

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yeung v. 1353202 BC Ltd.*,  
2025 BCSC 1417

Date: 20250312  
Docket: S247954  
Registry: Vancouver

Between:

**Hoi Ting Yeung**

Plaintiff

And:

**1353202 BC Ltd., Shakir Nikjo, Katelyn Cavaliero,  
Nathan Liu and V Lee**

Defendants

Before: The Honourable Justice Thomas

## Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

H.T. Yeung

Counsel for the Defendants, 1353202 BC  
Ltd., Katelyn Cavaliero, Nathan Liu and  
Shakir Nikjo:

A. Matour

Place and Date of Hearing:

Vancouver, B.C.  
March 12, 2025

Place and Date of Judgment:

Vancouver, B.C.  
March 12, 2025

[1] **THE COURT:** This is an application by the defendants 1353202 BC Ltd., Nikjo, Cavaliero, and Liu to strike the notice of civil claim for lacking a viable cause of action or, alternatively, to dismiss it through a summary trial. It is also an application by the defendant, Constable Lee, to strike the notice of civil claim for failing to raise a valid cause of action.

[2] The amended notice of civil claim notes:

1. On September 9, 2024, the plaintiff traded in an old vehicle and purchased a new vehicle at Go Richmond Chrysler (operated by 1353202 BC LTD).
2. On October 16, 2024, the plaintiff discovered that she was still making loan payments on the traded-in vehicle, indicating that the defendant had failed to fulfill its obligation to pay off the loan as part of the trade-in agreement.
3. Between October 16, 2024 and October 19, 2024, the plaintiff made multiple attempts to resolve the issue, including:
  - Visiting her bank in person:
  - Calling Nathan Liu, the sales representative:
  - Sending emails twice to Shakir Nikjo, General Manager:
  - Making multiple phone calls to both individuals.
  - Despite these efforts, the defendant refused to respond or provide clarification.
4. On October 25, 2024 Katelyn Cavaliero, Finance Manager, sent an email stating that:
  - A cheque had been issued to RBC Auto Finance but the bank allegedly lost it.
  - The cheque was supposedly sent via Purolator under tracking number 334928773111.
  - Despite multiple follow-up calls Ms. Cavaliero refused to respond further.
  - The cheque lacked essential banking details (ABA number, account number, cheque number) raising doubts about its validity.
5. On October 26, 2024, at 10:45 AM, Plaintiff visited Go Richmond Chrysler at 5491 Parkwood Way, Richmond, BC, seeking a resolution. Defendant continued to blame the bank and insisted that the Plaintiff should "wait".
6. At 10:59 AM on October 26 2024. The defendant called 911, falsely alleging that the Plaintiff was:
  - Causing a riot
  - Yelling and throwing objects
  - Refusing to leave the premises.
7. At 11:06 AM, RCMP Officer V. Lee (Badge No. 58317) and two other officers arrived at the scene:
  - Without investigating, the officers accepted the defendant's version of events.

- The officers falsely claimed that RBC Auto Finance was closed on Saturdays. instructing the plaintiff to "come back on Monday".
8. At 12:00 PM on October 26, 2024, the plaintiff, under threat and intimidation from Officer V. Lee was forced to accept a payment of \$766 from the Defendant. •
- Officer V. Lee threatened to arrest the plaintiff unless she accepted the payment.
  - The plaintiff did not voluntarily accept the money but was coerced under police intimidation.
9. The plaintiff asserts that the defendant engaged in deliberate fraud by:
- Issuing a fake cheque to falsely claim the loan was paid.
  - Exploiting the plaintiff's limited English proficiency and unfamiliarity with company and loan procedures.
  - Engaging in professional fraud targeting the plaintiff as a vulnerable consumer.
10. The plaintiff confirms that she was a legitimate customer engaged in a trade-in transaction with the defendant and asserts that the defendant's conduct constitutes:
- a) Breach of Contract;
  - b) Negligence;
  - c) Fraudulent Misrepresentation; and
  - d) Discrimination.
11. The plaintiff denies that the defendant fulfilled its payment obligations before September 17, 2024. Furthermore, the defendant claimed that the check was lost on September 17, 2024 but the plaintiff was not notified until October 25, 38 days later.
12. The plaintiff acknowledges that Purolator tracking number 334928773111 was dispatched from Richmond on September 16, 2024 and delivered to North York, ON, on September 17, 2024. However:
- The defendant failed to prove that RBC Auto Finance was the recipient.
  - The defendant failed to confirm that the parcel contained a valid cheque or payment instrument.
13. The defendant falsely claimed that the plaintiff lacked knowledge of the loan process and failed to follow up with RBC.
- This statement is misleading, discriminatory, and ignores the fact that it is the Finance Manager's duty to track loan payments.
  - Shifting the burden to the customer is not industry standard nor reasonable.
14. Evidence provided by Katherine Harris, Senior Relationship Manager at RBC Auto Finance, confirms that:

- RBC was open on Saturdays until 3 PM for auto finance matters.
  - The defendant lied to both the plaintiff and the police, falsely claiming that RBC was closed.
15. The defendant's actions caused serious psychological harm to the plaintiff:
- a) Due to the defendant's breach of contract, fraudulent misrepresentations and discriminatory actions. The plaintiff suffered significant emotional distress.
  - b) The plaintiff was forced to deal with ongoing loan issues, deception, and a refusal to take responsibility, leading to anxiety, insomnia, and mental distress.
  - c) The defendant chose to call the police instead of resolving the matter, resulting in humiliation and psychological pressure on the plaintiff.
  - d) For new immigrants, credit records are very important. The plaintiff cannot stop the bank from deducting the money.

