clarkes gone from the marina. Mr. Sirri does not recall when he made his final decision, but that it was made some time after the January 11, 2022 meeting.

[51] At the time, the marina was short staffed as about half of them had quit or were terminated in March and April 2022 due to the vaccine mandate. Mr. Sirri testified the office was behind in doing the renewals and it was on the to do list to let Ms. Lennon know of the decision. When Ms. Lennon sent an email on May 24, 2022, inquiring about her renewal status, that triggered a response. Mr. Sirri advised her she was not being renewed. In the email, he offered her a recreational moorage agreement which would allow her to keep *Seascope* at the marina. He believed it was a reasonable compromise as it allowed the marina to be rid of her as a live aboard client but gave her time to find alternate moorage facilities.

[52] He met with Ms. Lennon on May 31, 2022, at her request. He described Ms. Lennon during the meeting as being upset about losing her live aboard status. She repeatedly asked him why she could not renew. He advised her nine times CHM was not renewing her. Ms. Lennon repeatedly asked him why and he responded it was at the marina's discretion whether to renew. He testified he repeated this nine times as well. He testified he did not want to engage in further discussion with her about the non-renewal but wanted to be very clear with her that she was not returning as a live aboard client. He discussed the recreational moorage agreement and advised her the float home can stay in the marina but live aboard is not permitted beyond 60 days. When asked in cross-examination if he told her it was 60 days from the meeting, Mr. Sirri testified he told her it was 60 days from the start of the moorage agreement.

[53] Mr. Sirri sent an email to Ms. Lennon on August 31, 2022, advising that her moorage would not be renewed beyond March 31, 2023, and to have her float home

vacate the marina by 1:00 p.m. on March 31, 2023. He testified this provided Ms. Lennon seven months notice so she can find alternative moorage. He wanted to advise Ms. Lennon the marina was ending its relationship with her.

[54] Since Ms. Lennon and Mr. Clarkes left CHM, Mr. Sirri testified there has been a significant reduction in conflicts between clients and staff complaints. In his view, he does not believe it would be possible to have Ms. Lennon back as a client.

[55] The marina is planning a significant redesign and refresh in the near future, as the existing infrastructure needs to be revamped. The renovations would require all clients to vacate.

C. Evidence of Charlotte Arber

[56] Charlotte Arber started working at CHM in March 2021. Her initial role was as an administrative assistant in the office. She was promoted to moorage coordinator in 2022 and is currently the moorage manager. She oversees the billing for client accounts, coordinates transient and sublet moorage and liaises with the City of Vancouver for live aboard licenses. For live aboard licenses, CHM pays the city upfront and then bills the clients.

[57] CHM offers two types of moorage licenses: recreation moorage licenses and live aboard moorage licenses. Both types of moorage licenses include the berth for the boat. With a recreation moorage license, a client can only stay overnight on the boat for 59 nights a year.

[58] Live aboard clients put more demand on the infrastructure of the marina, such as the pump system, the fresh water supply and electrical supply. Ms. Arber testified the personality of the live aboard clients is more important than clients who do not live aboard, due to the frequency of interactions with staff and other clients. The marina is a small community where clients live in close quarters, so it is important that people get along.

[59] When Ms. Arber started at CHM, there were no vaccination policies in place. After Mr. Sirri joined as the new general manager, a vaccine mandate was implemented with staff required to submit proof of vaccination by April 2022. Ms. Arber testified that about half of the staff, approximately five or six people, quit or were terminated as a result. Her workload increased and the annual moorage renewals typically conducted in April of each year were delayed due to staff shortage.

[60] Ms. Arber saw Ms. Lennon frequently at the marina. Ms. Arber testified she observed Ms. Lennon intoxicated at the marina, based on her demeanour, slurred speech and unsteadiness on her feet. Ms. Arber was aware Ms. Lennon had conflicts with Mr. Clarkes and Ms. Milliken. The email sent to the marina by Ms. Lennon about Ms. Milliken's visit to her float home was received by Ms. Arber and forwarded by her to Mr. Varley. Ms. Arber did not know about Ms. Lennon's seizure condition before May 2022 when her live aboard status was cancelled. She was not advised by staff member Mauricio Guerra about Ms. Lennon's seizure condition.

[61] Ms. Arber testified Mr. Clarkes was not renewed as a client in February 2023. Ms. Arber testified she was instructed by her co-worker Kendall Farrell to advise Mr. Clarkes. As Ms. Kendall was no longer working at the marina in 2023, I find Ms. Arber mistaken about the date. Ms. Arber's understanding was Mr. Clarkes was not renewed due to his conflicts with Ms. Lennon and his lengthy absences from the marina. He was often not using his slip but instead of allowing the marina to sublet it out, Mr. Clarkes sublet it out himself. Ms. Arber testified there is a high demand for moorage at CHM, and the marina prioritizes active boaters who tend to make a better community.

[62] Ms. Lennon did not vacate her slip by March 31, 2023. She was sent an invoice for April to May 31, 2023 at a high season day rate. The invoice for that period was \$10,248 and she paid \$2,557 on June 1, 2023. That was the last payment Ms. Lennon made for moorage.

[63] When there is no moorage agreement, clients are charged the transient day rate, which varies depending on the season and the length of the boat.

D. Evidence of Mauricio Guerra

[64] Mauricio Guerra started working for CHM in June 2014 as a dockhand. Currently he is the dock operations coordinator, responsible for overseeing the security and maintenance of the marina.

[65] In his role, Mr. Guerra interacts frequently with clients. He first met Ms. Lennon in spring 2016. Mr. Guerra was responsible for doing a daily security walk about on the docks, including picking up garbage. He saw Ms. Lennon frequently at the garbage area where she was dumping her empty alcohol bottles after the weekend.

[66] Mr. Guerra was aware Ms. Lennon had conflicts with Mr. Clarkes over complaints about loud music and nudity. Mr. Guerra observed Ms. Lennon playing loud music from her boat with the windows open to annoy Mr. Clarkes. She would play music on the northside of her boat, pointing towards Mr. Clarkes' boat which was north of her. Mr. Guerra observed these occasions with her playing loud music approximately three times from 2018 to 2020. He testified he was aware it happened frequently.

[67] Mr. Guerra heard complaints from Ms. Lennon about Mr. Clarkes and was aware that Mr. Clarkes complained to staff about her. Their float homes were separated by one slip in between. Neither Ms. Lennon nor Mr. Clarkes wanted to change slips, as their location had the best sun exposure.

