

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pattison v. Royal Vancouver Yacht Club*,
2026 BCSC 747

Date: 20260424
Docket: S237224
Registry: Vancouver

Between:

Sarah Pattison

Plaintiff

And:

Royal Vancouver Yacht Club

Defendant

And:

Sarah Pattison

Defendant By Way of Counterclaim

Before: The Honourable Justice Lawn

Reasons for Judgment

Counsel for the Plaintiff and Defendant By
Way of Counterclaim:

G. Douvelos

Counsel for the Defendant:

A. Stainer
E. Christian

Place and Dates of Trial:

Vancouver, B.C.
October 6–10, 14–17, 31, 2025

Place and Date of Judgment:

Vancouver, B.C.
April 24, 2026

Introduction

[1] On July 16, 2023, the plaintiff’s vintage wooden vessel collapsed on the defendant’s boatlift and suffered catastrophic damage. The plaintiff now sues in negligence alleging that the defendant incorrectly blocked and lifted the vessel. The defendant says that liability has not been proven and that a waiver provides it with a complete defence as well as the basis for a counterclaim for full indemnification.

[2] For the reasons set out below, the waiver is effective to bar the plaintiff’s claim. Further, the plaintiff has failed to prove negligence. The issue of the counterclaim will be the subject of further submissions.

Background and Issues

[3] In 2021 the plaintiff purchased a 40-foot wooden vessel named the “Reel Nauti”, built in 1969. She stored it at the Coal Harbour facility of the defendant Royal Vancouver Yacht Club (“RVYC”) where she had been a member for 23 years. On July 16, 2023, she had arranged to have it hoisted on the smaller of RVYC’s two boat lifts, so she could access the wooden hull to perform routine maintenance, including power-washing and re-applying anti-fouling paint. The plaintiff had made a similar arrangement the year before, when her vessel was lifted without incident.

[4] The plaintiff and her employee Koa Nelson arrived late for the appointment on July 16. Three of RVYC’s employees stayed to assist her in completing the lift before two of them left for the evening. The plaintiff backed the vessel into the lift, positioning it above the platform which would eventually raise the vessel out of the water. Staff had already positioned a row of five keel blocks on the lifter platform floor, upon which the vessel’s keel would eventually rest. The expanding arms on either side of the platform could be accessed from the dock and were positioned so as to pinch the sides of the vessel as the platform was lifted, to provide lateral support. The keel blocks were intended to take the weight of the vessel as the lifter platform was gradually raised up out of the water. By this mechanism, the vessel was lifted out of the water and rested upon the keel blocks, nestled between the supporting arms. The lift was completed by around 5:00pm.

[5] Three-and-a-half hours later, at around 8:29pm, as the plaintiff stood on her vessel mixing anti-fouling paint, she heard a cracking noise. Concerned, she rushed to the office, where a RVYC staff member was working. Shortly thereafter, the vessel lurched sideways and collapsed on the lift. The keel was pushed upwards into the vessel floor.

[6] The vessel was eventually towed to the Reed Point Marina. Insurers deemed it a total loss, as it could not be repaired for less than its \$95,000 insured value.

[7] The plaintiff submits that RVYC staff failed to adequately block the vessel. She argues that they ought to have known that the vessel required additional moveable tripod stands known as “jack stands” and additional keel blocks supporting the aft portion of the hull. She also alleges that the staff failed to properly position the boat on the boatlift.

[8] The RVYC’s practice was to set out the proper placement of supporting keel blocks on a “lifter card” the first time a vessel was lifted, keeping the card on file as a plan for use in all future lifts. The vessel’s lifter card, created in 2022, provided for five blocks along the keel: it showed no additional keel blocks or jack stands at the aft of the vessel.

[9] When the plaintiff had arrived at the boatlift earlier that day, she was handed the lifter card in a plastic sleeve, along with a pre-printed document which both parties referred to as “the waiver” at trial. There is no dispute that she signed the document. The parties disagree on whether she signed it before the vessel was lifted, as maintained by RVYC, or after, as the plaintiff asserts. The plaintiff relies on the doctrine of spoliation, seeking an inference that video footage, which RVYC allowed to be overwritten, would have shown that she signed the document after the lift had occurred.

[10] The RVYC submits that the plaintiff has not proven the intention necessary for spoliation; that the plaintiff’s version of events is contrary to the evidence of other witnesses including her own employee; and no matter when it was signed, the

waiver is effective to prevent the plaintiff from now claiming in negligence against RVYC. In the alternative, RVYC says it is not liable, because it lifted the vessel correctly according to its lifter card, thus meeting the standard of care. Further, RVYC argues that the cause of the damage was the torsional force created by unevenly balanced fuel tanks, exerted upon the keel's weakened scarf joint, the point at which both parties agree it ruptured.

