Federal Court Cour fédérale

Date: 20251028

Docket: T-219-24

Citation: 2025 FC 1618

Ottawa, Ontario, October 28, 2025

PRESENT: The Honourable Mr. Justice Duchesne
Co-Case Management Judge

BETWEEN:

DHL GLOBAL FORWARDING (CANADA) INC.

Plaintiff

and

LOWE'S CANADA AND RONA INC.

Defendants

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ORDER AND REASONS

I. Overview

[1] The Plaintiff, DHL Global Forwarding (Canada) Inc. [DHL], has brought a motion for summary judgment pursuant to Rules 214 and 215 of the *Federal Courts Rules*, SOR/98-106 [the *Rules*].

[2] DHL and the Defendants, Lowe's Canada [Lowe's] and Rona Inc. [Rona] have agreed on the scope of this motion and on the issues to be determined through it. They have also agreed that they are otherwise preserving their respective rights to continue the action and to have issues raised in their pleadings other than those submitted for the Court's determination here deferred to be determined later if necessary. More particularly, the parties have agreed to defer the determination of Lowe's liability toward DHL to some later date, if necessary, whereas Rona's liability toward DHL may be conclusively determined on this motion.

[3] The parties agree that the *lis* between them arises from the application or interpretation of an agreement the parties entered into on December 11, 2019, entitled “DHL Transportation Agreement” [the DTA] and its amendments. The DTA was amended in writing through an agreement entitled “First Amendment to DHL Transportation Agreement and Statement of Work No.001” [the Amending Agreement]. The Amending Agreement included a document entitled “Schedule G, Block Space Agreement” that was executed on the same date and by the same signatories as the Amending Agreement [the BSA].

[4] On March 23, 2023, Rona delivered a written 30-day notice of termination to terminate the BSA, purportedly pursuant to the termination clauses in the DTA [the Notice of Termination]. On April 17, 2023, DHL responded to the Notice of Termination and rejected it. DHL took the position that the BSA was a fixed-term agreement containing no language that permitted its termination prior to the expiry of its Term and also because it was an “entire agreement” separate from the DTA. DHL also demanded the payment of $ 4,598,653. Rona responded to DHL on May 4, 2023, and disputed DHL’s position.

[5] The parties submit that the following issues are to be determined on this motion:

1. Whether Rona is liable and indebted to DHL for the “deadfreight” allegedly owing for the period of March 23, 2023, to December 23, 2023, pursuant to the BSA;
2. If the answer to Issue 1 is affirmative, whether DHL is “discharged” from its obligation to mitigate the damages arising from Rona’s actions.

[6] Rona seeks the dismissal of the action against it on the basis that it is not liable to DHL under Question 1. DHL and Rona have agreed that Question 2 – which is reserved to be contested at a later date if need be – is to be determined on this motion on the simple assumption of fact that there was no market for the carriage of containers from third-party shippers at the rates agreed upon by the parties pursuant to the BSA.

[7] The DTA, the Amending Agreement and the BSA, as well as their respective wording, have been admitted by the parties in their pleadings.

[8] Although DHL argued at the hearing of this motion that the BSA was not incorporated into the DTA, it admits at paragraph 7 of its Statement of Claim that:

a) the Amending Agreement incorporated the BSA into the DTA; and,

b) the BSA, collectively with the Amending Agreement and the DTA, constitutes the "Agreement" as referred to in the contractual documents.

[9] DHL also admits at paragraph 8 of its Statement of Claim that the Amending Agreement subordinated the BSA to the terms and conditions of the DTA in the event of any ambiguity, inconsistency, or conflict between the stipulations contained in the two documents.

[10] DHL made an oral motion to withdraw these admissions against interest at the conclusion of its oral submissions in chief at the hearing of this motion. The oral motion was dismissed by an oral decision from the bench because no evidence had been filed in support of the motion and permitting an amendment to withdraw admissions against interest from a Statement of Claim

midway through a motion for summary judgment was not in the interest of justice. This is particularly true considering that Rona had prepared its arguments, at least in part, based on DHL's admissions.

[11] DHL and Rona agree that this motion for summary judgment is the most expeditious way to resolve the liability issue as between them. The liability issue framed by the pleadings gives rise to a question of contractual interpretation or application. It does not raise any credibility issue or genuine issue for trial. In a sense, the parties have agreed to separate this action as it relates to Rona from the action as it relates to Lowe's on their joint understanding that:

a) an order finding Rona liable to DHL, pursuant to the terms of the DTA, the Amending Agreement and the BSA, will permit DHL to proceed to trial on the issue of the quantification of damages, if any, including any impact thereon resulting from DHL's performance, or lack thereof, of its duty to mitigate, and;

b) an order finding in favour of Rona that it is not liable to DHL, pursuant to the terms of the DTA, the Amending Agreement and the BSA, will result in the dismissal of the action against it.

[12] The Court agrees with the parties that this case is appropriate for a motion for summary judgment as it pertains to the dispute between DHL and Rona. There are no credibility issues raised by the materials and there is no genuine issue for trial.

[13] For the reasons that follow, DHL's motion for summary judgment is dismissed and judgment is granted to Rona, dismissing DHL's proceeding as against it.

II. **The Law Applicable to Summary Judgment Motions**

[14] The *Rules* provide for a summary judgment motion and the Court's disposition of such a motion as follows:

Motion by a party	**Requête d'une partie**
213 (1) A party may bring a motion for summary judgment or summary trial on all or some of the issues raised in the pleadings at any time after the defendant has filed a defence but before the time and place for trial have been fixed.	**213 (1)** Une partie peut présenter une requête en jugement sommaire ou en procès sommaire à l'égard de toutes ou d'une partie des questions que soulèvent les actes de procédure. Le cas échéant, elle la présente après le dépôt de la défense du défendeur et avant que les heure, date et lieu de l'instruction soient fixés.
Further motion	**Nouvelle requête**
(2) If a party brings a motion for summary judgment or summary trial, the party may not bring a further motion for either summary judgment or summary trial except with leave of the Court.	**(2)** Si une partie présente l'une de ces requêtes en jugement sommaire ou en procès sommaire, elle ne peut présenter de nouveau l'une ou l'autre de ces requêtes à moins d'obtenir l'autorisation de la Cour.
Obligations of moving party	**Obligations du requérant**
(3) A motion for summary judgment or summary trial in an action may be brought by serving and filing a notice of motion and motion record at least 20 days before the day set out in the notice for the hearing of the motion.	**(3)** La requête en jugement sommaire ou en procès sommaire dans une action est présentée par signification et dépôt d'un avis de requête et d'un dossier de requête au moins vingt jours avant la date de l'audition de la requête indiquée dans l'avis.
Obligations of responding party	**Obligations de l'autre partie**
(4) A party served with a motion for summary judgment or	**(4)** La partie qui reçoit signification de la requête

summary trial shall serve and file a respondent's motion record not later than 10 days before the day set out in the notice of motion for the hearing of the motion.

signifie et dépose un dossier de réponse au moins dix jours avant la date de l'audition de la requête indiquée dans l'avis de requête.

Summary Judgment

Jugement sommaire

Facts and evidence required

Faits et éléments de preuve nécessaires

214 A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.

214 La réponse à une requête en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l'instance. Elle doit énoncer les faits précis et produire les éléments de preuve démontrant l'existence d'une véritable question litigieuse.

If no genuine issue for trial

Absence de véritable question litigieuse

215 (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

215 (1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

Genuine issue of amount or question of law

Somme d'argent ou point de droit

(2) If the Court is satisfied that the only genuine issue is

(2) Si la Cour est convaincue que la seule véritable question litigieuse est :

(a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or

a) la somme à laquelle le requérant a droit, elle peut ordonner l'instruction de cette question ou rendre un jugement sommaire assorti d'un renvoi

	pour détermination de la somme conformément à la règle 153;
(b) a question of law, the Court may determine the question and grant summary judgment accordingly.	**b)** un point de droit, elle peut statuer sur celui-ci et rendre un jugement sommaire en conséquence.
Powers of Court	**Pouvoirs de la Cour**
(3) If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a claim or a defence, the Court may	**(3)** Si la Cour est convaincue qu'il existe une véritable question de fait ou de droit litigieuse à l'égard d'une déclaration ou d'une défense, elle peut :
(a) nevertheless determine that issue by way of summary trial and make any order necessary for the conduct of the summary trial; or	**a)** néanmoins trancher cette question par voie de procès sommaire et rendre toute ordonnance nécessaire pour le déroulement de ce procès;
(b) dismiss the motion in whole or in part and order that the action, or the issues in the action not disposed of by summary judgment, proceed to trial or that the action be conducted as a specially managed proceeding.	**b)** rejeter la requête en tout ou en partie et ordonner que l'action ou toute question litigieuse non tranchée par jugement sommaire soit instruite ou que l'action se poursuive à titre d'instance à gestion spéciale.