[68] Mr. Guerra testified in the summer of 2019 there was a complaint from someone on the seawall who observed a woman walking topless on the deck of her float home. Mr. Guerra received a call on the radio to verify the complaint. He went to a vantage point on an adjacent dock and he saw Ms. Lennon walking on her float home deck topless.

[69] Mr. Guerra saw Ms. Lennon frequently at the marina. He observed her drinking alcohol consistently at the marina, walking around the docks with a glass of wine. She later purchased a small tender and would tour the marina in it with her partner, drinking and taking photos. Mr. Guerra described her drinking level as high. He observed her

intoxicated on the docks frequently, when she would become loud and would criticize staff.

[70] Ms. Lennon had told him she had problems with seizures at one point and needed to wear a life vest on the docks. The marina made a hook available for her in the office to hang her life vest when she left the marina. Mr. Guerra testified that after a while Ms. Lennon stopped using the life vest, but she never advised the staff if she had been medically cleared.

[71] Ms. Lennon had a young dog. One time the dog jumped from her float home and landed in the water. Mr. Guerra had to get the dog out of the water. He testified he had a concern about her having such an active dog as she had a health condition.

[72] Mr. Guerra was working the day Ms. Lennon fell on the docks in January 2020. He had finished his shift before her fall that night. The next day Mr. Guerra and Mr. Varley checked the CCTV video to verify that salting procedures were followed. After the fall, Mr. Guerra testified Ms. Lennon became more standoffish towards staff.

[73] Mr. Guerra was terminated by the general manager in September 2021. He testified Mr. Varley asked him his opinion on recently hired staff members and Mr. Guerra advised he did not believe they were suitable as they did not have any marina experience. Mr. Guerra was terminated on the spot.

[74] He first met Mr. Sirri in May 2022. Mr. Guerra was cleaning a boat at CHM for a client. They had a conversation on the docks on or before May 24, 2022. Mr. Guerra testified that Mr. Sirri wanted to know about the operation of the marina as he had not received an adequate briefing from Mr. Varley. Mr. Guerra was knowledgeable as he had worked at CHM since 2014. He discussed various issues with Mr. Sirri. Mr. Guerra told Mr. Sirri his observations of Ms. Lennon at the marina, including her openly drinking on the docks and conflict with Mr. Clarkes. He met Mr. Sirri again for a job interview in early June 2022. He started working at the marina again in June 2022.

III. CREDIBILITY AND RELIABILITY

[75] An assessment of credibility requires an examination of the consistency of the evidence with “the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A). Factors to consider in assessing a witness’ credibility include the firmness of their memory, whether the witness’ evidence harmonizes with independent evidence that is accepted, whether the witness changes their testimony between direct and cross-examination, whether the witness’ testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and, with caution, their demeanor: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff’d 2012 BCCA 296, leave to appeal to SCC ref’d 35006 (7 March 2013).

[76] Distinct from credibility, which has to do with a witness’ veracity, reliability refers to the accuracy of the witness’ testimony. Factors to be considered include the ability to accurately observe, recall and recount events in issue: *Ford v. Lin*, 2022 BCCA 179 at para. 104. A witness whose evidence is found to be non-credible cannot give reliable evidence on that same issue: *Sull v. Pengelly*, 2019 BCSC 575 at para. 27, citing *R. v. H.C.*, 2009 ONCA 56 at para. 41.

[77] Ms. Lennon argues Mr. Sirri’s evidence ought not be accepted, except where it is contrary to his interests such as where he referenced Ms. Lennon’s health condition as a factor in deciding not to renew. She argues Mr. Sirri’s evidence is contrary to the documents and inconsistent with the evidence of both Ms. Arber and Mr. Guerra. For example, while Mr. Sirri referred to many “documented” incidents of conflicts between Ms. Lennon and other clients, the only documents produced have been a few emails. While Mr. Sirri testified that he had a meeting with all staff on January 11, 2022, to discuss the problematic live aboard clients, Ms. Arber testified she was not at such a meeting. Mr. Sirri testified he spoke with Ms. Milliken at the marina office in 2022 and discussed with Ms. Milliken her conflict with Ms. Lennon. However, Ms. Arber testified Ms. Milliken did not come into the marina office until 2023. He testified he received Ms. Lennon’s NOCC with respect to the slip and fall on

January 12, 2022, as he was not in Vancouver before that time, but the evidence is he was in Vancouver having a staff meeting on January 11, 2022. Overall, Ms. Lennon argues Mr. Sirri was not credible or reliable.

[78] With respect to Mr. Guerra, Ms. Lennon argues he held a grudge against her in relation to the slip and fall, and he was a biased witness. She argues Mr. Guerra's evidence was "hyperbolic" and extreme. Ms. Lennon argues his evidence should be treated carefully by the Court.

[79] Ms. Lennon's position is Ms. Arber was the only defence witness whose evidence should be accepted by the Court, as she presented as neutral and fair.

[80] CHM argues Ms. Lennon was not credible or reliable. CHM argues she changed her evidence to favour her position. For example, on the issue of whether she obtained legal advice after she received the email advising she was not renewed, Ms. Lennon initially testified she was not able to get any legal advice, and specifically that she had no help from a lawyer in drafting her questions for the meeting with Mr. Sirri. Later, Ms. Lennon changed her evidence to agree that she was able to consult with a lawyer who assisted her in drafting the questions. CHM argues Ms. Lennon's evidence between her examination for discovery and trial was inconsistent. For example, at trial she testified she did online research on float homes before purchasing *Seascape*, while at discovery her evidence was she did not conduct any research and relied on her realtor. At trial she denied being intoxicated on the docks, while at discovery she agreed she had been intoxicated at the marina. When confronted with her discovery evidence, Ms. Lennon agreed she could have been intoxicated when she interacted with the marina staff.

[81] With respect to Mr. Sirri, Ms. Arber and Mr. Guerra, I generally found them all to be credible. I did not find Mr. Sirri to provide self-serving evidence. While he used the term "documented" interchangeably with "reported", I did not find that was an attempt to cover up why there were not more written documents containing complaints against Ms. Lennon. In my view, when he spoke of well documented, he was referring to verbal reports he received from all the staff members about Ms. Lennon. His

evidence is he spoke to all the staff when he started his role to learn of their concerns, and issues with respect to Ms. Lennon were consistently raised. In that sense, when he used the phrase “well documented”, I do not take him to be saying these were all written complaints. With respect to his testimony about Ms. Arber being at the January 11, 2022 meeting and Ms. Arber’s evidence that she was not, upon a review of his evidence, he did not definitively testify that Ms. Arber was at the meeting. He testified more than once that he believed she was but he was not certain. With respect to the date that Mr. Clarkes was not renewed, Mr. Sirri testified it was in 2022. Ms. Arber testified it was in 2023. However, Ms. Arber testified she was told by Ms. Farrell not to renew Mr. Clarkes, and Ms. Farrell was no longer at CHM in 2023. Ms. Arber testified more than once she was directed by Ms. Farrell not to renew Mr. Clarkes. I find it more likely that Mr. Clarkes was also not renewed in 2022 and Ms. Arber was mistaken about the date.