(1) Waiver

A. WHEN WAS THE WAIVER SIGNED?

[11] There is no dispute that the plaintiff signed the waiver while on her boat on July 16, 2023. The parties disagree, however, as to precise timing.

[12] The waiver reads:

**OPERATING INSTRUCTIONS FOR
LIFTERS TO BE OPERATED BY RVYC STAFF ONLY!**

Lifters are to be left clean and free of all debris after use. All ladders, boards, and equipment are to be returned to where they were taken. All hoses are to be coiled and returned to their proper position on the lifters.

Boats requiring over-rides due to keel depth restrictions may be lifted any time during the regular hours, but will only be lowered before 1600 hrs or on the following morning at regular times. Boats requiring sling lifts will only be lifted Monday to Friday, 0800-1600 hrs. They must be lowered prior to 1600 hours or must stay up until regular hours the next day.

I, the undersigned, hereby acknowledge receipt of, and by this present do accept the terms and conditions of the above noted "Operating Instructions" for the boat lifters at Coal Harbour station. In consideration of the permission given to me by the Royal Vancouver Yacht Club to make use of the facilities, I hereby refuse and forever discharge and by these presents do for myself, my heirs, executors, administrators, and assigns, RELEASE AND FOREVER DISCHARGE ROYAL VANCOUVER YACHT CLUB, its Officers, Directors, Servants and Agents of and from any and all actions, causes of action, claims and demands, whatsoever and whosoever, whether at law or in equity, which I now have or may have at any time in the future for damages for any injury, loss or damage which have resulted from or in any way arisen out of or developed from, or which may at any time.

in the future result from or develop from my use of the said facilities, or any act or omission on the part of the said Royal Vancouver Yacht Club, its Officers, Directors, Servants and Agents and whether caused by or resulting from any negligence on the part of the said Royal Vancouver Yacht Club, its Officers, Directors, Servants and Agents or otherwise howsoever, AND FURTHERMORE, I do for myself, my heirs, executors, administrators and assigns and for and in consideration of the permission given me aforesaid HEREBY COVENENT AND AGREE to indemnify and save forever harmless the said Royal Vancouver Yacht Club from and against any and all claims, demands and actions which may at any time hereafter be made or brought

against, or any of its Officers, Directors, Servants and Agents, or on behalf of myself, my heirs, executors, administrators or assigns, arising out of or in any way connected with my use of the said lifting facilities as- aforesaid, and from and against any and all loss, damage and expense which the said Royal Vancouver Yacht Club may sustain or incur by reason of, or in any way arising out of any such claim, demands, or actions.

LIFTER DECKS ARE TO BE LEFT CLEAN AND FREE OF ALL DEBRIS AFTER USE

ALL LADDERS, BOARDS, AND EQUIPMENT ARE TO BE RETURNED TO WHERE THEY WERE TAKEN

ALL HOSES ARE TO BE COILED AND RETURNED TO THEIR PROPER POSITION ON THE LIFTERS.

IN THE WITNESS WHEREOF I have hereunto set my hand and seal at the City of Vancouver, in the Province of British Columbia,

SIGNED, SEALED AND DELIVERED LG, JQ, EC Witness EC
(RVYC Dock staff initial here) *(RVYC Dock staff initial here)*

Name of Vessel: REEL NAUTI	Lifter No. 1
Name of Owner: Sarah Pattinson 604-XXX-XXXX	Member Signing: P1825
Date Up: Sunday July 16, 2022	Time Up: 1530
Date Down: Monday, July 17, 2022	Time Down: 1100
Signature of Owner/Agent _____ [<i>signed by S. Pattison</i>] _____	

Please make note of the time the lift will be coming down, so that you may plan projects accordingly.

*Waste collection / Pressure wash: Yes_ **NO_X** (Environmental Fee) \$50.00*

Total Hours:24 Total Charges: \$220 + \$50 Prepared by: Gustavo

[13] This was the fourth such document that the plaintiff had signed. The vessel had been lifted or partially lifted twice before in 2022, and the plaintiff’s previous vessel had been lifted once in 2021. The document text varied slightly over the years but the main provisions were generally consistent.

[14] All three RVYC employees present at the lift on July 16 testified at trial. Eoin Cotter, Jawid Qiam, and Luis Gonzales all agree that the plaintiff signed the waiver whilst on the boat in the boatlift, but before it was lifted. This accords with RVYC’s general practice, as described by Chris Barnett, the Marine Assets and Operations Manager for the RVYC, who also testified.

[15] The plaintiff has a different memory of events. She says that she did not sign the waiver until after the lift was complete. She reported that Mr. Cotter insisted that she sign it, after the boat was lifted, and over her protestations that the vessel was not properly blocked. For his part, Mr. Cotter acknowledges that the plaintiff questioned the blocking, but he says he explained that it had been done according to the lifter card. He says that after the lift she asked him for the lifter card and clipboard back, to take a photo of it, and he obliged.