[15] DHL and Rona rely on the principles governing motions for summary judgment as set out in *Saskatchewan (Attorney General) v Witchekan Lake First Nation,* 2023 FCA 105 at paras 22 to 41 [*Witchekan Lake*]. The Court agrees with the parties that these principles apply and govern. The following paragraphs in *Witchekan Lake* succinctly summarize the guiding principles on this motion:

> [23] The bar to be met by the moving party on a motion for summary judgment is high *(Canada (Attorney General) v. Lameman,* 2008 SCC 14, [2008] 1 S.C.R. 372 at para. 11

[Lameman]). It must show that no genuine issue for trial exists (*CanMar Foods Ltd. v. TA Foods Ltd.*, 2021 FCA 7, [2021] 1 F.C.R. 799 at para. 27 [*CanMar*]). If the moving party meets this threshold, then "the evidentiary burden falls on the responding party, who cannot rest on its pleadings and must come up with specific facts showing that there is a genuine issue for trial" (*CanMar* at para. 27). While both parties must "put [their] best foot forward" in establishing that no genuine issue for trial exists (*Lameman* at para. 11), a responding party may do so by identifying gaps in the moving party's evidence that can only be addressed by evidence at trial (*Apotex Inc. v. Merck & Co. Inc.*, 2004 FC 314, 248 F.T.R. 82 at para. 28 [*Apotex FC*], aff'd 2004 FCA 298).

[…]

[31] Rule 215 provides that the Federal Court shall grant summary judgment where it is satisfied that there is no genuine issue for trial with respect to a claim or defence. There is no genuine issue for trial where the judge has the evidence required to fairly and justly adjudicate the dispute on a summary basis, i.e., where the process allows the judge to make the necessary findings of fact, allows the judge to apply the law to the facts, and is a proportionate, more expeditious and less expensive means to achieve a just result (*Hryniak* at paras. 49 and 66; *ViiV Healthcare* at paras. 32-34; see also *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22 at para. 25 [*Aga*] and *Manitoba v. Canada*, 2015 FCA 57, 470 N.R. 187 at para. 11 [Manitoba]).

[32] Put another way, a case ought not to proceed to trial, with the consequences that would follow for the parties and the costs involved for the administration of justice, unless there is a genuine issue that can only be resolved through the full apparatus of a trial (*CanMar* at para. 24). Even if there is a genuine issue of fact or law for trial with respect to a claim or defence, the Court may nevertheless determine that issue by way of summary trial (Rule 215(3)). In such cases, judges have greater powers to decide disputed questions of fact (*Manitoba* at para. 16; *Milano Pizza* at para. 32).

[…]

[38] The determination of whether a genuine issue for trial exists must, either explicitly or implicitly, follow a certain analytical path. The legal issues in dispute and their associated evidentiary requirements must be identified. The factual issues in dispute must then be extracted and assessed in light of their relevancy to the

> legal issues. Only when these questions have been answered can the sufficiency of the motion record be assessed. […]

[16] It is well established that this Court has the jurisdiction to consider and determine a motion for summary judgment in a matter that touches on some aspects of maritime law while resting entirely on the principles of contract law (*Labrador-Island Link General Partner Corporation v Panalpina Inc.*, 2020 FCA 36 at para 2).

[17] Having identified and articulated the applicable principles, I now turn to the claims, facts, and evidence on this motion.

III. **The Claims, the Facts and the Evidence**

A. ***The Pleadings***

(1) **The Statement of Claim**

[18] DHL's Statement of Claim sets out its claim against the Defendants as follows:

a) Defendants are condemned jointly and severally to pay Plaintiff the Canadian equivalent of the sum of US $ 3,720,000 together with interest at the rate of 5% from March 23, 2023, to the date of judgment,

b) Defendants are declared to be jointly and severally liable to Plaintiffs for all deadfreight owing pursuant to the Block Space Agreement, dated March 17, 2022, up to December 31, 2023, together with interest at the rate of 5% as of the 30th day of each month when sailings become known until the date of judgment,

c) Post-judgment interest on the total capital and interest amount of the judgment to be rendered at the rate of 5% from the date of judgment until the date of payment.

[19] The thrust of DHL's material allegations is that the Defendants wrongfully purported to terminate the BSA on March 23, 2023, and that the Defendants are liable to pay DHL the value of the deadfreight that accrued pursuant to the BSA from March 23, 2023, to December 31, 2023, the date of expiry of its Term. DHL further alleges that the BSA was a fixed-term agreement that could not be terminated prior to the expiry of its Term.

[20] DHL pleads that Rona is indebted to it in the amounts claimed and reflected in its Statement of Account attached to its Statement of Claim to form part of it.

[21] As noted above, DHL also alleges at paragraph 8 of its Statement of Claim that the BSA was incorporated into the DTA, that the BSA collectively with the Amending Agreement and the DTA constitutes the "Agreement" as referred to in the contractual documents binding the parties, and that the Amending Agreement subordinated the BSA to the terms and conditions of the DTA in the event of any ambiguity, inconsistency, or conflict between the two documents.

(2) **The Defence**

[22] Rona defends by alleging that the Amending Agreement added the BSA to the DTA as part of the DTA. It also alleges that the BSA is not a fixed-term agreement because section 2 of the BSA explicitly contemplates that it may be terminated prior to the expiry of its Term.

[23] Rona further alleges that it terminated the BSA by its delivery of its Notice of Termination as is permitted by paragraph 11.2(d) of the DTA, such that the BSA was effectively terminated on April 23, 2023.

[24] Rona also alleges that all amounts due and payable to DHL for services rendered or that were in the course of being rendered up to April 23, 2023, have been paid. Rona alleges that it is not indebted to DHL for any amount pursuant to the BSA after its effective termination date of April 23, 2023. Rona pleads in the alternative that if it is found liable to pay any amount to DHL, then DHL has failed to mitigate its losses, and its claim is exaggerated and unjustified.

(3) **The Reply**

[25] DHL denies Rona's characterization of the facts as well as their legal effects, as alleged in its defence. DHL pleads and relies upon the words used in the DTA, the Amending Agreement, the BSA, and the termination letter dated March 23, 2023. It reiterates that there is no termination clause that applies to the BSA, nor any clause that makes the BSA subject to the DTA or its terms.

[26] DHL avers that section 10 of the Amending Agreement contains no stipulation that makes the BSA subject to the DTA or incorporated by reference to it. It alleges that the BSA was a "stand-alone" agreement to be performed in the context of DHL's other obligations under the DTA.

B. ***The Uncontested Facts, the DTA, the Amending Agreement, and the BSA***

[27] The facts as set out below are not contested by either DHL or Rona. They both agree that the wording of the agreements at issue is accurate.

(1) **The DTA**

[28] The parties entered into the DTA on December 11, 2019. It sets out the terms of their agreement with respect to DHL, referred to as the "Contractor", providing the Defendants, referred to collectively as "Lowe's", with transportation and related services.

[29] The DTA stipulates at sections 2.1 and 2.2 that the agreement between the parties is comprised of several documents and that those documents together comprise one agreement referred to as the "Agreement". Section 2.1 of the DTA is drafted as follows:

> **2.1** The Agreement is comprised of:
>
> 2.1.1 The DTA;
>
> 2.1.2 any and all Statements of Work;
>
> 2.1 3 the Standard Operating Procedures ("SOP") attached hereto at Schedule 2 and as amended;
>
> 2.1.4 the rates and charges schedule attached hereto at Schedule 3
>
> 2.1.5 the Customs Brokerage Agreement for brokerage services attached hereto as Schedule 4;
>
> 2.1.6 the Standard Freight Forwarding Trading Conditions ("Contractor Conditions - CIFFA") attached hereto at part 1 of Schedule 1 ;
>
> 2.1.7 the Global Forwarding Terms and Conditions ("Contractor Global Terms and Conditions") attached hereto at part 2 of Schedule 1;
>
> 2.1.8 the Danmar Lines Limited bill of lading and sea waybill and die Contractor air waybill that are attached hereto at part 3 of

> Schedule 1 ("Contractor Transport Document - Waybill"), provided always that die terms and conditions in the Contractor Transport Documents will only apply if one has been issued in accordance with an SOW entered into as per Section 3.1 of the DTA; and
>
> 2.1.9 the IATA Terms and Conditions ("Contractor Transport Document - IATA Terms and Conditions") which are attached hereto at part 4 of Schedule 1 .
>
> The documents listed in 2.1.1 to 2.1.9 shall comprise and together be referenced as the Agreement (the "Agreement").

[30] Section 2.2 of the DTA provides the rules to be applied in the event that there is any ambiguity, inconsistency, or conflict between the provisions of any of the documents comprising the Agreement as follows:

> **2.2** The documents comprising the Agreement will be read as one document. If there is any ambiguity, inconsistency, or conflict between the provisions of any of the documents comprising the Agreement then the documents take precedence in the order set out above in Section 2.1 of the DTA. For further clarity, the DTA in the event of any conflict between the terms of the documents listed in Section 2.1 of the DTA and any tariff, cargo receipt, bill of Lading or other transport or logistics document prepared or issued by or on behalf of Contractor, including the documents listed in Sections 2.1.6, 2.1.7, 2.1.8 and 2.1.9, the terms of the DTA and the Statements of Work shall prevail.

[31] The DTA sets out the terms upon which the parties agreed that the whole or part of the DTA could be terminated, as the case may be. The salient termination clauses contained in the DTA are drafted as follow:

> **11.1** **Term**. The DTA shall commence on the Effective Date unless terminated as provided in this Article 11 ("Term"). However, Statements of Work entered into under the DTA will survive the expiration or termination of the DTA for the term specified in the applicable Statement of Work and shall continue to be governed by the terms, obligations and conditions thereof.