[82] With respect to Mr. Guerra’s evidence, I do not agree he showed he held a grudge against Ms. Lennon due to the slip and fall. I took his evidence to be that initially, Mr. Varley came down hard on Mr. Guerra for not salting properly, but once they reviewed the CCTV footage, Mr. Guerra was cleared. I do not agree his evidence was exaggerated. Contrary to Ms. Lennon’s argument, Mr. Guerra did not testify she was “always” drunk or nude “all the time”. His evidence was her drinking level was high, and he often bumped into her or her partner at the bottle recycling spot after a weekend. I do not find his observations were so exaggerated as to be hyperbolic and not believable. He was at the marina when Ms. Lennon first started living there and he was in a good position to observe her behaviour. His evidence of her behaviour, her intoxication and occasions of nudity, were consistent in direct and cross-examination. While Ms. Lennon complains that the incident of a report from someone on the seawall of topless sunbathing was not put to her, that evidence was elicited by her counsel during cross-examination of Mr. Guerra. I found his evidence of Ms. Lennon’s behaviour at the marina detailed and credible. I rely on his evidence as he was the witness with the most knowledge of Ms. Lennon’s behaviour at the marina, as he was there from 2014 to 2021, and then again from 2022 to present. He had the

most opportunity to observe Ms. Lennon’s behaviour and interactions with others at the marina.

[83] I found Ms. Lennon to be credible. Contrary to the submissions of CHM, I do not find Ms. Lennon intentionally tried to mislead the court on the issue of whether she received any legal advice before her meeting with Mr. Sirri. However, I find Ms. Lennon in her evidence tried to downplay the extent of her conflict with Mr. Clarkes or Ms. Milliken and minimized her alcohol consumption. By her own emails from 2020, it is evident the conflict with Mr. Clarkes did not start and end in 2020. Her email described a long brewing feud between them escalating into a “total war”. Her email is consistent with Mr. Guerra’s evidence that they were in constant conflict like children. Similarly, while Ms. Lennon testified her issue with Ms. Milliken resolved in a few hours, the email that Ms. Lennon sent to the marina management is more consistent with the evidence of the defence witnesses that the relationship was strained. While Ms. Lennon denied being intoxicated at the marina, she generally did not challenge the evidence of Mr. Guerra about her level of drinking, except to argue his evidence was hyperbolic. For example, she did not challenge his evidence that he observed her and her partner drinking alcohol while touring around the marina in their tender. Ms. Arber, a witness that Ms. Lennon conceded was credible and reliable, also testified about her intoxication. On the issue of her behaviour and incidents of intoxication at the marina, I prefer the evidence of the defence witnesses.

IV. ISSUES

[84] The issues to be determined are the following:

1. Was Ms. Lennon’s live aboard status with CHM an automatically renewing contract?
2. Did CHM breach its duty of honesty and good faith in not renewing Ms. Lennon’s live aboard status?
3. Is CHM estopped from not renewing Ms. Lennon’s live aboard status?

4. Was the 2022 Moorage Agreement unconscionable?
5. Was the 2022 Moorage Agreement validly terminated?
6. Should Ms. Lennon pay transient moorage fees?
7. Is the moorage of *Seascope* at CHM a trespass and nuisance?
8. Has Ms. Lennon been unjustly enriched?
9. Is CHM entitled to a permanent injunction?
10. What damages are appropriate?

V. PRINCIPLES OF CONTRACT INTERPRETATION

[85] The proper approach to interpretation of contracts is to “read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract”: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*] at para. 47. However, the surrounding circumstances must not “overwhelm the words of [the] agreement”, and “should consist only of objective evidence of the background facts at the time of the execution of the contract ..., that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting”: *Sattva* at paras. 57–58; see also *Corner Brook (City) v. Bailey*, 2021 SCC 29 at para. 20.

VI. IS THE LIVE ABOARD STATUS AUTOMATICALLY RENEWING?

[86] As there were many documents exchanged between the parties from 2016 to 2022 while Ms. Lennon resided on her boat, I will first set out which documents comprise the contract. Then I will determine if the live aboard status was automatically renewing.

A. What documents comprise the contract?

[87] When Ms. Lennon purchased *Seascope*, the parties entered into the 2016 Moorage Agreement. The evidence is every spring a new Schedule C was executed by the parties, which renewed the moorage for another year to end the next March 31. The first Schedule C signed by the parties was in the spring of 2016, and governed the nautical year April 1, 2016 to March 31, 2017. Ms. Lennon executed additional Schedule Cs in 2017 (April 1, 2017 to March 31, 2018); in 2018 (April 1, 2018 to March 31, 2019); in 2019 (April 1, 2019 to March 31, 2020); in 2020 (April 1, 2020 to March 31, 2021); and in 2021 (April 1, 2021 to March 31, 2022).

[88] This renewal extended the term of the 2016 Moorage Agreement, as by clause 33 the annual Schedule C was incorporated into the 2016 Moorage Agreement. Pursuant to clause 3 of the 2016 Moorage Agreement, the term of the moorage would be extended by one year if a renewal Schedule C was executed, as clause 3 permitted a variation of the annual term if expressly provided. As such, each year that moorage was renewed, the 2016 Moorage Agreement together with that year's Schedule C comprised the contract between the parties. Each Schedule C was for one year ending the next March 31. I do not find the Schedule C from earlier years to continue to be applicable once those years have passed.

[89] Separate from the 2016 Moorage Agreement and the Schedule C process, live aboard clients must obtain a license from the City of Vancouver which are valid for one year, from January 1 to December 31. These live aboard licenses are applied for by CHM from the city. Each December CHM sends correspondence to the live aboard clients asking if they wish to renew for the next year. CHM decides which clients will be given a live aboard license. Live aboard status is governed by clause 18 of the 2016 Moorage Agreement.

[90] I find in the spring of 2022, the 2016 Moorage Agreement and the Schedule C signed by Ms. Lennon in 2021 comprised the most recent agreement between the parties.