[16] There was another witness present, however, who observed the plaintiff throughout and saw her sign the waiver: the plaintiff's own employee, Koa Nelson. He stated that he had worked on the vessel at RVYC on two prior occasions, cleaning the top side of the hull from top to bottom, as well as polishing the outside, fittings, and deck. On July 16, he was due to assist with power-washing and painting the hull. He was running a little late. When he got to the RVYC the plaintiff had already arrived. He jumped on the vessel and soon after they moved it to the boatlift. Mr. Nelson recalled that there were three staff at the boatlift. Although he grew up around boats, the plaintiff's boat was the first one Mr. Nelson had worked on, and July 16 was the first time he saw a boat being lifted.

[17] Mr. Nelson testified that the process took about 20 to 30 minutes; and that some time was taken aligning the vessel so that the arms would be in the proper position. He recalled that the plaintiff was shown "the plans," and that she displayed some hesitancy in signing, but that she did sign eventually. Mr. Nelson stated clearly in his evidence that he saw the plaintiff sign the document given to her whilst she stood on the vessel in the boatlift, before it was lifted, while all three RVYC team members were present. Mr. Nelson confirmed that once the boat started lifting out of the water, two team members left and one stayed behind to watch.

[18] The plaintiff, who presented as a sophisticated and well-educated person, suffered from a faulty memory at times. For example, she attested many times to never having met Harbour Master Juan Gonzales. Mr. Gonzales recounted his clear recollection of a previous conversation with the plaintiff. During that interaction he

stated that he took a photograph of one page of a document that the plaintiff had which was stored on the vessel, which photograph was in evidence and upon which Mr. Gonzales was cross-examined. I find that the photograph supports the defendant's position that the two had met previously and I accept Mr. Gonzales's evidence of their conversation, during which he explained to her that RVYC did not use jack stands when lifting vessels such as hers, and that if she did not wish to lift the vessel without stands per RVYC procedure, she could have the vessel lifted elsewhere.

[19] I therefore find that the plaintiff's recollection was mistaken and that she signed the waiver while on the boat but prior to the lift, while the boat was still in the water, as Mr. Nelson described. He had no reason to fabricate this evidence and his memory was clear. It accords with Mr. Cotter's evidence of when he gave the plaintiff the clipboard.

B. SPOILIATION

[20] The RVYC had several motion-sensor video cameras, at least one of which was trained to record the lifter area. Its footage was automatically overwritten in a two-week cycle. In high-motion areas, the overwriting may occur more frequently, as the footage fills up the available storage space.

[21] The plaintiff argues that had RVYC preserved its video footage, it would have shown the July 16 boatlift events from beginning to end. Citing the doctrine of spoliation, she asks the court to draw the inference that the video evidence would have supported her position that the waiver was signed after the lift.

[22] My acceptance of the evidence of Mr. Nelson, as well as that of the three dock employees, negates the plaintiff's spoliation argument: the plaintiff signed the waiver before the lift.

[23] The spoliation argument also fails on the basis that the plaintiff has failed to prove that RVYC deliberately overwrote the video with the intention of suppressing evidence.

[24] The law on spoliation was recently articulated by Justice Hoffman in *Matossian Estate v. Clark Estate*, 2024 BCSC 2214, aff'd without reference to this issue, 2026 BCCA 27:

[203] Spoliation occurs when a party intentionally destroys, mutilates, alters, or conceals evidence relevant to ongoing or contemplated litigation in circumstances where it can be reasonably inferred that the evidence was destroyed to affect the litigation: *McDougall v. Black & Decker Canada Inc.*, 2008 ABCA 353 at paras. 18, 29; *Holland v. Marshall*, 2008 BCCA 468 at para. 59; *Dyk v. Protec Automotive Repairs*, 151 D.L.R. (4th) 374 at para. 3, 1997 CanLII 2114 (B.C.S.C.). To establish spoliation, the party alleging it must show that:

1. the evidence was destroyed, mutilated, altered, or concealed;
2. the evidence was relevant;
3. legal proceedings were pending or contemplated; and
4. the destruction, mutilation, alteration, or concealment was an intentional act of the party or the party's agent indicative of fraud or intent to suppress the truth.

(*Dyck* at para. 20; *Holland* at para. 59.)

[204] Spoliation requires intentional conduct: *Chow-Hidasi v. Hidasi*, 2013 BCCA 73 at para. 29; *McDougall* at para. 29. An intentional act in this context means an act "with the knowledge that the evidence would be required for litigation purposes": *Chow-Hidasi* at para. 29.

...

[206] The alleged spoliator can rebut the presumption by adducing evidence that they did not intend to affect the litigation by destroying the evidence or by other evidence which proves their case or repels the case against them: *McDougall* at paras. 19, 29.

[25] RVYC staff were asked to preserve video related to this incident several times.