11.2 Termination.

[…]

(b) Either party has the right to terminate the DTA and/or any or all Statements of Work if the other party materially breaches or is otherwise in material default of any obligation hereunder, which default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of written notice of such default from the other party or within such additional cure period as the other party may authorize in writing,

[…]

(d) Notwithstanding any other provision in the DTA or any Statements of Work, the DTA and/or any Statements of Work may be terminated in whole or in part without cause or reason by Lowe's by providing Contractor with not less than thirty (30) days' advance written notice and, in such case, Lowe's shall not have any further obligations or liabilities under or in respect of the DTA and/or any Statement of Work save for the Contractor shall be paid for the value of the Services performed, or in the process of being performed, up until die date of termination.

(e) Any termination by Lowe's of the DTA and/or any Statement of Work will be in addition to, and not in lieu of, any other rights and remedies, whether legal or equitable, to which Lowe's may be entitled in connection therewith.

11.4 No Additional Damages or Compensation- Lowe's and Contractor acknowledge and agree that Contractor will not be entitled to damages, indemnification, compensation of any kind, or other remedy solely by virtue of Lowe's termination of the DTA. This provision does not affect any other remedies that may be available to either party for breach of the DTA. Lowe's will not be responsible for any costs incurred by Contractor after the termination of the DTA, other than pursuant to an open Statement of Work(s) that is not subject to a specific termination.

11.5 Survival. The terms of the DTA that would, by their nature, survive termination, including, without limitation, the terms of the "Definitions" Article, "Services" Article, "Charges" Article, "Taxes" Article, ''Lowe's Proprietary Property and Deliverables" Article, "Confidentiality" Article, "Representations and Warranties" Article, "Audit Rights" Article, "Obligations Upon

> Expiration or Termination” Section, this “Survival” Section, “Indemnification” Article, “Insurance" Article and “Miscellaneous” Article will survive any termination or expiration of the DTA and/or any Statement of Work.

[32] The DTA also includes a choice of law clause, a venue clause, an amending clause, and the parties’ agreement that the *contra proferentem* rule of contractual interpretation does not apply in the interpretation of the DTA. These clauses are worded as follow:

> **15.5 Governing Law; Venue**. The DTA and all matters arising out of, directly or indirectly, or related to the DTA will be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable therein. Each party irrevocably attorns and submits to the exclusive jurisdiction of the Quebec courts situated in the City of Montreal and waives objection to the venue of any proceeding' in such court or that such court provides an inconvenient forum. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THE DTA.
>
> **15.10 Amendment Modification and Waiver-** No amendment, modification or addendum to the DTA or any Statement of Work will be effective unless reduced to a writing signed by duly authorized officers of both parties, which in the case of Lowe's will be an officer of at least foe senior vice president level or higher or the Vice President of Enterprise Strategic Sourcing. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by an authorized officer of the party claimed to have waived or consented. Furthermore, for the avoidance of doubt, the parties agree that no amendment, modification or addendum to the DTA or any Statement of Work may be effectuated by email or text message.
>
> **15.15 Drafting Ambiguities-** Each party to the DTA and its counsel have reviewed and revised the DTA. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of the DTA and both Parties recognize that this is not a contract of adhesion.

(2) **The Amending Agreement**

[33] The parties amended the DTA through the Amending Agreement that was negotiated and entered into on March 18, 2022, but made effective as of December 11, 2021. The Amending Agreement includes the BSA as its Schedule G. The preamble to the Amending Agreement is drafted as follows:

> This First Amendment to the SOW-001 and the DHL Transportation Agreement (this “First Amendment") is effective as of December 11th, 2021 (the "Amendment Effective Date"), by and between DHL Global Forwarding (Canada) Inc. ("Contractor”), and Lowe’s Companies Canada, ULC and RONA inc. (collectively "Lowe’s").
>
> **WHEREAS** Contractor and Lowe’s Companies Canada, ULC and RONA inc. (collectively "Lowe’s") entered into a DHL Transportation Agreement (the "DTA") and Contractor and RONA inc. have entered a Statement of Work No. 001 (“SOW-001") both dated December 11th , 2019;
>
> **WHEREAS** the SOW-001 expires December 11th, 2021;
>
> **WHEREAS** the parties are currently negotiating the amendment of the terms of SOW-001 and wish to confirm the applicable rates for 2022 and extend the term of the SOW-001;
>
> **WHEREAS** the parties wish to put in place a block space agreement, as part of the DTA; and,
>
> **WHEREAS** the parties have agreed by email, dated October 25th , 2021, to extend the SOW-001 for a period of one (1) year.
>
> **NOW, THEREFORE**, in consideration of the mutual covenants and premises contained in the Agreement and set forth herein, intending to be legally bound hereby, agree as follows:

[34] The Amending Agreement then sets out specific amendments to specific clauses and stipulations contained in the DTA. The amendments are drafted to reflect the parties' agreement on whether any particular amendment deletes and replaces a clause of the DTA or adds one to it.

[35] The parties amended section 2.1 of the DTA by deleting the existing clause and replacing it with a new one that includes the BSA and specifies its place in the order of precedence among the Agreement's components. The amendment is worded as follows:

> 2. Section 2.1 is hereby deleted and replaced by the following:
>
> "2.1 The Agreement is comprised of in the following order of precedence:
>
> 2.1.1 Any and all amendments to the DTA,
>
> 2.1.2 The DTA.
>
> 2.1.3 Any and all amendments to the Statements of Work.
>
> 2.1.4 Any and all Statements of Work.
>
> 2.1.5 The terms of the Blocked Space Agreement, attached hereto in Schedule G .
>
> 2.1.6 The Standard Operating Procedures ("SOP") attached hereto at Schedule 2 and as amended.
>
> 2.1.7 The rates and charges schedule attached hereto at Schedule 3.
>
> 2.1.8 The Customs Brokerage Agreement for brokerage services attached hereto as Schedule 4.
>
> 2.1.9 The Standard Freight Forwarding Trading Conditions ("Contractor Conditions - CIFFA") attached hereto at part 1 of Schedule 1 .
>
> 2.1.10 The Global Forwarding Terms and Conditions ("Contractor Global Terms and Conditions") attached hereto at part 2 of Schedule 1

> 2.1.11 The Danmar Lines Limited bill of lading and sea waybill and the Contractor air waybill that are attached hereto at part 3 of Schedule 1 ("Contractor Transport Document - Waybill"); provided always that the terms and conditions in the Contractor Transport Documents will only apply if one has been issued in accordance with clause 3.1 of the DTA; and
>
> 2.1.12 The IATA Terms and Conditions ("Contractor Transport Document - IATA Terms and Conditions") which are attached hereto at part 4 of Schedule 1 .
>
> The documents listed in 2.1.1 to 2.1.12 shall comprise and together be referenced as the Agreement (the "Agreement")

[36] Section 2.2 of the DTA was also amended by deletion and replacement. The parties amended section 2.2 of the DTA as follows:

> 3. Section 2.2 is hereby deleted and replaced by the following:
>
> > 2.2 The documents comprising the Agreement will be read as one document. If there is any ambiguity, inconsistency, or conflict between the provisions of any of the documents comprising the Agreement, then the documents take precedence in the order set out in Section 2.1 of the DTA. For further clarity, the DTA in the event of any conflict between the terms of the documents listed in Section 2.1 of the DTA and any tariff, cargo receipt, bill of lading or other transport or logistics document prepared or issued by or on behalf of the Contractor, including the documents listed in 2.1.5, 2.1.6, 2.1.7, 2.1.8, 2.1.9. 2.1.10. 2.1.11, 2.1.12, the terms of the DTA and the Statements of Work shall prevail.

[37] Giving effect to the preamble statement that the parties wished to put in place a block space agreement "as part of the DTA", and to section 2.1.5 of the Amending Agreement, the parties agreed that the BSA was attached as Schedule G to the DTA, and would form part of DTA. To that end, the parties added the BSA to the DTA in accordance with the amending

language set out in section 10 of the Amending Agreement, which stipulates plainly that, “10. The attached Schedule G is hereby added to the DTA.”

(3) The BSA

[38] The BSA’s salient terms for the purposes of this motion are as follow:

> **1 PURPOSE OF THE BLOCK SPACE AGREEMENT (“BSA”)**
>
> Lowe 's agrees to tender and ship with Contractor a minimum quantity of Twenty Foot Equivalent Container Units ("TEUs”) and/or Forty Foot Equivalent Container Units (“FEUs”) per week as stated in Appendix 1 (the “Weekly Volume Commitment" or “WVC”) during the Term at the rates set forth in Appendix 1 (“Negotiated Rates”), ail in accordance with the terms and conditions set forth herein.
>
> Any addition or modification to the WVC and/or Negotiated Rates shall be agreed by way of an amendment duly signed by the Parties’ authorized representatives.
>
> **2 TERM**
>
> This BSA comes into full force and effect on the Second Amendment Effective Date and shall continue until December 31, 2023 (the “BSA Term”). Lowe’s shall have the option to renew the BSA for a period of 1 year upon a 6-month prior notice or by June 20th, 2023, whichever occurs the latest. Expiration or termination of this BSA shall not affect the rights and liabilities of the Parties accrued prior to the date of expiration or termination. Any provision, which by their nature extend beyond the expiration or termination of this BSA, shall survive the expiration or termination of this BSA.
>
> **3 PERFORMANCE**
>
> 3. 1 Contractor will make available the cargo capacity necessary to ship the WVC at the Negotiated Rates. It is agreed and understood by Lowe’s that Contractor will not be liable to accept and/or carry any volume above the WVC under this Agreement. Contractor will provide vessel space and equipment to Lowe’s to fulfill the WVC. If Contractor fails to make available

the cargo capacity necessary to whip the WVC in any week during the BSA Term, it shall be liable for the Deadfreight Penalty amount set forth in Appendix 1 for each TEU or FEU of cargo committed as its WVC but not shipped ("Deadfreight Penalty") unless there are blank sailings announced by the ocean carriers weeks in advance.