B. Is Ms. Lennon’s moorage agreement with live aboard status automatically renewing?

[91] Ms. Lennon argues Schedule C is used specifically for live aboard clients, and the first Schedule C between the parties contained an automatic renewal term. She relies on the following language:

C. Renewal Status (Initial Selection)

RECURRING ANNUAL RENEWAL (Moorage Term:
April 1 – March 31):

- Subject to the Licensee being in good standing with no outstanding amounts due, each Moorage Term shall automatically renew for subsequent periods of the same length as the initial Term unless the Licensee provides written notice of non-renewal a minimum of thirty (30) days prior to expiration of the then-current Term (March 31st).

[Emphasis added.]

[92] This language was changed in the Schedule C signed in the spring of 2021 to “may automatically renew”. Ms. Lennon argues the wording was changed unilaterally without notice and is not binding on her. Further, she argues “may automatically renew” is ambiguous and internally inconsistent, as “may” indicates uncertainty while “automatic” indicates the outcome is self-executing. As I understand it, Ms. Lennon argues the Court ought to look to the earlier “shall automatically renew” language to interpret the agreement.

[93] Ms. Lennon argues an automatically renewing term with discretion provided to one party to provide notice of non-renewal is valid, relying on *Uniprix inc. v. Gestion Gosselin et Bérubé inc.*, 2017 SCC 43 [*Uniprix*]. She argues the term in Schedule C is similar to the term in *Uniprix*.

[94] With respect, I am not persuaded by these arguments. First, I find it is the Schedule C signed in 2021 which governs, with the “may automatically renew” language. Ms. Lennon initialled the paragraph, indicating she had read it, and signed at the end of the document. She provided no authority to support her position that a change made to the wording without notice is not binding. She had an opportunity to read it and decide if she wished to accept, decline or negotiate the terms. She

accepted the changed wording by initialling the paragraph and signing the document. While she testified she did not notice the changed wording at the time, again she has provided no authority for her position that she should then not be bound by it. I find the wording which governed the relationship was “[s]ubject to the Licensee being in good standing with no outstanding amounts due, each Moorage Term may automatically renew for subsequent periods of the same length as the initial Term”.

[95] I do not find in the circumstances that the parties had an automatic renewal term. In *Uniprix*, the contract contained a clause that the pharmacists shall notify Uniprix six months before the end of the term if they wished to leave or renew the contract. However, if the pharmacists failed to send the notice, the contract explicitly stated the agreement was deemed to have been renewed: *Uniprix* at para. 7. There is no such deemed renewal in Schedule C. The renewal in this case was subject to the licensee being in good standing with no outstanding amounts due, and even then it was discretionary. That is, even if Ms. Lennon was in good standing and up to date with her fees, CHM still retained a discretion to renew the moorage term, as seen by the use of “may”. In my view, the 2016 Moorage Agreement and the Schedule C signed in 2021 did not contain any compulsory automatic renewal term.

[96] I also do not find Schedule C was specific to live aboard clients. There was no evidence from any witness to that effect. Schedule C by its wording could have been used for all renewals, for both live aboard and non-live aboard clients.

[97] The process that was specific to live aboard clients is the application for live aboard licenses from the City of Vancouver that took place at the end of each December. I find CHM had discretion to decide which clients would be provided a live aboard license. That is found pursuant to clause 18 of the 2016 Moorage Agreement, which sets out no person may live aboard without the prior written consent of CHM, which CHM can withhold at its sole discretion. The clear language of clause 18 provides discretion to CHM to decide live aboard status. There are no other provisions in the 2016 Moorage Agreement or Schedule C which contradicts this. That live aboard status is not guaranteed is further supported by the language of the Live

Aboard License Renewal Status Form, which references a “Request” for live aboard status and notes that CHM makes no guarantee that a City Live-Aboard Licence will be made available or provided.

[98] Reading the contract as a whole, I find this was not an automatically renewing contract for live aboard status or moorage. This was an agreement for a one-year term and CHM has discretion to decide whether to renew.

VII. DID CHM EXERCISE ITS DISCRETION TO NOT RENEW HONESTLY AND IN GOOD FAITH?

[99] In contract law, there is an organizing principle of good faith performance, which underlies and manifests itself in more specific doctrines governing contractual performance: *Bhasin v. Hrynew*, 2014 SCC 71 at para. 63. The courts have recognized such a duty to exist in situations where the parties must cooperate in order to achieve the objectives of the contract; where one party exercises discretionary power under the contract; and where one party seeks to evade contractual duties: *Bhasin* at para. 47. This list is not closed: *Bhasin* at para. 66. As a manifestation of the general organizing principle of good faith, the duty of honest performance requires the parties to be honest with each other in relation to the performance of their contractual obligations and not lie or otherwise knowingly mislead: *Bhasin* at paras. 73, 93.

[100] The duty of good faith in the exercise of contractual discretion was considered in *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 [*Wastech*]. To determine whether a party failed in its duty to exercise discretionary power in good faith, one must determine if the exercise of contractual discretion was unconnected to the purpose for which the discretion was granted. If it was unconnected, the party has not exercised the contractual discretion in good faith and thus that exercise was unreasonable: *Wastech* at paras. 69, 71. Reasonableness in the exercise of contractual discretion refers to the exercise of discretion honestly and in light of the purposes for which it was conferred: *Wastech* at para. 68. The purpose of the discretion may be discerned from the text of the clause granting the

discretion or understood by reading the clause in the context of the contract as a whole: *Wastech* at para. 72.

[101] The principles flowing from *Wastech* were summarized by Horsman J.A. in *Dhanesar v. Pandher*, 2026 BCCA 63:

[67] Before returning to the trial judgment in this case, I will summarize the relevant principles I take from the Supreme Court of Canada’s judgment in *Wastech*:

- a) The duty to exercise contractual discretion in good faith is not based on implied terms in the contract but rather is a general doctrine of contract law that operates in all cases irrespective of the parties’ intentions: at para. 91.
- b) Contractual discretion must be exercised reasonably, which in this context means in a manner connected to the purposes for which discretion was conferred: at para. 63.
- c) To determine the range of good faith behaviour, it is first necessary to interpret the contract—in accordance with the ordinary principles of contractual interpretation—and to determine those purposes: at paras. 70–72.
- d) In a contractual context, the choices available to a party exercising discretion are ascertained principally by reference to the contract, which is the “first source of justice between the parties”: at para. 75.
- e) Where the discretion is exercised in a manner consistent with its purpose, that exercise may be characterized as reasonable according to the parties’ own bargain: at para. 71.
- f) Where discretion is exercised for an improper purpose—that is ulterior or extraneous to their intentions—then it is exercised in bad faith: at para. 75.
- g) This general duty of good faith in exercising discretion interferes very little with freedom of contract because: (1) contracting parties will rarely expect discretion to be exercised in a manner unconnected to the purposes for which it was conferred; and (2) the content of the duty is guided by the will of the parties: at paras. 92–93.

