

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Tichopad v. One West Auto Ltd.*,
2025 BCCA 371

Date: 20251029
Docket: CA49856

Between:

Jiri Tichopad

Appellant
(Plaintiff)

And

**One West Auto Ltd. dba
Vancouver Mitsubishi / CCV Company of Cars**

Respondent
(Defendant)

Before: The Honourable Justice Riley
The Honourable Justice Gomery
The Honourable Justice MacNaughton

On appeal from: An order of the Supreme Court of British Columbia, dated
April 10, 2024 (*Tichopad v. One West Auto Ltd.*, 2024 BCSC 579,
Vancouver Docket S232860).

Counsel for the Appellant:

N. Lidder
K. Negahdar Chelarci

Counsel for the Respondent:

J.S. Malik

Place and Date of Hearing:

Vancouver, British Columbia
September 26, 2025

Place and Date of Judgment:

Vancouver, British Columbia
October 29, 2025

Written Reasons by:

The Honourable Justice Riley

Concurred in by:

The Honourable Justice Gomery

The Honourable Justice MacNaughton

Summary:

The appellant appeals from the judgment of the trial court holding that he had not taken ownership of a motorcycle he contracted to purchase from the respondent. The appellant makes two arguments on appeal: (1) the chambers judge erred in failing to find that ownership of the motorcycle passed to him on the date when the contract was signed and he paid the purchase price; and (2) in the alternative, if ownership of the motorcycle never passed to him, the chambers judge erred in finding that the respondent was entitled to cancel the sale because, in the appellant's submission, the reason for cancelling was within the respondent's control. The appellant also applies to adduce fresh evidence, namely a vehicle transfer notice that he says was executed by both parties on the date that the purchase contract was signed and the purchase price was paid. Held: Appeal and application to adduce fresh evidence dismissed. The chambers judge did not err in finding that (1) ownership of the motorcycle was never transferred to the appellant, and (2) the respondent was entitled to and did cancel the sale after the appellant failed to accept delivery of the motorcycle when notified that it was available. The fresh evidence is not admissible because of a lack of due diligence, concerns about its credibility, and its admission would not have affected the result.

Reasons for Judgment of the Honourable Justice Riley:**Introduction**

[1] This appeal concerns a dispute over the ownership of a motorcycle. The appellant, Mr. Tichopad, signed a standard form contract for the purchase of the motorcycle from a vehicle dealership operated by the respondent, One West Auto Ltd. ("One West"). Mr. Tichopad paid the purchase price of \$13,647.90 and drove the motorcycle off the dealership lot. He returned ten minutes later, raising concerns about the condition of the brakes and tires. He insisted that the dealership arrange for an independent inspection and conduct necessary repairs. The dealership did so, but not to Mr. Tichopad's satisfaction. Mr. Tichopad failed to pick up the motorcycle when notified that it was ready, leading One West to cancel the sale and mail him a refund. Mr. Tichopad claims he never received the refund, which was returned to sender. In any event, his position was that he was entitled to the motorcycle and he did not want a refund.

[2] Mr. Tichopad filed a claim in the Supreme Court of British Columbia, seeking an order that One West deliver the motorcycle to him, or damages in the alternative.

In its response, One West opposed the order compelling delivery of the motorcycle to Mr. Tichopad, but did not dispute his right to the return of the purchase price.

[3] In a summary trial ruling, the chambers judge found in favour of One West. The chambers judge found that ownership of the motorcycle had not passed to Mr. Tichopad. He dismissed Mr. Tichopad's claim and ordered One West to refund the purchase price.

[4] On appeal, Mr. Tichopad argues that the chambers judge erred in law in failing to apply s. 23(2) of the *Sale of Goods Act*, R.S.B.C. 1996, c. 410 [SOGA] to conclude that ownership of the motorcycle had passed immediately upon execution of the contract. In the alternative, he argues that the chambers judge erred in law in concluding, based on s. 17 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [MVA], that ownership of the motorcycle had not passed to him. In the further alternative, he applies to admit fresh evidence calling into question one of the factual elements relied upon by the chambers judge in assessing the intention of the parties.

[5] For the reasons that follow, I would dismiss the appeal and the fresh evidence application. In summary, the chambers judge did not err in assessing the intention of the parties as required under the relevant provisions of SOGA. The proposed fresh evidence was available to Mr. Tichopad and could have been presented at the summary trial had he been duly diligent, there is reason to be concerned about its credibility, and it would not have affected the result in any event.

Facts

[6] On or about 10 October 2022, Mr. Tichopad saw an advertisement, posted by One West through its dealership on Clark Drive in Vancouver, for the sale of a 2011 Ducati motorcycle. Several days later, Mr. Tichopad contacted One West, arranged to see the motorcycle, and thereafter negotiated the terms of purchase.

[7] One of the issues Mr. Tichopad raised in his discussions with One West was whether the motorcycle had undergone a safety inspection. Mr. Tichopad was informed that it had.

[8] On 19 October 2022, Mr. Tichopad attended the dealership, where he and a One West representative both signed a standard form “Motor Vehicle Purchase Agreement” (the “Purchase Agreement”) in which One West agreed to sell the motorcycle to Mr. Tichopad for a total purchase price of \$13,647.90, consisting of a base price of \$11,808, a “dealer prep” fee of \$695, “administrative fees” of \$495, and GST of \$649.90.