3.2 Lowe's agrees to deliver the shipments to the Contractor on the agreed day and location (port, inland CY, etc.), prior to the agreed cut off time in accordance with the applicable regulations, Contractor's instructions and professional practices and standards. Shipments must be accompanied, in particular, by all applicable transport and customs documents.

3.3 Contractor is entitled to refuse a booking that exceeds the agreed upon WVC.

3.4 In case Lowe's fails to tender the WVC in any week during the BSA Term, it shall be liable for the Deadfreight Penalty amount set forth in Appendix 1 for each TEU or FEU of cargo committed as its WVC but not tendered ("Deadfreight Penalty"). Contractor shall make reasonable attempts to procure cargoes from other customers to fill the WVC and minimize the Deadfreight Penalty.

6 CONTRACTOR'S CONDITIONS

CARRIAGE OF CARGO PURSUANT TO THIS BSA WILL BE GOVERNED, IN ORDER OF PRECEDENCE, BY (I) THE TERMS AND CONDITIONS CONTRACTOR'S BILL OF LADING (ATTACHED HERETO AS APPENDIX 2), (II) THE TERMS OF THE DTA, (III) THE TERMS OF THIS BSA AGREEMENT, AND (IV) APPENDIX 1."

7. ENTIRE AGREEMENT

Notwithstanding anything else to the contrary, this BSA and its Appendices together constitute the entire agreement and understanding between the parties pertaining to the subject matter contained herein, and supersedes all prior agreements, representations, and understandings of the parties pertaining to the subject matter, it is agreed by the parties that, the Contractor reserves the right to update, revise and change its Bill of Lading terms by way of public notice or any other way informing Lowe's. Any update, revision or change to Contractor's Bill of Lading terms shall automatically amend Appendix 2 of this BSA without the need for a formal amendment signed by the parties. Except for

> updates, revisions or changes to Contractor's Bill of Lading, no other update, revision or change to this BSA shall be valid unless in writing and signed by an authorized representative of each of the parties.

[39] The BSA also includes a schedule of Weekly Volume Commitment rates and Deadfreight Penalty terms and a penalty calculation formula as its Appendix 1.

C. *The Notice of Termination*

[40] Rona's Notice of Termination delivered to purportedly terminate the BSA was drafted as follows:

> We refer you to the DHL Transportation Agreement (the "DTA") and the SOW-1 (the "SOW) both entered into by the parties, as of December 11th, 2019, and subsequently amended by the First Amendment (the "First Amendment"), dated December 11th, 2021 (Collectively he "Agreements"). The First Amendment included without limitation the extension of the term of the DTA up to December 31st , 2023 and added a blocked space agreement as a schedule to the DTA, as stated in the title.
>
> As provided for in Section 11.2 (b) of the DTA, RONA hereby provides DHL with its 30-day notice of termination of the BSA. Such termination shall be effective as of March 23, 2023 (the "Termination Effective Date") and the terms of Section 11.3 shall apply.
>
> RONA will pay all undisputed invoices for purchase orders and services rendered up to the Termination Effective Date. All disputed amounts will be treated as per the terms of the DTA.

[41] DHL's April 17, 2023, response to Rona's notice of termination read as follows:

> I refer to your letter of March 23, 2023, which purports to terminate the Block Space Agreement (the "BSA") between Rona Inc. ("Rona") and the DHL Global Forwarding (Canada) Inc. ("DGF").

> In that letter, Rona relies on section 11.2(b) of the DHL Transportation Agreement, dated December 11, 2019, as amended on December 11, 2021, (the "DTA"). Section 11.2(b) permits Rona to terminate the DTA or any Statement of Work under the DTA in the event DHL is in material default of its obligations under the DTA. DHL is not in default under the DTA. For this reason, Rona's notice of termination is rejected.
>
> The BSA is a fixed-term contract, which means it cannot be terminated by Rona until December 31, 2023. There are no provisions permitting termination of the BSA within the language of that document and the "entire agreement" language of section 7 of the BSA speaks for itself. This was always fully understood by Rona's and DHL's commercial teams. I trust Rona will continue to fulfill its obligations under the DTA and the BSA to avoid incurring further deadfreight and related charges.

[42] Rona replied to DHL on May 4, 2023. The salient portions of Rona's reply are as follow:

> […] We cannot disagree more with your position. Section 11.2(d) speaks for itself and reads as follows:
>
> > "Notwithstanding any other provision in the DTA or any Statements of Work, the DTA and/or any Statements of Work may be terminated in whole or in part without cause or reason by Lowe's by providing Contractor with not less than thirty (30) days' advance written notice and, in such case, Lowe's shall not have any further obligations or liabilities under or in respect of the DTA and/or any Statement of Work save for the Contractor shall be paid for the value of the Services performed, or in the process of being performed, up until die date of termination.
>
> In our letter dated March 23, 2023, our reference to section 11.2(b) and effective termination date of March 23, 2023, were typographical errors. It goes without saying that RONA had exercised its right of termination without cause of the BSA pursuant to section 11.2(d) of the DTA, with an effective date of termination of the BSA of April 23, 2023.
>
> Moreover, your interpretation of the "entire agreement" language at section 7 of Schedule G (BSA), as allegedly being a provision that precludes us from exercising our termination rights, is erroneous for the following reasons.

> Firstly, it is well specified at section 2 of the "First Amendment to DHL Transportation Agreement and Statement of Work no. 001" (which replaced section 2.1 of the DTA) that the DTA or any of its amendments are higher in the order of precedence than the terms of the BSA included in Schedule G. 1 Moreover, it is indisputable that the goal of the "entire agreement" language in Schedule G was simply to specify that the terms regarding the "subject matter" of the BSA (i.e. only the details regarding the block space services) were those that were henceforth applicable to the parties (Footnote: Extract of section 7 of the BSA: "*This BSA and its Appendices together constitute an entire agreement and understanding between the parties pertaining to the subject matter contained therein*", the subject matter being the block space services included in Schedule G (BSA) only). Such language can in no way be construed as having any impact on RONA's termination rights included in the superseding DTA.
>
> Secondly and in any event, nothing in the BSA expressly excludes the right to terminate the BSA pursuant to section 11.2(d) of the DTA. The mere statement of a term cannot have this result. Fixed-term agreements regularly allow without cause termination upon notice and such stipulations are in no way incompatible with one another. Section 2 of the BSA (Schedule G) even refers to the possibility that such BSA be terminated at a moment that differs from its expiration date (Footnote: Extract of section 2 of the BSA: "*Expiration or termination or this BSA shall not affect the rights and liabilities of the Parties accrued prior to the date of expiration or termination*".). This makes it even more clear that the intent of the parties was that all of RONA's termination rights pursuant to the DTA remained intact.
>
> Considering the foregoing, the BSA was effectively terminated as of April 23, 2023, pursuant to our valid notice communicated in our March 23, 2023, letter.

D. ***The Affidavit Evidence***

[43] DHL filed the affidavit of Jamal Ashraf in support of its motion. Mr. Ashraf is the former head of the Ocean Freight Department at DHL and oversaw the management of all ocean freight for DHL's customers in Canada up to July 2022. Mr. Ashraf deposes that he negotiated and signed the BSA on behalf of DHL. He also deposes that the BSA formed part of the Amending

Agreement. Mr. Ashraf further deposes that, in his view, “during all times material the BSA was signed separately and was intended to be a “stand alone” agreement independent of the DTA but was to be performed in the context of the undertakings and rights of the parties enshrined in the DTA”. He also deposes that, “[t]he language used in the First Amendment, section 10. i.e. “added to" meant exactly that, i.e. for administrative purposes only”. There is no language found in the Agreement and there is no extrinsic evidence led that supports Ms. Ashraf’s interpretation of the words “added to”.

[44] DHL also filed the affidavit of Eric Wang, Mr. Ashraf’s successor. Mr. Wang deposes that Rona never had any “cause” to terminate the BSA prior to the expiry of its Term on December 31, 2023. He further deposes that the real issue between the parties was whether an indebtedness had accrued as of the signing of the BSA and survived any purported termination of the agreements; whether the BSA was subject to the DTA; whether the provisions of ss. 11.2(b) and (d) of the DTA applied to the BSA; and whether the notice given on March 23, 2023 was a legally valid notice, and if not, what were the consequences.

[45] Mr. Wang’s affidavit contains his opinion on whether the BSA or the DTA was binding upon the parties after March 23, 2023. It also contains his opinion on whether DHL’s obligation to mitigate the Deadfreight Penalty contemplated at section 3.4 of the BSA was discharged because there was no market for the carriage of containers from third-party shippers at the rates agreed upon between the parties pursuant to the BSA. No additional evidence is led to support Mr. Wang’s opinion.

[46] Rona has not filed any affidavit evidence.

IV. **The Issues**

A. ***Issues raised by the DHL in its Written Representations***

[47] The Plaintiff submits in its written representations that there are eight issues on this motion. These issues include arguments in connection with uncontested matters and matters that are not before the Court, as well as matters that were not raised in its notice of motion. Other issues are subsumed in the arguments made on the agreed upon issues set out below and need not be considered separately here.