[3] The plaintiff has limited English skills and was aided by a translator. Essentially, she no longer disputes that the car dealership made the payment; rather, she argues that the payment was delayed because the cheque sent was lost by RBC, the previous financier. When RBC located the cheque, their loan was cancelled, and the plaintiff was refunded all charges made by RBC after they received the cheque. When she attended at the dealership on October 26th, the dealership provided her a gratuitous cheque for lease payments deducted due to the delay, despite the fact that the payments had already been returned to her account. The plaintiff was emotional, such that the dealership phoned the police. The plaintiff also phoned 911. Once the police arrived, the plaintiff was given the cheque and left.

[4] With respect to damages, the plaintiff advised me that she lost access to the funds charged by RBC for several days. Additionally, she experienced emotional distress due to RBC's failure to cancel her loan and to cease charging her payments. This failure was caused by the defendant car dealership because, under the consumer protection legislation, they were required to honour their promises and promptly, within at least two weeks, carry out the terms of the purchase agreement, which included cancelling the loan with RBC.

[5] In addition, she claims emotional distress due to the way she was treated at the dealership, the calling of the police, and the fact that the police wrongfully

investigated the incident and compelled her to accept a cheque from the dealership. The cheque was related to the cancellation of the loan and was, in fact, a gratuity payment.

[6] I have taken care to clarify the nature of this claim directly with the plaintiff to ensure that any deficiencies in her pleadings can be rectified through amendments and to acknowledge her difficulty in expressing herself in English. To that end, she agrees that there is no claim against the defendant Liu and consents that the action should be struck against him, which I so order.

[7] Additionally, she asks for leave of the court to amend her pleadings to add both the financial director and the accountant at the car dealership as defendants.

### **Claim Against Dealership and Employees**

[8] I will deal with this aspect of the applications as a summary trial.

[9] In my view, the only potential cause of action advanced by the plaintiff is a breach of contract. Causes of action are set out in para. 10(a) of the notice of civil claim:

The plaintiff confirms that she was a legitimate customer engaged in a trade-in transaction with the defendant and asserts that the defendant's conduct constitutes a breach of contract.

[10] I see no compensable loss for a breach of contract.

[11] The plaintiff states the defendants breached their contractual obligations by not complying with the consumer protection legislation by failing to have the loan to RBC paid promptly after her purchase. To the extent that this constitutes a breach of contract, it falls within the jurisdiction of the Motor Dealer Customer Compensation Fund ("MDCCF") and outside the jurisdiction of this court.

[12] The elements of fraud and discrimination have not been specified, and the plaintiff did not provide any additional factual basis upon which this claim could be supported. The allegations are set out at para. 9 of the notice of civil claim:

The plaintiff asserts that the defendant engaged in deliberate fraud by:

- Issuing a fake cheque to falsely claim the loan was paid.
- Exploiting the plaintiff's limited English proficiency and unfamiliarity with company and loan procedures.

- Engaging in professional fraud targeting the plaintiff as a vulnerable consumer.

[13] These pleadings, the particulars with respect to the speed at which the loan was paid, fall squarely within the jurisdiction of the MDCCF.

[14] The allegations against these defendants are dismissed. The defendants are entitled to costs of a summary trial.

### **Allegations Against the RCMP Member**

[15] The main allegation against Constable Lee is an alleged failure to investigate the incident at the dealership fairly.

[16] Constable Lee has no common law duty to the plaintiff for this. I rely upon *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41; and *Allen v. New Westminster (City)*, 2017 BCSC 1329 at paras. 15-27. Given that there is no common law duty owed to this specific plaintiff, the claims against Constable Lee are dismissed.

[17] The pleadings do not support a claim for fraudulent misrepresentation by Constable Lee, as the plaintiff pleads that Constable Lee was told by the other defendant that the dealership was closed on Saturday.

[18] There are no statutory claims available against Constable Lee for breach of the *Criminal Code* or human rights legislation for his conduct alleged in the notice of civil claim.

[19] The only other potential claim is was summarized in para. 8 of the further amended notice of civil claim:

8. At 12:00 PM on October 26, 2024, the plaintiff, under threat and intimidation from Officer V. Lee, was forced to accept a payment of \$766 from the defendant.

- Officer V. Lee threatened to arrest the plaintiff unless she accepted the payment.
- The plaintiff did not voluntarily accept the money but was coerced under police intimidation.

[20] Though this conduct could fall outside of the exclusion clause pertaining to RCMP members in s. 21(2) of the *Police Act*; and outside of the common law

prohibitions against officers conducting an investigation, no damages could arise from the plaintiff's acceptance of the cheque. Therefore, there is no common law cause of action because there are no damages arising from the alleged breach.

[21] Therefore, I dismiss the action of the plaintiff against the RCMP and award them costs at \$967.

[22] I have dismissed the claim against the dealership defendants and against the RCMP. I therefore also dismiss the plaintiff's application to add additional defendants whose conduct is associated with the actions that I have just dismissed.

[23] To the extent that the plaintiff is upset about financing or the services provided by the dealership, it appears that she should direct her attention to the MDCCF. It may be that this is the appropriate avenue to pursue a complaint and/or initiate a process to seek recovery of damages related to the delay in receiving the funds.

"Thomas J."