[102] Hence, the first step is to interpret the contract to determine the purposes for which discretion was provided. If the discretion was exercised in a manner consistent with its purpose, then the discretion was exercised reasonably. If the discretion was exercised for an improper purpose unconnected to its grant, then the discretion was exercised in bad faith.

1. For what purpose was the discretion granted?

[103] The discretion is granted to CHM in clause 18 to decide which clients to provide the City's live aboard licenses. Ms. Lennon argues the purpose for the discretion was to prevent the indefinite automatic renewal of a live aboard client who did not pay their fees or was unduly interfering with CHM's business despite being asked to correct their behaviour. CHM argues the discretion is for the purpose of managing its business and maintaining harmony at the marina between clients and staff.

[104] I do not accept the purpose of the discretion is to prevent indefinite automatic renewal of those who are behind in their fees or those who do not correct their behaviour after notice. This interpretation focuses only on clause 23 relating to defaults during the term of the contract and does not consider the other parts of the agreement.

[105] Reading the contract as a whole, I find the purpose of granting sole discretion to CHM in clause 18 is to allow it to decide suitability of clients to be live aboard patrons. Throughout the contract are terms designed to allow CHM to control the type of activities that can occur at the marina, and hence the type of clients allowed to live aboard at the marina. For example, limits are placed on use of the vessel at the marina. Chartering, overnight rental accommodation, business office use, film, photography or commercial use are not permitted: clause 6. By this clause, CHM wished to not have commercial clients moored or live aboard at the marina, maintaining its focus as a recreational marina.

[106] Further, clients must comply with all rules and regulations found in Schedule A: clause 8. Schedule A include rules on waste disposal, household recycling, sewage pump-out, waste oil transfer and toxic and hazardous materials. These materials are not accepted by the marina for disposal but must be stored on the vessel or removed by the licensee from the marina for disposal. There are rules on dock attachments or vessel overhangs and rules for proper electrical connections and water hoses. Children under 12 are not permitted on the docks without an adult and all non-

swimmers must wear life jackets. The marina is focussed on health, sanitation, environmental impacts and maintaining safety on the docks.

[107] There are further rules governing noise levels from machines (no operation of engines and machinery between 6:00 p.m. and 8:00 p.m.) and laundry (no drying of laundry on the docks). Skateboards, rollerblades, bicycles, scooters and wheeled transport devices except wheelchairs are not permitted. No modifications can be made to the berth. Fishing, diving or swimming in the marina is prohibited. There are rules as to how fish can be cleaned on the docks. Any noise audible from outside the vessel is prohibited from 10:00 p.m. to 7:00 p.m. Disorderly conduct is prohibited. Drinking of alcohol is prohibited on the docks. There is provision for finding a licensee in default for violating the rules and regulations, which can result in immediate termination and removal of the vessel: clause 23. These rules are geared towards regulating the types of activities that clients can engage in at the marina.

[108] Clause 18 is one of the few places in the contract in which CHM is granted “sole discretion”. In my view, this shows it was important to CHM to retain control over who lives aboard their vessels, due to the marina’s responsibility for sanitation, environmental impacts in the harbour, and safety of the clients and the wider boating community. I find the discretion granted to CHM to decide who can be live aboard clients is for the purpose of ensuring only those suitable to be living full time at the marina, including those who abide by its rules and regulations, are granted the live aboard licenses. This flows from the unique environment of a marina with its specific water safety concerns and the small community of live aboards, being 14 to 15 of the 250 total clients.

2. Was the discretion exercised in a manner consistent with its purpose?

[109] While Ms. Lennon appears to agree CHM had discretion, her position is so long as she paid all her fees and had not been subject to verbal or written warning, she remained in good standing and ought to have been renewed. She relies on clause 23, which requires written notice to the licensee of a violation before a licensee is found

to be in default. She argues she received no written or verbal warning about any of her behaviour, and as such, CHM exercised its discretion to not renew unfairly and in bad faith.

[110] She also argues the discretion to not renew was exercised in bad faith as it was discriminatory, based on her gender and health condition, and was motivated by malice due to her personal injury claim against the marina.

a) Health condition

[111] Ms. Lennon argues Mr. Sirri based his decision not to renew on her health conditions—epilepsy and vertigo. She relies on the following evidence from his examination for discovery:

Q Sure. And the way I read this note, “Health and safety – known health issue”, that’s what you’re referring to (epilepsy and vertigo)?

A Yes.

Q And that factored into the concern that she wasn’t a suitable person to have her licence renewed. Is that fair?

A Yes, that’s fair.

[112] Ms. Lennon argues so long as her health condition was a factor, it is *prima facie* discriminatory conduct even if it was not the only factor in the non-renewal, relying on *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33. She argues that allegations of breaches of human rights legislation, if made out, may ground a finding of bad faith performance of contractual obligations, relying on *Deol v. Dreyer Davison LLP*, 2020 BCSC 771 at para. 160.

[113] CHM argues this Court does not have jurisdiction to decide any issues of discrimination due to disability or gender, as those issues are the purview of the British Columbia Human Rights Tribunal (“BCHRT”). Ms. Lennon has already filed a claim with the BCHRT. CHM argues all human rights complaints must be brought under the *Human Rights Code*, R.S.B.C. 1996, c. 210 before the BCHRT: *Gichuru v. The Law Society of British Columbia*, 2014 BCCA 396 at para. 103. There is no tort of discrimination: *Gichuru* at para. 103. CHM argues *Deol* was a decision on an

application to strike and does not go so far as to say allegations of discrimination can be used to support a claim of breach of duty of good faith in the exercise of contractual discretion and duty of honest performance. CHM argues that allegations of discrimination cannot be used to support other claims, including a claim of breach of contract: *Afridi v. College of Physicians and Surgeons of British Columbia*, 2025 BCSC 2296 at para. 61.

[114] On the evidence, I do not find Ms. Lennon’s medical condition was a factor in the decision not to renew the live aboard status. Due to my findings on the evidence, I need not decide if discrimination can support a claim of breach of duty of good faith in the exercise of contractual discretion. On the evidence, I do not find that Mr. Sirri based his decision not to renew on Ms. Lennon’s health condition. The above extract from his examination for discovery must be assessed against his evidence as a whole, and also against the background of the other evidence adduced. While her health condition was a known fact, I find Mr. Sirri’s evidence overall was clear that the non-renewal was not due to her health.