[48] The Plaintiff first argues that this Court has subject-matter jurisdiction and personal jurisdiction over the parties to hear and determine this motion and the underlying proceeding. The Defendants do not contest this. This Court has subject-matter jurisdiction pursuant to paragraph 22(2)(i) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and personal jurisdiction over the parties by their voluntary attornment to the jurisdiction of this Court. Rona, in any event, confirmed at the hearing of this motion that it waives any jurisdictional argument it could have made to oust this proceeding from this Court.

[49] The Plaintiff submits that the Court ought to determine whether Rona had any accrued indebtedness to DHL at the time of signing the Amending Agreement. The matter of any accrued indebtedness at the time of signing the Amending Agreement was not raised in the Plaintiff's notice of motion and is accordingly not properly before the Court to be adjudicated as a separate

item on this motion. This crux of this issue is nevertheless subsumed in the agreed upon issues to be determined on this motion.

[50] The Plaintiff contends that the BSA was not incorporated by reference into the DTA, arguing that the common intention of the parties required by article 1435 of the *Civil Code of Quebec* [CCQ] to incorporate the BSA into the DTA is absent. Considering DHL's admission at paragraph 7 of its Statement of Claim that the BSA was incorporated into the DTA, this argument must be rejected. As will be discussed below, the BSA was added to the DTA and formed part of it, in accordance with the parties' explicit agreement to do so. DHL's argument based on article 1435 of the CCQ would have been rejected, had its admissions against interest not conclusively resolved the "incorporation by reference" issue.

B. *The Issues on this Motion*

[51] The issues before the Court as agreed upon by the parties are as follow:

1. Whether Rona is liable and indebted to DHL for the "deadfreight" allegedly owing for the period of March 23, 2023, to December 23, 2023, pursuant to BSA;
2. If the answer to Issue 1 is affirmative, whether DHL is "discharged" from its obligation to mitigate the damages arising from Rona's actions.

V. **Analysis**

A. *Preliminary Issue: Affidavit Evidence Admissibility*

[52] Rona objects to certain passages of Mr. Ashraf's and Mr. Wang's affidavits insofar as

they purport to contradict or vary the terms of the DTA, the Amending Agreement or the BSA. Rona bases its objection on article 2863 CCQ, which it argues applies in this proceeding because of section 40 of the *Canada Evidence Act*, RSC 1985, c. C-5 [*CEA*]. Article 2863 CCQ provides that "[t]he parties to a juridical act set forth in a writing may not contradict or vary the terms of the writing by testimony unless there is a commencement of proof."

[53] I agree with Rona. Section 40 of the *CEA* applies because this proceeding was filed at the Federal Court's offices in Montreal, in the province of Quebec, as appears from the Statement of Claim (*Bauer Hockey Ltd. v Sport Maska Inc. (CCM Hockey)*, 2020 FC 624 at para 188; aff'd 2021 FCA 166, *Canada (Revenu national) c Hydro-Québec*, 2023 CAF 171 at para 10). As a result, the laws of evidence applicable in civil proceedings in Quebec as set out in the CCQ apply to this proceeding. Article 2863 CCQ therefore applies and prohibits the admission of affidavit evidence that purports to contradict or vary the terms of the Agreement entered into by the parties unless there is a commencement of proof.

[54] DHL has not led evidence as contemplated by article 2685 CCQ in order to give rise to a commencement of proof within the meaning of article 2863 CCQ. It follows that DHL's affidavit evidence that purports to contradict or vary the terms of the Agreement, as defined at section 2.1 of the DTA and as amended, is inadmissible.

[55] Paragraphs 7 and 9 of Mr. Ashraf's affidavit offer a subjective interpretation of the words used in the BSA and attempt to recast the meaning of those words. These paragraphs run afoul of article 2863 CCQ and are inadmissible. Paragraph 8 of the affidavit is a statement of his opinion

and is not admissible evidence pursuant to Rule 81(1) of the *Rules*, which requires that the content of affidavits be confined to facts within the deponent's personal knowledge. Mr. Ashraf's evidence contained at paragraphs 7, 8, and 9 of his affidavits is therefore inadmissible and must be disregarded.

[56] The evidence contained at paragraphs 1, 2, 3, 4, 5, and 6 of Mr. Ashraf's affidavit is admissible as matters of fact.

[57] Exhibits JA-1 and JA-2 to Mr. Ashraf's affidavit are copies of the DTA and the Amending Agreement and are admissible.

[58] Mr. Wang's affidavit is equally problematic in that some of its content is admissible whereas some is not. Mr. Wang's affidavit evidence of DHL's obligation to mitigate being discharged, as set out at paragraph 11 of his affidavit, is an impermissible statement of legal conclusion by a lay witness (*Sawridge Band v Canada*, [2000] FCJ No 192, 95 ACWS (3d) 20; *Lukács v. Canada (Transportation Agency),* 2019 FC 1256 at para 29; *7294140 Canada Inc. (Zoomtoner) v. Connexlogix Inc*., 2023 FC 1010, at para 35). It is the Court's function to determine whether DHL's obligation to mitigate existed or was discharged, not Mr. Wang's. That portion of Mr. Wang's affidavit is inadmissible and must be disregarded.

[59] Similarly, Mr. Wang's evidence at paragraph 12 of his affidavit, to the extent that it speaks to legal determinations, is inadmissible and must be disregarded also (*Sawridge Band v Canada*, [2000] FCJ No 192, 95 ACWS (3d) 20; *Lukács v Canada (Transportation Agency),*

2019 FC 1256 at para 29).

[60] Paragraphs 13, 14, 15, and 16 of Mr. Wang's affidavit are statements of argument, not of fact (Canada *(Attorney General) v Quadrini*, 2010 FCA 47, 399 N.R. 33 at para 18; *Akme Poultry Butter & Eggs Distributors Inc. v Canada (Public Safety and Emergency Preparedness)*, 2024 CanLII 30068 at paras 24 and 25; *Coldwater First Nation v Canada (Attorney General*), 2019 FCA 292 (CanLII) at para 19; *Johnson v Canadian Tennis Association*, 2024 FC 110 (CanLII) at para 19). These paragraphs run afoul of Rule 81(1) of the *Rules,* are inadmissible, and must be disregarded.

[61] It follows that only paragraphs 1 to 10 of Mr. Wang's affidavit, as well as those portions of paragraphs 11 and 12 that are not impacted by the determinations above, are admissible evidence on this motion.

[62] Much as is the case with Exhibits JA-1 and JA-2 to Mr. Ashraf's affidavit, Exhibits EW-3 and EW-4 are admissible documentary evidence. Exhibit EW-5 is also admissible evidence on this motion.

B. ***Whether Rona is liable and indebted to DHL for the "deadfreight" allegedly owing for the period of March 23, 2023, to December 23, 2023, pursuant to BSA***

[63] Rona's liability to DHL for deadfreight is determined by considering whether Rona could lawfully terminate the BSA through its Notice of Termination. This requires determining:

a) what contractual rights Rona had to terminate the BSA;

b) whether those termination rights were properly exercised; and,

c) if the BSA was terminated, what deadfreight is owed as a result of termination for the period of March 23, 2023, to December 23, 2023.

[64] The parties agreed at article 15.5 of the DTA that "[t]he DTA and all matters arising out of, directly or indirectly, or related to the DTA will be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable therein". The laws of Quebec and the articles of the CCQ pertaining to contracts therefore apply given that the BSA and its termination, constitute matters that arise from, relate to, or are connected to the DTA, either directly or indirectly.

[65] The Supreme Court of Canada's decision in *Uniprix inc. v Gestion Gosselin et Bérubé inc.*, 2017 SCC 43 [*Uniprix*] sets out the law to be applied when a court must either interpret or apply a commercial agreement that is governed by Quebec law such as the Agreement at issue in this case.

[66] Pursuant to *Uniprix*, interpreting a commercial agreement involves a two-step process. The first step requires the Court to determine whether the agreement's words are clear or ambiguous. The purpose of this step is to prevent the Court from departing, deliberately or unexpectedly, from a clearly expressed intention of the parties. The Court must defer to a clear contract. This first step therefore serves as a bulwark against the risk of an interpretation that deviates from the true intention of the parties and subverts the scheme of their agreement (*Uniprix* at para 34). Determining whether the words used are clear may require the Court to

consider the words as used in the context of the agreement, in light of the scheme of the agreement and the parties' true intention as expressed in the contractual language used (*Uniprix* at para 35). If the words are clear, then the Court's role is limited to applying them to the facts before it. There is no need for resort to the principles of interpretation set out in articles 1425 to 1432 CCQ if the language used in the agreement is clear (*Uniprix* at para 36).

[67] The mere fact that one party has a subjective opinion as to the meaning of words used in a contract does not render those words ambiguous or require recourse to the rules of contractual interpretation. The same is true when parties disagree as to the meaning of the words used (*Aro inc. c Polard*, 2024 QCCA 546 at para 26; *Messageries de presse Benjamin inc. c Publications TVA inc.*, 2007 QCCA 75 at para 22).

[68] If there is an ambiguity identified in the first step, then the Court must resolve that ambiguity by proceeding to the second step of contractual interpretation (*Uniprix* at para 36). The second step is guided by the cardinal rule set out in article 1425 CCQ that the common intention of the parties must prevail over the literal meaning of the words used. It is necessary in this second step to consider intrinsic aspects of the contract, such as the wording of the clause at issue and that of the other clauses. The objective is to ensure that each clause is given a meaningful effect and is interpreted in light of the others (arts. 1427 and 1428 CCQ). The interpretation of a contract also requires consideration of the nature of the contract and the context extrinsic to it, including the factual circumstances in which it was formed, the interpretation the parties have already given to it, and usage (art. 1426 CCQ; *Uniprix* at para 37).