[26] The plaintiff testified that the day after the incident she asked Mr. Barnett to preserve video footage. Mr. Barnett could not recall the request. He did acknowledge a later preservation request from the insurers, by which time the footage had been overridden. Given the frailties in the plaintiff's memory set out above, I cannot conclude that she made this request.

[27] The Harbour Master Mr. Gonzales testified that he viewed the video the day following the incident and preserved what he considered to be the important portion:

the moment of the vessel's actual collapse on the lift, which video was shown at trial. At trial, Mr. Gonzales was not asked whether the plaintiff spoke to him about preserving video. He also confirmed that around July 19, he was asked to preserve video more generally. At that point, he went back to search for more footage, but it had already been overwritten. Mr. Gonzales was clear on these points and I accept his evidence.

[28] On July 27, 2023, Jason Illes of ClaimsPro, an adjuster hired to investigate on behalf of the plaintiff's insurer, emailed RVYC staff to reiterate the importance of preserving video footage. Again, by that time, the footage had already been overwritten.

[29] Accepting, as I do, Mr. Gonzales's explanation for preserving what he, reasonably, deemed to be important in the video footage, I cannot draw the inference that in allowing the footage to be overwritten in the normal course, Mr. Gonzales or others at the RVYC were intentionally attempting to destroy evidence and so affect the course of this litigation.

[30] Again, had the plaintiff been able to show such an intention, she might have been entitled to an inference that the evidence destroyed would not have been favourable to the defendant's case. The main purpose of the lost footage would have been to show when the waiver was signed.

[31] As I have already established, however, there is clear evidence on this point in the form of Mr. Nelson's testimony. The spoliation inference, had it arisen, would be rebutted by this evidence. The plaintiff has not pointed to any other inference it says ought to arise from the missing video evidence.

C. ENFORCEABILITY OF THE WAIVER

[32] Waivers and releases are interpreted on general contractual principles: *Corner Brook (City) v. Bailey Corner Brook (City) v. Bailey*, 2021 SCC 29 at paras. 3, 20-21. The defendant submits that this waiver contains clear language releasing and discharging RVYC from all claims for loss or damage arising from Ms. Pattison's use

of the lift, and that there is no credible argument that the plaintiff is not bound by its terms. In *Loychuk v. Cougar Mountain Adventures Ltd.*, 2011 BCSC 193, aff'd 2012 BCCA 122, leave dismissed [2012] S.C.C.A. No. 225, Justice Goepel wrote:

A. Enforceability of the Release

[27] In *Karroll*, McLachlin C.J.S.C. (as she then was) discussed when a plaintiff will be bound by the terms of a release. In the course of her reasons, she reviewed and reconciled two distinct lines of authorities. The first supports the principle of general contract law that where a party signs a document which he or she knows affects his or her legal rights, the party is bound by the document in the absence of fraud or misrepresentation, even though the party may not have read or understood the document: *L'Estrange v. F. Graucob Ltd.*, [1934] 2 K.B. 394 at 403 (C.A.) [*L'Estrange*]. The second requires a party seeking to rely on an exclusion of liability, which the signing party has not read, to show that a reasonable attempt has been made to bring the signing party's attention to the terms contained on the form if they wish to rely on the release: *Union Steamships Ltd. v. Barnes*, 1956 CanLII 63 (SCC), [1956] S.C.R. 842.

[28] McLachlin C.J.S.C. reconciled the decisions at 166. She concluded that an obligation on the party tendering the document for signature to take reasonable steps to apprise the party signing of onerous terms only arises in circumstances that a reasonable person should have known that the party signing was not consenting to the terms.

[29] The Plaintiffs signed the Release knowing that it was a legal document affecting their rights. Under the principles set forth in *L'Estrange* they are bound by its terms unless they can bring themselves within one of the exceptions. This is not a case of *non est factum*. Nor was there active misrepresentation. Unless it is unconscionable or invalid for other reasons, they are bound by the Release unless they can establish:

- i. that in the circumstances a reasonable person in the place of the defendant would have known that they did not intend to agree to the Release they signed; and
- ii. that in the circumstances the defendant failed to take reasonable steps to bring the content of the Release to their attention.

[33] I find that the plaintiff signed the waiver knowing it was a legal document affecting her rights. She had signed similar RVYC waivers on three prior occasions. She presented at trial as educated and intelligent. She was familiar with the Rules of the RVYC. The document itself was clear. It included key release language in all capitals: "I, the undersigned... RELEASE AND FOREVER DISCHARGE ROYAL VANCOUVER YACHT CLUB..." It specifically mentions negligence. It was a short, one-page document. It required her signature. It was not a new requirement. The

plaintiff has not argued that it was unconscionable. As I will set out below, I agree with RVYC that the plaintiff cannot bring herself within one of the exceptions set out in the extract from *Loychuk*, above. In summary, the waiver serves to relieve RVYC of liability on its plain and ordinary meaning.