[115] I find on the basis of the totality of the evidence the reason Mr. Sirri decided not to renew was the conflict between Ms. Lennon and Mr. Clarkes and her persistent intoxication. These two reasons were the main themes in his evidence—that he had reports from all the staff that they did not want her to live at the marina as she was difficult to deal with, particularly when she was intoxicated, and she was in conflict with other clients.

[116] While Mr. Sirri in his examination for discovery mentioned Ms. Lennon’s health condition as a concern, I do not find it played a role in the decision not to renew. Her seizures had occurred in 2016 and 2017, and the evidence was after a time she no longer needed to wear a life vest while on the docks. There is no evidence any of the staff complained about her health condition; the recurring complaints were of her negative attitude, conflicts with other residents and intoxication. There is support for my finding that Ms. Lennon’s vertigo was not the reason she was not renewed in the evidence of Ms. Arber. Ms. Arber testified she was not aware of Ms. Lennon’s vertigo,

showing that it was not a known fact among all staff and it was not what the staff complained about to Mr. Sirri. Ms. Arber testified about Ms. Lennon's intoxication and conflicts with other clients, as those were the concerns that were persistent. I find Mr. Sirri was considering safety, and not her medical condition, as Ms. Lennon did not advise staff if she was medically cleared to not require a life vest. As Mr. Guerra testified, he observed she was no longer wearing the life vest after a few months but was never advised if that was appropriate. I find Ms. Lennon's health condition was a known historical fact, but it did not play a role in Mr. Sirri's decision not to renew.

b) Gender

[117] I also do not find the discretion not to renew was based on her gender. I accept the evidence of Mr. Guerra that Ms. Lennon was topless on her deck, but as he testified, she is permitted to do so on her vessel and he did not do anything further. He was asked to verify a complaint that came in from a member of the public and he did so. There was no evidence that her gender was considered in the decision not to renew. The complaints of nudity came from Mr. Clarkes and it was the conflict between these neighbours, and not her nudity, that led to both of them not being renewed.

c) Retaliation for slip and fall lawsuit

[118] I also do not find the evidence supports Ms. Lennon's position that she was not renewed as retaliation for filing her slip and fall lawsuit. The accident occurred in January 2020. The marina was advised a few days after the accident that she had retained a lawyer. The marina had alerted its insurance adjuster at that time. Her live aboard status was renewed in both 2020 and 2021, after CHM was made aware of the potential litigation. In my view, there is no evidence to tie the lawsuit to the decision not to renew.

d) No prior warning

[119] Ms. Lennon argues she received no verbal or written warning about her behaviour from CHM and was provided with no opportunity to correct any shortcomings. However, I do not find there is any obligation in the 2016 Moorage Agreement or any of the other associated agreements that CHM must provide a verbal

or written warning prior to exercising its discretion not to renew her live aboard status. CHM was exercising its discretion pursuant to clause 18, which did not contain any requirement for a warning. Clause 23, which specifies a written warning is required before a finding of default, applies to default during the term of the agreement. If CHM wished to terminate the live aboard status during the term, then CHM would need to provide a written warning. However, by spring of 2022, Ms. Lennon no longer held a valid live aboard license, and it was clause 18 which governed.

e) 2022 Moorage Agreement

[120] Ms. Lennon also argues the 2022 Moorage Agreement was presented to her in bad faith. She argues Mr. Sirri breached the duty of honest performance by misleading her as to her ability to stay overnight on her float home. By the time she signed it in June 2022, she had already used up the 59 nights. She argues Mr. Sirri knowingly misled her to sign the agreement, knowing that she would have had no more overnights on her float home.

[121] I do not find the evidence shows Mr. Sirri knowingly misled her. I accept his evidence that he told her at the meeting it was 59 nights from the start date of the agreement. Ms. Lennon may have misunderstood that to mean 59 nights from the date she signed it, but the agreement is clear that it started on April 1, 2022. She cannot fault him for her own misunderstanding.

f) Delay in notification

[122] As for the delay in notifying her that her live aboard status was not being renewed, I find the delay was due to being short staffed and there was no intention to mislead her. I accept Mr. Sirri's evidence that he had made his final decision but did not notify Ms. Lennon due to the office being behind in all renewals that year. Her inquiry triggered a response. He offered her a recreational moorage agreement so she would have more time to find an alternative place for her float home. In my view, he did not act in an unreasonable or high-handed manner.

3. Conclusion

[123] I find the discretion to not renew was exercised honestly and in good faith, consistent with the purpose for which the discretion was granted. The discretion was not exercised arbitrarily or capriciously. Based on the staff reports of continuing conflict, Mr. Sirri determined it was not sustainable to have Ms. Lennon and Mr. Clarkes continue as live aboard clients.

[124] Further, Ms. Lennon's alcohol consumption outside her vessel on the docks is a clear breach of marina rules. I have relied on the evidence of Mr. Guerra as to his observations of Ms. Lennon's behaviour and conflicts with others at the marina. Importantly, the evidence shows Mr. Sirri was aware of Mr. Guerra's observations before Mr. Sirri advised Ms. Lennon of the decision not to renew. The evidence is Mr. Sirri and Mr. Guerra met at the marina and discussed Ms. Lennon on or a few days before May 24, 2022. The reports from all staff of Ms. Lennon's problematic behaviour were confirmed by Mr. Guerra who had first-hand and detailed knowledge.

[125] I find Mr. Sirri exercised his discretion fairly. He decided both Ms. Lennon and Mr. Clarkes should not be renewed as they were not suitable for the marina community. The discretion was exercised in good faith for a purpose connected to its grant.

VIII. DOES ESTOPPEL BY CONVENTION APPLY TO PREVENT CHM FROM NOT RENEWING THE MOORAGE AGREEMENT?

[126] Ms. Lennon raises estoppel by convention as a defence to CHM's counterclaim. CHM in its counterclaim seeks an injunction against *Seascope* being at the marina and damages. As I understand it, Ms. Lennon argues an injunction and damages ought not to be granted to CHM as it is required to renew her moorage agreement on the basis of estoppel.

[127] Estoppel by convention arises where there is a mutual assumption, reliance on that assumption and detriment. The elements are set out in *Ryan v. Moore*, 2005 SCC 38:

59. ...I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:
- (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of *silence* (impliedly).
 - (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
 - (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

[128] Ms. Lennon relies on *SCP 173 Dining Limited v. Costa Del Sol Holdings Ltd.*, 2021 BCSC 1252 [SCP], to argue CHM is estopped from not renewing the moorage agreement annually. She argues the parties consistently communicated and acted in accordance with an understanding that the moorage would be automatically renewed annually. Ms. Lennon was never advised of poor behaviour which would have caused her to not be in good standing. She relied on the pattern of automatic renewal in committing to purchase the float home and keeping *Seascape* at the marina.