(1) Rona's contractual right to terminate the BSA

[69] Determining a party's rights to terminate an agreement begins with considering whether the agreement binding the parties contains termination clauses as well as the words used in those clauses (articles 1433, 1434, and 1439 CCQ).

[70] DHL's argument that a proper interpretation of the DTA, the Amending Agreement, and the BSA leads to the conclusion that the BSA could not be terminated because it is as a stand-alone entire agreement with a fixed term must be rejected because of its admissions at paragraphs 7 and 8 of its Statement of Claim. According to DHL's admissions, the BSA was incorporated into the DTA and is subordinate the DTA's terms in the event of any ambiguity, inconsistency or conflict between the two documents. As discussed below, there is no ambiguity or inconsistency between the agreements and the terms of the DTA apply to provide the mechanism to terminate the BSA. DHL's argument that the BSA's entire agreement clause reinforces that the BSA is a separate and stand-alone agreement, that is neither incorporated into the DTA nor subordinate to it, fails because such a reading put the BSA and the DTA in conflict with the result dictated by the terms of the Amending Agreement that the DTA applies to the BSA with respect to termination rights. Furthermore, DHL's position is contrary to the terms of the Agreement.

[71] Article 11.1 of the DTA stipulates that the DTA shall commence on the effective date unless terminated as provided by Article 11. Paragraph 11.2(d) sets out Rona's right to terminate the DTA "in whole or in part" at any time without cause or reason. The contemplated right to terminate "in whole or in part" must be exercised through the termination mechanism described at paragraph 11.2(d). That is, Rona must provide DHL with 30 days' advance written notice of

termination. Rona's right to terminate the DTA "in whole or in part", pursuant to paragraph 11.2(d) of the DTA, is explicitly articulated in paragraph 2(d) of the DTA as being a contractual right that exists notwithstanding any other provision in the DTA.

[72] Article 10 of the Amending Agreement establishes that the parties had agreed that the BSA "is hereby added to the DTA". This clause is consistent with and gives effect to the parties' preamble declaration that they "wish to put in place a block space agreement, as part of the DTA". There is no ambiguity in the words used by the parties in the Amending Agreement: the BSA was added to and as a part of the DTA. It follows that, because the BSA was a "part" of the DTA, it could be terminated by Rona through the exercise of its right to terminate the DTA "in whole or in part" as set out in paragraph 11.2(d) of the DTA.

[73] DHL's argument that the BSA could not be terminated because it did not contain a termination clause must be rejected because it is inconsistent with the parties' agreement to add the BSA as part of the DTA with the consequences that follow as discussed above. It must also be rejected because it ignores that the BSA's Term clause that explicitly contemplates in its third and fourth sentences that the BSA could be terminated. The possibility of the BSA being terminated prior to the expiry of its Term is explicitly contemplated in the BSA's Term clause's use of the expressions "date of expiration or termination" and "extend beyond the expiration or termination of this BSA". While it is correct to observe that the BSA itself did not contain an explicit termination mechanism, it remained subject to the termination mechanisms and rights set out in the DTA once it became a "part" of the DTA. The absence of an explicit termination clause in the BSA itself is therefore irrelevant.

[74] DHL is correct that Article 7 of the BSA is an “entire agreement” clause. Its wording sets out that:

> Notwithstanding anything else to the contrary, this BSA and its Appendices together constitute the entire agreement and understanding between the parties pertaining to the subject matter contained herein, and supersedes all prior agreements, representations, and understandings of the parties pertaining to the subject matter.

[75] Leaving aside the question of the “subject matter” of the BSA referred to in article 7 of the BSA, DHL agreed, through its acceptance of articles 2 and 3 of the Amending Agreement, that the terms of the DTA would prevail over those of the BSA in case of any ambiguity, inconsistency or conflict between them. Article 3 of the Amending Agreement is unambiguous as to the parties’ agreement in this regard by expressly stipulating that article 2.2 of the DTA would be amended to provide that:

> 2.2 The documents comprising the Agreement will be read as one document. If there is any ambiguity, inconsistency, or conflict between the provisions of any of the documents comprising the Agreement, then the documents take precedence in the order set out in Section 2.1 of the DTA. For further clarity, the DTA in the event of any conflict between the terms of the documents listed in Section 2.1 of the DTA and any tariff, cargo receipt, bill of lading or other transport or logistics document prepared or issued by or on behalf of the Contractor, including the documents listed in 2.1.5, 2.1.6, 2.1.7, 2.1.8, 2.1.9. 2.1.10. 2.1.11, 2.1.12, the terms of the DTA and the Statements of Work shall prevail.
>
> (the emphasis is mine)

[76] It is plain that the BSA’s entire agreement clause is in conflict with articles 2 and 3 of the Amending Agreement and with article 15.20 of the DTA because the BSA clearly does not supersede DHL and Rona’s agreement with respect to termination rights. The conflict is resolved

by applying articles 2, 3, and 10 of the Amending Agreement together with article 15.20 of the DTA. The result is that the BSA is forms part of the DTA, is subject to its terms, and does not constitute the entire agreement between the parties – it only reflects their agreement to the extent that it is not inconsistent with the DTA. Accordingly, the terms of the Amending Agreement and the DTA prevail with respect to termination rights, including with respect to the right to terminate the BSA.

[77] None of the words used by the parties in the DTA, the Amending Agreement or the BSA are ambiguous in the least in this regard. Given the absence of any ambiguity, no contractual interpretation exercise is necessary. I conclude that Rona had the right to terminate the BSA through the exercise of its termination rights provided at articles 11.1 and 11.2 of the DTA.

[78] DHL's arguments based on alleged ambiguity and the need for contractual interpretation are therefore rejected.

(2) **The right to terminate was properly exercised**

[79] Rona's Notice of Termination communicated its decision to terminate the BSA and provided DHL with 30 days' written notice of the BSA's termination as of the date of the notice itself. The Notice of Termination cited paragraph 11.2(b) of the DTA as the basis of its right to terminate the BSA and indicated that the "termination effective date" was the date of the letter itself.

[80] DHL argues that the Notice of Termination was invalid because it purported to terminate

the BSA “with cause”. The Notice of Termination, DHL argues, was therefore null and void and could not be rectified without a fresh notice of termination. In DHL’s view, the BSA remained in force and effect until the end of its term because Rona’s letter of May 4, 2023, did not correct the errors in the notice of termination. DHL’s arguments must be rejected.

[81] It is apparent upon review of the Notice of Termination in light of the termination rights set out in the DTA that Rona was exercising its right to terminate the BSA by relying on the substantive right to terminate stipulated at paragraph 11.2(d) of the BSA, and not on the “for cause” right to terminate set out at paragraph 11.2(b) of the BSA. Paragraph 11.2(d) of the DTA expresses the parties’ agreement that Rona may unilaterally terminate “[…] the DTA […] in whole or in part without cause or reason […] by providing not less than 30 days’ written advance notice […]”. The Notice of Termination set out the key requirement Rona was bound to provide to DHL pursuant to paragraph 11.2(d) of the DTA to terminate the BSA: the provision of 30 days’ written notice of termination, without communicating any “cause” for the termination itself.

[82] DHL points out that two features of the Notice of Termination are inconsistent with the exercise of the right to terminate pursuant to paragraph 11.2(d) of the DTA: 1) the contractual provision identified by Rona is incorrect; and 2) the effective date of termination is also incorrect. DHL does not identify any jurisprudence, statutory provision or contractual stipulation to support its argument that these two features render the Notice of Termination null and void.

[83] Nothing in the DTA requires Rona to identify the DTA section or paragraph number it

relies upon for the exercise of its unilateral right of termination in its Notice of Termination. Nor does article 1439 CCQ. Identifying the specific clause of an agreement that supports one's exercise of a unilateral right of termination is useful and may provide direction to guide the parties should a question arise in connection with the termination. An error in the identification of the clause relied upon does not on its own make the Notice of Termination null and void provided the substantive basis for termination is otherwise described in the notice as it was in this case. Rona's reference to paragraph 11.2(b) rather than 11.2(d) of the DTA in the Notice of Termination was clearly a typographical error. Such an error does not invalidate Rona's exercise of the right to terminate the BSA.

[84] Similarly, no stipulation in the DTA or in article 1439 CCQ require Rona to identify the effective date of termination with precision or at all in its notice of termination. The Notice of Termination specified that it constituted a "30-day notice of termination". Its effective date is a matter of date calculation on a calendar commencing from the date of the Notice of Termination itself. In this case, the effective termination date indicated therein was the same date as the date of the written notice. The effective date of termination of March 23, 2023, as set out in the Notice of Termination, was clearly a typographical error that could have been resolved through good faith communication between the parties.

[85] In my view, neither of the inconsistent features observed by DHL render the Notice of Termination null and void.

[86] I therefore conclude that Rona's right to terminate the BSA as a part of the DTA upon the

delivery of its written 30-day Notice of Termination on March 23, 2023, was properly exercised. The last day of the notice period was therefore April 22, 2023, with the BSA being terminated the following day, on April 23, 2023.