[34] The plaintiff advances seven arguments against the enforceability of the waiver, none of which are convincing.

[35] First, the plaintiff argues that she did not know she was signing a waiver, due to its title. Although the title does not include the words waiver or release, the release language is signalled by a lead-in of all capital letters, making the provision obvious, at the centre of the document. The operative sentence contains clear language releasing and discharging RVYC, and its servants and agents, from all claims for loss or damage arising from the plaintiff's use of RVYC's facilities. It refers to "any act or omission" on the part of RVYC and specifically mentions "negligence". I find that the language clearly signals that this is a waiver of rights despite the title.

[36] Second, the plaintiff says she had no intention to release RVYC, because the document contained "fine print" that made it hard to read. The position that the document was unclear in its small print was not supported by particular examples, the plaintiff referring vaguely to "numerous deficiencies". For the reasons already stated, I find that the wording of the document was clear.

[37] Third, the plaintiff says that some unknown hand changed the date from 2022 to 2023 and that this after-the-fact correction was an immoral, if not an illegal act that ought to bar RVYC's reliance on the document, based on the principle of *ex turpi causa*. The date change was unknown to the plaintiff until near the end of trial. This argument has no merit. The plaintiff does not dispute that she signed the document on July 16, 2023. Neither party noticed the typo at the time. RVYC does not seek to rely on the corrected version and there is no dispute that the document contained the wrong year. That an employee sought to correct it after the fact does not amount to an immoral act in the circumstances. At most, it was unwise, and RVYC probably

ought to have explained earlier that this occurred, but nothing turns on the correction.

[38] Fourth, the plaintiff argues that I can draw an inference that she did not intend to be bound by the waiver from the fact that she photographed the document after signing it. I do not find the act of taking a photograph sufficient to support that inference. If the plaintiff had not wanted to be bound by the release, or abide by the lifter card for that matter, the clear option for her was not to lift her boat on the RVYC lifter. There was no urgency to the lift that day, and the plaintiff knew there were other lifters available. She also knew that the RVYC required the waiver to be signed before using the club lifters because on June 18, 2021, she signed the Moorage Agreement in which she agreed to be bound by the Mooring Rules (the “Rules”) as specified in the RVYC Yearbook. Those Rules clearly state that members using club lifters must sign a release. The plaintiff admitted during discovery that she was familiar with these Rules and her attempt at trial to limit this to “social rules” was unconvincing. I find that the plaintiff signed the document knowing that it was a legal document affecting her rights. If anything, the hesitancy she showed and the time she took to “haggle” with Mr. Cotter and photograph the document indicate that she knew its importance. She cannot show that RVYC misrepresented their requirements in any way.

[39] Fifth, the evidence that the plaintiff was thus aware of the waiver requirement is also a full answer to her argument that there were further steps that RVYC ought to have taken to bring the contents of the document to her attention. In this regard, RVYC points to *Loychuk* at para 29. RVYC argues that the plaintiff cannot bring herself within the exceptions described in para. 29(i) and (ii) above and I agree. The plaintiff signed the waiver as she had done on three previous occasions. She understood its role and effect, and was bound by its terms.

[40] Sixth, the plaintiff argues that the waiver is unenforceable due to lack of consideration because the RVYC did not collect the \$270 that she had agreed to pay for the lift. She says that being allowed to use the lifter, in exchange for signing the release, was illusory as consideration because “access to the marina and the lift

facilities had been provided without any corresponding obligation on Ms. Pattison's part." This is not persuasive. This argument reverses the concept of consideration: RVYC received no benefit from the exercise of lifting the plaintiff's vessel. Further, there was a corresponding obligation on the plaintiff's part: in order to be permitted to use the lifter, any RVYC member had to sign "a release in the form approved by the responsible Harbour Master" as stated in the Rules. In *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122 at paras. 68-70, the Court of Appeal cited and applied *Delaney v. Cascade River Holidays Ltd.* (1983), 44 B.C.L.R. 24, 1983 CanLII 387 (B.C.C.A.), where the plaintiff, there a participant in white water rafting, was advised that a waiver was a condition of participating. The same is true here.

[41] Seventh, in her response to counterclaim, the plaintiff pleaded that she was coerced into entering into the contract "as a result of economic duress or duress or undue influence." The defendant argues that the plaintiff was never under duress, citing *Saran v. Cartonio, Inc.*, 2020 BCSC 556 at paras. 42–45, aff'd 2020 BCCA 252, and that she always had a clear choice to simply have her boat lifted elsewhere. The plaintiff failed to show that she acted under duress, which requires her to prove that pressure was exerted in an unfair, excessive or coercive manner: see *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183 at para. 48. At most, on the plaintiff's evidence, Mr. Cotter was "whining" when he gave her the release to sign, she was flustered, and there was some "haggling." At trial, Mr. Cotter presented as a sincere and service-oriented professional. Mr. Cotter's evidence on cross-examination was that he gave the plaintiff the document and the lifter card; that he did not tell her to read it but that he did not rush her; and that she took about a minute with it before she signed. This is generally supported by Mr. Nelson's observations. Mr. Cotter also acknowledged that the plaintiff was concerned about the blocking; and that they went over how it was lifted and the information on the lifter card. He was confident that the boat was positioned according to the card and was secure on the lifter. I accept his evidence in this regard. The plaintiff knew that she had the option to have her boat lifted elsewhere.