[129] In my view, Ms. Lennon has not proven the elements of estoppel by convention. There is no evidence the parties held a shared assumption that the moorage license and live aboard status will be automatically renewed every year. Her evidence only establishes her assumption; it does not establish what CHM assumed at the relevant time. In any event, her evidence does not prove she held an assumption that her moorage would be automatically renewed. She was aware before purchasing the float home the marina had a discretion whether to renew. She testified her realtor had advised her of this before she finalized the purchase. The wording of the 2016 Moorage Agreement does not support that CHM held any assumption about automatic renewal, but rather live aboard status was left to CHM's sole discretion. The decision of *SCP* is distinguishable, as in that case the tenant had an option to renew in the

lease which required the landlord to provide estimates of additional rent so adjustments can be paid by the tenant: *SCP* at para. 101. The court found the tenant ought not be prevented from exercising its option to renew due to the landlord's failures to provide the required information: *SCP* at para. 114. In this case, Ms. Lennon had no option to renew which she was prevented from exercising. The discretion to renew was always with CHM.

[130] Ms. Lennon also made brief reference to estoppel by representation. CHM argues estoppel by representation was not pleaded by Ms. Lennon and this Court ought not to consider it. In any event, I do not find the evidence shows there was any representation by CHM that the live aboard status would be automatically renewed annually. From the outset, Ms. Lennon was advised CHM retained a discretion about renewal, which is consistent with the words of the agreement.

IX. IS THE 2022 AGREEMENT UNCONSCIONABLE AND CONTRARY TO THE BUSINESS PRACTICES AND CONSUMER PROTECTION ACT?

[131] Ms. Lennon argues the 2022 Moorage Agreement is unconscionable under the common law and pursuant to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 [*BPCPA*].

[132] The elements of unconscionability under s. 8 of the *BPCPA* are essentially the same as under the common law: *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122 at para. 54. "Unconscionability is an equitable doctrine that is used to set aside 'unfair agreements [that] resulted from an inequality of bargaining power'": *Uber Technologies Inc. v. Heller*, 2020 SCC 16 [*Uber*] at para. 54. The doctrine consists of an inequality of bargaining power and a resulting improvident bargain: *Uber* at paras. 64–65.

[133] "An inequality of bargaining power exists when one party cannot adequately protect their interests in the contracting process": *Uber* at para. 66. Differences in wealth, knowledge, or experience may be relevant, but inequality encompasses a diversity of possible disadvantages that may be personal or circumstantial: *Uber* at para. 67.

[134] “A bargain is improvident if it unduly advantages the stronger party or unduly disadvantages the more vulnerable”: *Uber* at para. 74. Improvidence is determined at the time the contract is formed, based on all the surrounding circumstances: *Uber*, at paras. 74–75. The application of this equitable doctrine is inherently contextual and fairness is its foundational premise: *Uber* at para. 78.

[135] Ms. Lennon argues there was an inequality in bargaining power between her and CHM at the time the 2022 Moorage Agreement was signed. CHM had 250 berths with a 10-year waitlist of clients, while Ms. Lennon had no option other than CHM to moor her float home. She argues the 2022 Moorage Agreement was unfair and harsh, as it provided her less than what she had in her previous moorage agreements, being the live aboard status. She felt pressured to sign the agreement as she had no other spot for her float home. She argues by the time she signed the agreement, her allotment of 59 nights had already been used, and Mr. Sirri did not make that clear to her.

[136] Pursuant to s. 9 of *BPCPA*, the burden is on CHM to prove the 2022 Moorage Agreement was not unconscionable.

[137] I do not find the 2022 Moorage Agreement is unconscionable. CHM did not provide a deadline for her to sign it. It was emailed to her on May 25, 2022, and discussed during the meeting on May 31, 2022. There is no evidence Ms. Lennon was told her float home would be removed immediately if she did not sign the agreement. No time frame was provided as to when she needed to sign it. She contacted a number of lawyers between May 25 and May 31 and obtained some legal advice from one lawyer before the meeting. It is noted that she had a copy of the 2022 Moorage Agreement by May 25 and she could have asked counsel about it. She testified she reached out to the same lawyer after the meeting, but he was not able to assist her. While she testified she contacted maritime lawyers, this was not the type of case where only a maritime lawyer would have the required expertise. I find she had opportunity to consult counsel, and if she did not seek advice on the 2022 Moorage Agreement, it was by choice.

[138] In terms of inequality of bargaining power, I do not see it the same way Ms. Lennon does. While CHM owned the marina and had a large number of berths, Ms. Lennon was not an unsophisticated consumer. Her evidence is she was aware before purchasing *Seascope* that buying a float home required realtors with expertise, which only a limited number of realtors in the lower mainland possessed. She was represented by one of these realtors who drafted conditions to the purchase, including approval of the marina documents. She knew the marina had discretion whether to renew her live aboard moorage. She had the means to pay for the float home outright, as she testified mortgages are not available for float homes. She is also highly educated as a communications expert with a bachelor's degree in journalism. She had time and opportunity to review the 2022 Moorage Agreement and to seek legal advice. She was not losing the moorage for her float home at the time; the only right she was not retaining was her live aboard status, which she knew from the beginning was not automatic. The cost of the 2022 Moorage Agreement was less than the amount she had paid previously for live aboard moorage. The resulting bargain was not improvident.

[139] In my view, the terms of the 2022 Moorage Agreement were not unconscionable under the common law or the *BPCPA*. I decline to set aside the 2022 Moorage Agreement.

X. TERMINATION OF 2022 MOORAGE AGREEMENT

[140] Mr. Sirri advised Ms. Lennon via email in August 2022 that the moorage agreement would not be renewed beyond March 31, 2023 and that she should remove her float home by 1:00 p.m. on March 31, 2023.

[141] This termination was pursuant to clause 3 of the 2022 Moorage Agreement, which allowed CHM to terminate before the end of the term on 30 days' written notice. It is arguable whether CHM needed to provide written notice, as the agreement was not being terminated before the end of the term. In any event, I find the termination was valid as seven months written notice was provided.