(3) **Deadfreight owing for the period of March 23, 2023, to December 23, 2023.**

[87] Whether deadfreight is owed by Rona for the period of March 23, 2023, to December 23, 2023, turns on what the parties had agreed to with respect to Rona's liabilities in the event of the termination of the BSA, and whether DHL has met its burden of establishing that any amount of deadfreight is owed.

[88] "Deadfreight" in the Agreement refers to what the parties describe as the "Deadfreight Penalty" at article 3.4 of the BSA. The conditions to be met for the imposition of a Deadfreight Penalty are set out in article 3.4 of the BSA. The amount of the Deadfreight Penalty payable is to be calculated in accordance with the parameters set out in Appendix 1 to the BSA on a per occurrence basis.

[89] DHL argues that the Deadfreight Penalty owed is an accrued liability from the beginning of the BSA. It further argues that Rona's obligation to pay the Deadfreight Penalty for the entirety of the BSA's Term remains unaffected by its termination of the BSA prior to the expiry of its Term. DHL relies on articles 1503, 1506, and 1509 CCQ, as well on the United Kingdom's Court of Appeal decision in *King Crude Carriers SA et al. v. Ridgebury November LLC et al*, [2024] EWCA Civ 219, at paras 26 and 27 [*King Crude*], with respect to the differences between a claim in debt and a claim for damages.

[90] Rona argues that DHL's arguments have no basis in fact and that no Deadfreight Penalty is owed for the period of March 23, 2023, to December 23, 2023.

[91] I agree with Rona. DHL's arguments are not supported by the applicable law or by the terms of the BSA and must be rejected.

(i) The Terms of the BSA

[92] Article 2 of the BSA stipulates that "[e]xpiration or termination of this BSA shall not affect the rights and liabilities of the Parties accrued prior to the date of expiration or termination".

[93] Paragraph 11.2(d) of the DTA, however, stipulates that if the DTA or BSA is terminated by a 30-day written notice of termination without cause, then Rona:

> shall not have any further obligations or liability under or in respect of the DTA and/or any Statement of Work save for the Contractor shall be paid for the value of the services performed, or in the process of being performed, up until the date of termination.

[94] Pursuant to articles 2 and 3 of the Amending Agreement, paragraph 11.2(d) of the DTA shall prevail over article 2 of the BSA in the event of any conflict or inconsistency between them with respect to liabilities that remain upon the termination of the BSA. Accordingly, paragraph 11.2(d) of the DTA operates as the limiting provision on Rona's liability to DHL upon the termination of the BSA. This applies to the extent that the expression "liabilities […] accrued prior to the date of […] termination" in article 2 of the BSA is inconsistent with, or in conflict

with, the expression “services performed, or in the process of being performed, up until the date of termination” in paragraph 11.2(d) of the DTA.

[95] Article 2 of the BSA is neither inconsistent nor in conflict with the limitation on Rona’s liability as stipulated in paragraph 11.2(d) of the DTA. Article 2 of the BSA is concerned with the broader notion of “liabilities […] accrued prior to the date of expiration or termination” in connection with the BSA, while paragraph 11.2(d) of the DTA is concerned with the different duty to pay the value of the services performed or that were in the process of being performed prior to the date of termination. Deadfreight Penalties are distinct from the value of services performed or in the process of being performed as they are unconnected to services delivered or performed by the obligational creditor.

[96] As the liabilities at issue are limited to Deadfreight Penalties and exclude the value of services performed or in the process of being performed at the date of the BSA’s termination, article 2 of the BSA applies to determine Rona’s liabilities to DHL pursuant to the BSA.

[97] The argument that Rona agreed to pay a Deadfreight Penalty for the entirety of the BSA’s Term as an accrued liability from the commencement of the Term, regardless of whether the Term is terminated prior to its expiry, must be rejected because it is inconsistent with the wording of the BSA.

[98] As explained above, article 2 of the BSA stipulates that its termination shall not affect the liabilities accrued prior to the date of expiration or termination. The wording of article 2 of the

BSA and the use of the words “accrued prior to the date of […] termination” does not suggest that liabilities, as set out in the BSA, may accrue in connection with the BSA after the date of its termination. The exact opposite is suggested by the language used that indicates that any liability payable must have accrued before – “prior to” - the effective date of the BSA’s termination.

[99] Deadfreight Penalties are more carefully circumscribed in the BSA. Section 3.4 of the BSA stipulates that “[i]n case Lowe’s fails to tender the Weekly Volume Commitment in any week during the BSA term, it shall be liable for the Deadfreight Penalty amount set forth in Appendix 1 for each TEU or FEU of cargo committed as its Weekly Volume Commitment but not tendered (“Deadfreight Penalty”)”. As this section reflects, the Deadfreight Penalty liability arises only if there is a failure to tender the Weekly Volume Commitment during a week of the BSA’s Term. The Deadfreight Penalty amount payable, as calculated pursuant to Appendix 1 to the BSA, confirms that such is the case by its description of the Deadfreight Penalty applying “per occurrence”. An “occurrence” is described as being one week during the BSA’s Term in which Rona failed to tender the Weekly Volume Commitment.

[100] There is no language in the BSA that reflects any agreement between the parties that would make Rona liable for Deadfreight Penalties for each week of the BSA Term in advance of the week of occurrence or in advance of Rona failing to tender its Weekly Volume Commitment in any particular week. The language used in the BSA, and its Appendix 1 are contrary to any such potential agreement, as well as contrary to DHL’s argument because it contemplates that a penalty becomes payable, or accrues, upon each “occurrence” and not in advance of any “occurrence”. It follows that while Rona had agreed to pay a Deadfreight Penalty upon any

occurrence of its failure to tender its Weekly Volume Commitment in any particular week of the BSA's unterminated Term when it entered into the BSA, it did not agree that it was liable to pay a Deadfreight Penalty for every week of the BSA's term in advance and without any failure on its part to tender its Weekly Volume Commitment.

(ii) **King Crude and the Common Law**

[101] DHL relies on *King Crude* to argue that the word "accrued" should be given a meaning that conforms to its argument. In *King Crude*, the United Kingdom's Court of Appeal remarked at paragraphs 26 and 27 as follows:

> 26. An action in debt is one of the oldest forms of action. It is a claim to enforce a primary obligation comprising the obligor's promise to pay as sum of money. By contract, a claim for damages is a claim to compensation which arises as a secondary obligation upon breach of a primary contractual obligation. Damages are, with limited exceptions, compensatory. Debts are not.
>
> 27. A debt is a sum of money which is presently payable or will become payable in the future by reason of a present obligation. The distinction between the two forms is often captured by the language of debts having accrued and debts becoming payable. An accrued debt is a present obligation, but one whose payment may fall due in the future by reference to the passage of time or a future event. A typical example is rent accruing daily but payable in arrears. This is what is referred to by the Latin tag "debitum in praesenti….. [sometimes presenti), solvendum in future". A debt it this form involves a legal right, which although it is as yet insufficient to support a claim for enforcement of the debt, carries with it legal incidents; for example it may be attached by way of execution. A debt which is payable is one which has not only accrued, but can currently be enforced by a claim in debt because the conditions for payment have been fulfilled. For these uncontroversial principles, see, for example, *Webb v Stenton*,(1883) 11 QBD 518.

[102] *King Crude* speaks to notions of debt and liabilities in English common law. These notions find no application in this proceeding as the parties agreed at article 15.5 of the DTA that all matters related to it shall be governed and construed in accordance with the laws of the province of Quebec and the applicable federal laws. DHL's argument based on *King Crude* must therefore be rejected.

(iii) **Articles 1503, 1506, and 1509 CCQ**

[103] DHL argues that articles 1503, 1506, and 1509 CCQ support its argument that Rona's obligation to pay Deadfreight Penalties is an accrued liability from the beginning of the BSA's Term. In its view, the BSA's purpose was to secure carrying capacity for the anticipated weekly volume commitment at fixed freight rates during a fixed period or to secure a financial estimate of loss due to Rona's failure to present cargo. Articles 1503 and 1506 CCQ are of no assistance to DHL here, and neither is article 1509 CCQ.

[104] DHL argues at paragraph 37 of its written representations that the Deadfreight Penalty seeks "to secure a financial estimate of loss due to Rona's failure to present cargo". DHL's argument, properly construed, is that the Deadfreight Penalty is a penalty in the classic contractual penalty clause sense as described in article 1622 CCQ. A penalty clause, properly construed, is not the equivalent of a conditional obligation that may become absolute as contemplated by article 1503 CCQ or with a retroactive effect as stipulated by article 1506 CCQ. Neither of these articles operate to make a contractual term to pay a penalty in the event of a failure to perform an obligation a conditional agreement with a retroactive effect that makes a penalty payable for situations where no penalty is otherwise payable as DHL argues. DHL's

argument changes the nature of the penalty clause the parties agreed to. There is no basis for DHL's argument; the penalty is payable as a penalty and its method of calculation and conditions of imposition were agreed upon in advance. There is no conditional agreement to be found in the section 3.4 of the BSA.

[105] Applying the unambiguous terms of the Agreement leads to the conclusion that Rona's exposure to Deadfreight Penalties could only occur during the Term of the BSA and then only for those weeks during which it failed to tender its Weekly Volume Commitment. Rona's Notice of Termination effected the termination of the BSA from its effective termination date and liberated it from any future obligation pursuant to the BSA after the effective date of termination (*9745866 Canada inc. c 9518002 Canada inc*., 2021 QCCA 1530 at para 19; article 1606 CCQ).