Even if there was “whining,” which Mr. Cotter was not asked about, I cannot find that these circumstances amounted to duress.

[42] Given that the waiver provides a full defence, it is not necessary for me to address liability for negligence. I will nonetheless briefly set out my findings on that issue.

(2) Negligence

[43] The plaintiff’s Notice of Civil Claim pleads in negligence only. Although both parties made brief mention of bailment, I have not dealt with it here.

[44] To succeed in negligence the plaintiff must show that the defendant failed to meet the standard of care that would be expected of an ordinary, reasonable and prudent boat lift operator in the same circumstances: *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2015 BCSC 845 at paras. 22-27 [*Laidar*].

[45] *Laidar* also supports the defendant’s position that lifting a vessel on a sea lift is technical and outside the scope of common understanding, thus requiring expert evidence. I agree that expert evidence is required on the standard of care of a reasonable boat lift operator in these circumstances.

[46] The plaintiff advanced several theories to support her claim that RVYC was negligent:

- a) It failed to properly prepare the lifter card: specifically, failing to indicate the location of fixed block “1” on the card;
- b) It failed to employ additional dunnage, tripod stands or a car jack at the aft end of the plaintiff’s boat in addition to the five keel blocks; and
- c) It failed to place the vessel correctly on the lift so that it lined up with the specifications set out on the lifter card.

[47] The plaintiff called two main witnesses: Kelly Thody and Ross Elkin.

[48] Although Mr. Elkin is an insurance adjuster and marine surveyor, the plaintiff called him as a fact witness. As he saw the vessel three days after the incident, his evidence as to his observations is presumptively admissible on this basis.

[49] The plaintiff also sought to adduce lay opinion evidence from Mr. Elkin under the exception set out in *American Creek Resources Ltd. v. Teuton Resources Corp.*, 2013 BCSC 1042, aff'd 2015 BCCA 170, at para. 16, where Justice Grauer distinguished between lay opinion or “compendious statement of fact” evidence, and evidence concerning matters of specialized expertise. The lay opinion exception only applies where the matter does not require expertise. Common examples include sobriety, as explained in *Graat v. The Queen*, [1982] 2 S.C.R. 819, 1982 CanLII 33 (S.C.C.), speed of a vehicle, and the age or physical condition of a person or an object. Where the person offering such an opinion also possesses expert qualifications, they can still offer evidence under this exception, but only where the inference being drawn is one that an ordinary lay witness could also draw: see *Ganges Kangro Properties Ltd. v. Shepard*, 2015 BCCA 522 at paras. 72–76. In such a situation the Court must avoid preferring a witness’s evidence just because of their role: see *Graat* at 840.

[50] I agree with the defendant that Mr. Elkin’s conclusions about causation and operational standards are not properly admissible under the lay opinion exception, because they rely on specialized or technical expertise. To this extent, Mr. Elkin’s “lay opinion” is inadmissible.

[51] I disagree with the defendant’s submission, however, that Mr. Elkin could not give an opinion as to the state of the wood of the hull – specifically, whether it was sound or rotten. I find that this is an opinion about the physical condition of an object that a layperson would be qualified to give, notwithstanding the fact that Mr. Elkin used an awl to test the firmness of the wood in certain places. Indeed, the defendant itself submitted that the deteriorated wood was visible from its expert’s photographs with the untrained eye, reinforcing my conclusion that whether wood shows signs of deterioration is an opinion that lay people can draw from observation. The darkened

wood around the severed scarf joint, in contrast to the lighter wood elsewhere on the keel, was clearly visible in the colour photographs produced as an exhibit at trial.

[52] The difficulty for the plaintiff, however, is that Mr. Elkin did not have immediate access to the vessel after its collapse on the boatlift. He first saw it on July 19: three days after the collapse and after spray foam had obscured portions of the keel and hull. He also did not see the debris on the deck of the lifter, which had been cleared away by the time he attended at the scene. He was therefore unable to give evidence about the condition of the wood at the scarf joint. I will return to this point below.

[53] I need not address other difficulties with Mr. Elkin's evidence, because his opinion as to the placement and blocking of the vessel is inadmissible in any event.