XI. TRANSIENT MOORAGE FEES

[142] CHM seeks transient moorage fees for outstanding fees from April 1, 2023 to the date of judgment. CHM relies on clause 20 of the 2022 Moorage Agreement:

20. Holding Over. If the Vessel remains at the Berth following termination of this License, and without otherwise limiting the rights of the Licensor hereunder, the Licensee shall be deemed to be occupying the Berth for purposes of Transient Moorage and shall pay the Licensor the then applicable Daily Rate of Transient Moorage for each day the Vessel continues to be moored at the Berth. The Licensor may, at its sole discretion, chain the vessel and/or exclude the Licensee from access to the marina.

[143] CHM seeks to enforce the holding over clause. The amount of transient moorage owing from April 1, 2023 up to February 9, 2026 is calculated by CHM to be \$162,328.74.

[144] Ms. Lennon argues CHM is not entitled to transient moorage fees, as the evidence is if *Seascope* had been removed, the berth would have been occupied by another vessel on a lower annual moorage rate.

[145] In my view, there is no reason not to enforce clause 20. Clause 20 is directed at the circumstances here, where a vessel remains at the marina after the moorage agreement has expired. It is a contractual term determining the moorage fees to be paid if a vessel continues to occupy a berth without a moorage agreement. This term is clearly set out in both the 2016 Moorage Agreement and the 2022 Moorage Agreement. CHM is entitled to transient moorage fees from April 1, 2023 to the date of judgment, less any amounts already paid.

XII. DOES THE MOORAGE OF SEASCAPE AT CHM CONSTITUTE TRESPASS AND NUISANCE?

[146] CHM argues Ms. Lennon's failure to remove *Seascope* from the marina after its moorage agreement expired and without paying moorage fees constitute nuisance and trespass. With respect to nuisance, there has been an interference with CHM's use or enjoyment of the marina that is substantial and unreasonable: *Steveston Harbour Authority v. Medanic Fisheries Ltd.*, 2019 BCSC 304 at paras. 55–58 [*Medanic*], citing *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13

at para. 19. Further, as *Seascope*'s presence in the marina is without authorization, it is also a trespass: *Medanic* at paras. 51–54.

[147] The evidence is *Seascope* has been occupying a berth in CHM without payment of moorage fees since April 2023. CHM is prevented from renting out the berth to another client. Ms. Lennon has been provided notice to remove *Seascope* from the marina but has not done so. The marina is privately owned, and CHM has the right to manage the marina. There is evidence that berths at the marina are highly sought after, with a long waitlist of clients. I find the continued presence of *Seascope* constitutes a substantial and unreasonable interference with CHM's use of the marina. Its presence at the marina also constitutes trespass, as *Seascope* has no authorization to remain there.

XIII. HAS MS. LENNON BEEN UNJUSTLY ENRICHED?

[148] CHM brings a claim in unjust enrichment, the elements of which are set out in *Moore v. Sweet*, 2018 SCC 52 at para. 37. CHM argues the elements of unjust enrichment have been met as Ms. Lennon has been enriched by essentially mooring her vessel for free since April 2023 and CHM has been deprived of being able to generate revenue from the use of the berth. There is no juristic reason for Ms. Lennon to keep *Seascope* at the marina, as the 2022 Moorage Agreement has expired.

[149] I find CHM has established unjust enrichment. As damages for the unjust enrichment, Ms. Lennon is to pay transient moorage fees from April 1, 2023 to the date of judgment, less any fees already paid.

XIV. SHOULD AN INJUNCTION BE GRANTED TO CHM?

[150] CHM seeks a permanent injunction against *Seascope* from mooring at the marina. There is no provision in the 2022 Moorage Agreement that would allow CHM to remove *Seascope* from the marina.

[151] I find a permanent injunction is justified. As there is no valid contract for moorage between the parties, *Seascope* can no longer be moored at CHM. I would stay the injunction for six months to allow time for Ms. Lennon to relocate *Seascope*

provided that transient moorage fees are paid: *Medanic* at para. 77; *Steveston Harbour Authority v. Ridge Fishing Ltd.*, 2025 BCSC 2154 at para. 226.

XV. APPLICATION OF TENANCY LAWS

[152] Ms. Lennon argues that the Court should view her claim through the lens of residential tenancy laws, as *Seascope* was her home. While she agrees the *Residential Tenancy Act*, S.B.C. 2002, c. 78, and the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c. 77, do not apply to her circumstances, she nonetheless urges the Court to fill in the legislative gap by protecting her from wrongful eviction from her berth.

[153] In my view, tenancy laws do not apply as between Ms. Lennon and CHM. It was not a legislative oversight that float homes are not included in either the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*. In fact, a float home is defined in *the Manufactured Home Park Tenancy Act*, and specifically excluded from its application: ss. 1, 2. The legislature has determined owners of marinas are not to be considered landlords *vis a vis* owners of float homes who moor there. I see no basis for the court to import concepts from residential tenancy laws into these circumstances.

XVI. COSTS

[154] As the successful party, CHM seeks solicitor and own client costs pursuant to clause 29 of both the 2016 Moorage Agreement and the 2022 Moorage Agreement:

29. Legal Costs. In the event that any action or other legal proceeding is brought to enforce any provision of this Licence, the prevailing party shall be entitled to recover all costs plus reasonable legal fees and related expenses from the non-prevailing party (including proceedings on appeal or in arbitration).

[155] I find CHM is entitled to costs on a solicitor and own client basis for both the action brought by Ms. Lennon and the action brought by CHM. In the action brought by Ms. Lennon, it was a legal proceeding to enforce what she viewed as the automatically renewing nature of the 2016 Moorage Agreement. In the action brought by CHM, it was to enforce clause 20 for the payment of transient moorage fees. In

both actions, CHM was the prevailing party. I find the circumstances fall within clause 29.

[156] I note Ms. Lennon had also sought costs on a solicitor and own client basis if she had been successful. In my view, this shows both parties agree with how this clause is to be interpreted, the only difference being CHM has been successful.

XVII. CONCLUSION

[157] The Court makes the following orders:

1. There will be a declaration that Ms. Lennon no longer has a valid moorage agreement with CHM;
2. There will be a declaration that Ms. Lennon’s failure or refusal to remove *Seascope* or pay moorage fees to CHM constitutes private nuisance and trespass to property;
3. An order for a permanent injunction against *Seascope*’s presence at CHM is granted, but it is stayed for six months to allow Ms. Lennon an opportunity to remove the boat so long as Ms. Lennon pays the moorage fees;
4. CHM is awarded damages, jointly and severally against the defendants in the CHM action, for unpaid moorage based on transient moorage fees from April 1, 2023 to the date of judgment, less any amounts already paid; and
5. Costs on a solicitor and own client basis pursuant to the 2022 Moorage Agreement are granted to CHM.

“Chan J.”