[106] DHL's argument and claims that Rona was liable to pay a Deadfreight Penalty for every week after April 22, 2023, until December 31, 2023, must therefore also be rejected.

(iv) **Deadfreight Penalty Owing**

[107] DHL has tendered several different invoices as Exhibit EW-5 in evidence on this motion to establish the quantum of the Deadfreight Penalties claimed from Rona. DHL's evidence is that it issued the invoices produced at Exhibit EW-5 and continued to issue Deadfreight Penalty invoices for the whole of 2023, without specifying whether any had been paid in whole or in part. Rona, as noted above, did not lead any affidavit evidence at all and did not lead any evidence as to whether any Deadfreight Penalty invoices had been paid in whole or in part.

[108] Given the absence of evidence on this key issue, the Court requested during the hearing of this motion that the parties confer and provide the Court with additional information and representations with respect to any amounts invoiced by DHL that may be outstanding at the date of the hearing and that may be owing as Deadfreight Penalties.

[109] The parties filed additional representations by way of brief letters. None of the additional representations contain any admissible affidavit evidence as to what is payable and what is not, although they do contain admissions by DHL.

[110] DHL's representations are that there are unpaid Deadfreight Penalty invoice amounts relating to its invoices bearing numbers Y0394618 and Y0404148.

[111] Invoice number Y0394618 is dated April 12, 2023, and was issued for "BSA Penalty March 2023", in the amount of US$ 18,000. The invoice is not included in the Statement of Account attached to the DHL's Statement of Claim and the invoice itself was not alleged in it. Invoice number Y0394618 and its alleged amount outstanding is therefore not before the Court and cannot be included in the determination of any amount that may be owing by Rona in this proceeding.

[112] Invoice number Y0404148 is dated May 11, 2023, and was issued in connection with "BSA Penalty April 2023" in the total amount of US$ 210,000. The total amount consists of two separate Deadfreight Penalty charges. DHL submits in its additional representations that only the Deadfreight Penalty amount of US$ 90,000 connected to the YM Together as reflected on the

invoice remains outstanding. The Court notes DHL's admission made through its representations.

[113] The remaining unpaid DHL invoices produced in Exhibit EW-5 bearing numbers Y0417854, Y0424563, Y0433862, Y0473484, Y0473485, Y0475451, Y0475872, and Y0496629 were issued by DHL for Deadfreight Penalties for shipping months that post-date the effective date of the BSA's termination of April 23, 2023. None of these invoices can give rise to any liability for Deadfreight Penalties because they relate to Deadfreight Penalties improperly imposed after the Term of the BSA had been properly terminated.

[114] The final alleged unpaid invoice produced by DHL in Exhibit EW-5 is invoice Y0333283, which relates to a Deadfreight Penalty imposed for June 2022. As was the case with invoice number Y0394618, invoice Y0333283 was not claimed by DHL in its Statement of Claim and therefore falls outside of the time period the parties determined as being the contested period in their submissions on this motion. This invoice cannot be included in the determination of any amount that may be owing by Rona in this proceeding.

[115] Considering the invoices produced and the additional representations made by DHL, it appears that the only Deadfreight Penalty amount potentially owing by Rona for the period of March 23, 2023, to December 23, 2023, is the Deadfreight Penalty of US$ 90,000 reflected in DHL invoice number Y0404148 as it pertains to the YM Together.

[116] Rona's additional representations concerning DHL's invoice number Y0404148 are that

it understands that the Deadfreight Penalty of US$ 90,000 is payable with respect to a voyage that departed on April 24, 2023, after the BSA had been effectively terminated. Rona argues that since the voyage departed after the BSA had been terminated, no Deadfreight Penalty should be payable. While the Court acknowledges Rona's representations in this regard, it must be noted that no evidence has been led by Rona to establish that the claimed US$ 90,000 in Deadfreight Penalties, as reflected in invoice number Y0404148, are Deadfreight Penalties invoiced for a week that post-date the BSA's effective termination date. But Rona has no burden of proof concerning this amount alleged to be payable unless DHL establishes that the Deadfreight Penalties invoiced are properly payable.

[117] The burden of establishing that the US$ 90,000 in Deadfreight Penalties claimed under invoice number Y0404148 corresponds in fact to Deadfreight Penalties invoiced for a week falling between March 23, 2023, and April 23, 2023, during which Rona failed to tender its Weekly Volume Commitment lies with DHL. The invoice details and the additional information reflected in the invoice are limited to "April 2023 penalties" and "BSA Penalty April 2023". The invoice lacks sufficient particulars to establish that it was issued in connection with a week during which Rona failed to tender its Weekly Volume Commitment prior to the effective termination of the BSA.

[118] DHL's affidavit evidence also does not establish that the Deadfreight Penalties charged in invoice number Y0404148 were in connection with a week prior to the BSA's effective termination date during which Rona failed to tender its Weekly Volume Commitment.

[119] If DHL had additional or better evidence to establish that the US$ 90,000 in Deadfreight Penalties claimed under invoice number Y0404148 correspond in fact to Deadfreight Penalties that were invoiced and owed for a week falling between March 23, 2023, and April 23, 2023, then that evidence should have been led in its motion record or should have been brought to the Court's attention in DHL's response to the Court's in-hearing request as referenced above (*Kanematsu Gmbh v Acadian Shipbrokers Ltd.*, 2000 CanLII 15572 (FCA) at para 13). The Court may assume that DHL has put its best evidentiary foot forward on this motion, and that there is nothing more by way of probative evidence to be adduced to show that there is no genuine issue for trial (*Witchekan Lake* at paras 23 and 44).

[120] The Court is left to conclude that DHL has not established on a balance of probabilities, that the US$ 90,000 claimed in Deadfreight Penalties in invoice number Y0404148 is in connection with a week prior to the BSA's effective termination date during which Rona failed to tender its weekly volume commitment.

(4) **Conclusion**

[121] It follows from the analysis set out above that Rona is not liable or indebted to DHL for the Deadfreight Penalties claimed for the period of March 23, 2023, to December 23, 2023, (the Contentious Period), pursuant to the BSA.

C. ***DHL's discharge from its obligation to mitigate its damages arising from Rona's actions***

[122] Considering the analysis and conclusions set out above, the question of whether DHL is

discharged from its obligation to mitigate the damages arising from Rona's actions does not arise and need not be decided on this motion.

D. ***There is no genuine issue for trial***

[123] Given the nature of this proceeding and the parties' agreement concerning the issues to be resolved, the dispute between them is appropriately resolved by way of a motion for summary judgment.

[124] The records filed by the parties have been sufficient to permit the Court to consider the legal and factual issues in dispute, their associated evidentiary requirements, and to assess them with a view to determining whether DHL has established that there is no genuine for trial with respect to the claims advanced. The records filed are also sufficient to determine whether Rona has established that DHL's claims against it should be dismissed because they do not raise a genuine issue.

[125] As discussed above, I have concluded that Rona had the right to terminate the BSA and that it properly exercised that right by way of its Notice of Termination. The notice communicated to DHL that the BSA would be effectively terminated 30 days later, on April 23, 2023. The evidence led, together with DHL's admissions, establishes that Rona has paid all amounts it was required to pay to DHL as Deadfreight Penalties in connection with the BSA and its termination. As no Deadfreight Penalties are payable by Rona to DHL, the issue of whether DHL discharged its obligation to mitigate its damages as assessed in advance as per occurrence Deadfreight Penalties does not arise and need not be adjudicated.

[126] It follows that I am satisfied that there is no genuine issue for trial raised by DHL's Statement of Claim with respect to its claims advanced against Rona.

VI. **Conclusion and Costs**

[127] An order will be granted dismissing DHL's claims against Rona pursuant to Rule 215(1) of the *Rules*.

[128] Rona has sought its costs of this motion and of this proceeding. The Court strongly encourages the parties to this motion to confer and attempt to agree on the costs of this motion and of the action prior to November 7, 2025. If the parties agree on costs by then, they may deliver a letter on consent to the case management office in Ottawa to my attention that sets out their agreement as to costs. If the Court considers such costs appropriate, a subsequent order as to costs consistent with the agreement will be issued.

[129] In the event that the parties do not agree on costs, then Rona shall have until November 12, 2025, to serve and file its respective costs submissions that do not exceed five pages, double-spaced, exclusive of schedules, appendices, and authorities. DHL will then have until November 24, 2025, to serve and file its costs submissions, also limited to five pages, double-spaced, exclusive of schedules, appendices, and authorities.

[130] If no agreement as to costs is filed by November 7, 2025, and no costs submissions are served and filed by November 12, 2025, then no costs will be awarded to any party for this motion or action.

ORDER in T-219-24

THIS COURT ORDERS that:

1. The Plaintiff DHL Global Forwarding (Canada) Inc.'s motion for summary judgment is dismissed.
2. The Plaintiff DHL Global Forwarding (Canada) Inc.'s Statement of Claim as against the Defendant Rona Inc. and the claims made therein as against Rona Inc. are dismissed.
3. Costs of this motion and of this action are reserved to be determined following the parties' submissions on costs in accordance with the directions as to costs set out above.

"Benoit M. Duchesne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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DATED:	OCTOBER 28, 2025

APPEARANCES:

David G. Colford	FOR THE APPLICANT
Frédéric Paré Vincent Lanctôt-Fortier	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Brisset Bishop Montréal, Québec	FOR THE APPLICANT
Stikeman Elliott Montréal, Québec	FOR THE RESPONDENT