[54] The plaintiff also sought to rely on the expert evidence of Kelly Thody, a marine surveyor. Multiple problems with the Thody report render it inadmissible:

- a) Mr. Thody's report failed to provide the instructions under which he was operating, in breach of Rule 11-6(1)(c) of the *SCCR*;
- b) His report did not contain the questions posed to him, the nature of the opinion being sought, and the issues in the proceeding to which the opinion relates, in breach of Rule 11-6(1)(d). In cross-examination, he could not state the questions plaintiff's counsel had asked him to address;
- c) He did not provide his file to defence counsel, in breach of Rule 11-6(8)(a); one of the three documents he cited as authoritative was never provided or placed in evidence; nor was it publicly available;
- d) His report fails to set out the assumed facts and documents relied upon. Mr. Thody relied on a version of events described to him by the plaintiff directly, in part at least, over the phone to him while he was driving, which version of events was not in evidence;

- e) His conclusion on whether RVYC followed best practices on its sea lift relied on a document that set out standards for a different type of boat lift.

[55] All these difficulties served to undermine any confidence that the Court might otherwise have placed on his opinion. It must be held inadmissible. In the alternative I would give it no weight.

[56] Rule 11-7(6) of the *SCCR*, which permits the Court to admit non-compliant expert evidence, does not assist the plaintiff. Subrule 11-7(6)(a) does not apply. The non-compliance has clearly caused prejudice, so as to render subrule 11-7(6)(b) inapplicable, in that the lack of clearly stated facts and assumptions, not to mention the unavailability of authoritative texts relied on, clearly prejudiced RVYC in cross-examination preparation. Finally, as to subrule 11-7(6)(c), the interests of justice do not require its admission. The plaintiff provided no “compelling analysis” as to why I ought to admit the report despite the various failings: see *Perry v. Vargas*, 2012 BCSC 1537 at para. 22.

[57] Given these determinations, the plaintiff is left with no expert evidence as to any of her three theories of liability.

[58] The defendant led expert evidence from Ryan Leeder, facilities manager at the West Vancouver Yacht Club (“WVYC”) from 2019 to the time of trial. Mr. Leeder opined as to the standard practice of blocking and lifting vessels like the plaintiff’s on sea lifts such as the one at RVYC. He testified that the WVYC has a similar sea lift and that lifting on five keel blocks (or even fewer), without supplemental jack stands, was standard practice on a sea lift such as this. I accept this evidence.

[59] He was asked about the use of jack stands that the plaintiff argues ought to have been used to block her vessel. He explained that supplemental jack stands may be used in two circumstances. First, they may be used after a travel lift hoists and places a vessel onto the hard in a boatyard. Because a vessel stored on the hard lacks the supporting arms which are present on a platform such as that at the defendant’s Coal Harbour sea lift, additional stands are required to provide lateral

support. Second, when a smaller vessel is lifted on a sea lift, additional stands may be required for lateral support because the vessel is too narrow to be supported on both sides by the moveable arms of the lift. Neither circumstance pertained here.

[60] The plaintiff and her brother Brien Pattison both testified that jack stands were used when her vessel was lifted in 2022, and that the former owner of the vessel had advised their use. The only photograph of the 2022 lift did not show any such stands, although the photograph was not decisive since it did not show a complete 360 view. In any event, even if the Pattisons had convinced previous RVYC staff to add additional supports in 2022 – contrary to RVYC’s evidence as to their normal practice – this does not prove that a failure to use such stands amounted to negligence here. The plaintiff presented no admissible expert evidence establishing the need or desirability of jack stands in addition to keel-block support to lift a vessel like the Reel Nauti on a sea lift such as that here.

[61] The RVYC also led expert evidence from Amir Erfanian. While on cross-examination, Mr. Erfanian was asked a great deal about the potential use of jack stands for additional support or extra safety, this was not a question he was asked to answer in his report. On the subject of blocking he was asked only whether the actual blocking was consistent with the lifter card: his report stated that it was. The other questions he answered concerned the vessel’s hull condition and the likely cause of collapse. I will return to those points below.

[62] There was a potential problem with Mr. Erfanian’s evidence since he had been retained by RVYC’s insurer to attend at the scene on July 17 and thereafter, and he authored several reports while in this role. In the course of these reports, he took statements from all three of the dock workers who participated in the lift. The plaintiff alleged that Mr. Erfanian’s previous role made him biased in favour of the defendant and, during cross-examination, repeatedly suggested that Mr. Erfanian was acting as an advocate – a proposition Mr. Erfanian rejected. I agree with the defendant that the plaintiff failed to establish Mr. Erfanian’s clear unwillingness or inability to act impartially: see *White Burgess Langille Inman v. Abbott and*

Haliburton Co., 2015 SCC 23 at paras. 48–49. Any remaining problem with bias in Mr. Erfanian’s testimony goes only to weight.

[63] When questioned on cross-examination about the use of jack stands, Mr. Erfanian resisted answering the question as to whether additional support structures or jacks at the aft of the vessel could have been placed for additional safety, deferring instead to what would be normal practice, which was not the subject matter of his report. He eventually testified that “you could do anything you want”. His testimony also revealed that he had spoken to the dock staff in the aftermath of the incident. He was not cross-examined on the extent to which these conversations may have factored in the conclusions he offered in his report – indeed, the answers to the three questions he provided in his report were subject to very little cross-examination.

[64] In my view, however, even if Mr. Erfanian’s oral testimony as to the use of jack stands showed potential bias, it is not fatal to the defendant’s argument. It was Mr. Leeder’s evidence that was tendered by the defendant on this point. As set out above, I would have accepted, had it been necessary to make a finding, that standard practice was as Mr. Leeder described.

[65] Mr. Erfanian’s evidence as to the state of the wood and the likely cause of the collapse did not face the same potential bias issue, given that it was clearly set out in his report with technical and observational support, and not reliant on his own view of what was standard practice or previous conversations with RVYC staff.

[66] In his report, Mr. Erfanian concluded that there was advanced rot in the keel’s scarf joint, visible, as the defendant put it, even to the untrained eye, in the photographs he took before the area was coated with spray foam by the salvage team. This rot weakened the structure of the keel, whose scarf joint would normally be able to withstand the stressors of the lift. As Mr. Erfanian explained in his report, the joint is built to withstand an even, balanced downward pressure. The joint was not built to withstand the twisting effect caused by a shift of the vessel’s centre of gravity from the centre to one side or the other. The twisting or torsional forces

caused by the imbalanced fuel load were too much for the weakened scarf joint and it gave way.

[67] Mr. Erfanian's report clearly explains his conclusions and how they are supported by the observational evidence including: the bending of the scarf joint screws towards the right (starboard) side due to torsional force; that the screws were ripped out of position; that wood fibres can be seen on the screw threads, indicating tearing; and the signs of degradation and wood decay including the darkened appearance of the wood at the two ends of the scarf joint. Mr. Erfanian concludes that because the rest of the keel did not fail, and only the scarf joint became detached, the torsional force applied to the keel exceeded the yield strength of the material specifically at the joint, where the wood condition was poorer than along the remainder of the keel, suggesting the structural integrity was weaker at the joint.

[68] These conclusions, which I accept, were not undermined by the plaintiff's witnesses.

[69] Mr. Elkin agreed that the keel failed at the scarf joint, but he saw it only after it was covered with foam. He did not attempt to remove foam from the scarf joint itself, despite testifying that there was another location where he had peeled off the foam. He also stated on cross-examination that he never used his awl to test the firmness of the wood at the scarf joint. As noted above, he never saw the debris on the lifter deck and did not see the photographs taken by Mr. Erfanian.

[70] The plaintiff also led evidence from Mr. Middleton, whose salvage company was hired to move the vessel out of the defendant's Coal Harbour facility. While he testified that the wood of the hull "looked pretty sound" and that he did not see rot "at the base", he did not specifically testify on the condition of the keel and scarf joint. His evidence as to his general observations during his salvage work cannot overcome Mr. Erfanian's clear observation, supported by photographs. Mr. Middleton also testified as to the uneven amounts of fuel in the two tanks, which supported Mr. Erfanian's theory of causation.

[71] Thus, had it been necessary, I would have found that the vessel collapsed on the boat lift due to a rupture at the keel’s deteriorated scarf joint, brought on by the torsional pressure caused by the imbalanced load of the two fuel tanks.

(3) Costs and Counterclaim

[72] A successful defendant is presumptively entitled to claim costs. RVYC does not seek ordinary costs, however. Instead, it counterclaims for substantive indemnification under the waiver, in the manner of cases such as *Eisler Estate v. GWR Resources Inc.*, 2020 BCSC 562.

[73] The operative term of the waiver states:

AND FURTHERMORE, I do for myself, my heirs, executors, administrators and assigns and for and in consideration of the permission given me aforesaid HEREBY COVENANT AND AGREE to indemnify and save forever harmless the said Royal Vancouver Yacht Club from and against any and all claims, demands and actions which may at any time hereafter be made or brought *against, or any of its Officers, Directors, Servants and Agents, or on behalf of myself, my heirs, executors, administrators or assigns*, arising out of or in any way connected with my use of the said lifting facilities as- aforesaid, and from and against any and all loss, damage and expense which the said Royal Vancouver Yacht Club may sustain or incur by reason of, or in any way arising out of any such claim, demands, or actions.

[Emphasis in original]

[74] The RVYC argues that it is entitled to recover all loss, damage and expenses including legal expenses, incurred in defending the plaintiff’s claim. It proposed that the indemnification issue be considered, if necessary, after judgment on the merits. The plaintiff made no submissions on the issue.

[75] In the circumstances, the defendant will provide brief written submissions to the plaintiff and to the Court within 21 days. The plaintiff will reply within 14 days.

“Lawn J.”