[9] The Purchase Agreement was a one-page, double-sided contract, in standard form, as reflected in the following statement found in fine print at the bottom of the first page:

The Motor Vehicle Sales Authority of B.C. has reviewed this form for compliance with the *Motor Dealer Act*. © New Car Dealer’s Association of B.C., Automotive Retailers Association of B.C., Recreation Vehicle Dealers Association of B.C.

[10] The reverse page of the Purchase Agreement set out 18 terms and conditions. For present purposes, the most important of these are terms 1, 5, and 6, which I would summarize as follows:

- (a) Term 1 provided that: “[d]elivery of the motor vehicle will be made as prior orders permit, and is subject to contingencies of transportation, fires, strikes, and other causes beyond the control of the Dealer”.
- (b) Term 5 provided, among other things, that: “[t]he Purchaser agrees to accept delivery of the motor vehicle and to comply with the terms of payment therefor within a reasonable time after notification to him that it is ready for delivery”, and that “[i]f the Purchaser does not accept delivery and comply with the terms of payment within 7 days from the date of such notification, then the Dealer may charge his reasonable expenses (including loss of profit) to the Purchaser in connection with this Agreement and the Purchaser agrees to pay the same forthwith”. In addition to any other remedy, the Dealer would be permitted to retain any partial payment or trade-in as a set-off against such expenses, and to sell the vehicle that was the subject of the Purchase Agreement without any liability whatsoever to the Purchaser.

- (c) Term 6 provided, in part, that: “[i]f for any reason the Dealer is unable to deliver the motor vehicle within a reasonable time this Agreement may be cancelled by either party hereto upon notification to the other”, in which case the Dealer would be obliged to return any partial payment received from the Purchaser, and any trade-in vehicle, unless the trade-in had been sold, in which case the Dealer would have to return the net proceeds.

[11] After signing the Purchase Agreement, Mr. Tichopad paid the full purchase price. He then drove the motorcycle off the dealership lot. Ten minutes later, he returned, stating that the motorcycle’s brakes and tires were not operating properly, and that the vehicle was unsafe and did not comply with the *MVA*. He left the motorcycle at the dealership, asserting that One West had to arrange a proper inspection, repair the brakes, and replace the tires.

[12] Thereafter, events unfolded as follows:

- (a) On or about 22 October 2022, after conducting an in-house examination of the motorcycle, One West arranged for and completed “some work” on the front and rear brakes. One West was not prepared to replace the tires. A One West representative sent a text message to Mr. Tichopad notifying him of these developments and advising that the motorcycle was ready for pick up. Mr. Tichopad refused to take possession of the motorcycle, taking the position that its tires had to be replaced.
- (b) On 27 October 2022, One West had the motorcycle inspected by North Shore Motorsports, who concluded that it was roadworthy and that there were no issues with the brakes or tires.
- (c) On 28 October 2022, One West’s “Principal Dealer” texted Mr. Tichopad, advising him of the results of the inspection, and stating that he could collect the motorcycle by the end of the day or receive a refund of the purchase price. Mr. Tichopad refused both options. He retained counsel, who then requested that One West arrange for another inspection. Mr. Tichopad also

- submitted a complaint to the Vehicle Sales Authority of British Columbia (“VSA”). Thereafter, he took the position that he had the right to wait until the conclusion of the VSA investigation before accepting the motorcycle.
- (d) On 4 November 2022, One West had the motorcycle inspected by Burnaby Kawasaki, who also concluded that it was roadworthy and that there were no issues with the brakes or tires.
- (e) On 6 November 2022, One West shared the results of the second inspection with Mr. Tichopad’s counsel.
- (f) By 24 November 2022, Mr. Tichopad had still not attended the dealership to collect the motorcycle. One West wrote to Mr. Tichopad, via his mailing address as stated on the Purchase Agreement, enclosing a bank draft for the full amount of the purchase price. One West sent the letter to Mr. Tichopad by registered mail, twice, but on both occasions, Mr. Tichopad did not collect it and it was returned to sender.
- (g) On 22 December 2022, the VSA investigator assigned to Mr. Tichopad’s complaint emailed him advising that the motorcycle had passed two separate inspections, and that the tires were determined to be roadworthy such that the VSA could not compel One West to replace them. In an affidavit sworn in support of his summary trial application, Mr. Tichopad stated that while he “did not necessarily agree” with the investigator’s determination, he “accepted it”.
- (h) On 23 December 2022, Mr. Tichopad texted One West asserting that the motorcycle was his property and that One West was holding it “in contravention of the Criminal Code”. One West’s Principal Dealer responded, taking the position that because Mr. Tichopad had refused to pick up the motorcycle when notified that it was ready, One West had cancelled the contract, and attempted to mail a refund to his listed address. Later the same

day, Mr. Tichopad attended the dealership with a police officer, but the officer concluded that the matter was a contract dispute and declined to intervene.

- (i) On 10 January 2023, the VSA investigator wrote Mr. Tichopad, reporting the results of his investigation. The letter explained that the VSA’s jurisdiction was limited to potential breaches of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316, and certain parts of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2. The investigator concluded that Mr. Tichopad’s complaint involved a “contractual dispute” that was “not within [the VSA’s] jurisdiction to offer an opinion on or resolve”.
- (j) On 30 January 2023, Mr. Tichopad’s counsel wrote to One West demanding that they relinquish possession of the motorcycle. Again, One West refused to do so.

[13] On 11 April 2023, Mr. Tichopad filed a notice of civil claim in the Supreme Court of British Columbia, pleading conversion. He asserted that ownership of the motorcycle was transferred to him at the point when he paid the purchase price and drove it off the dealership lot. The relief he sought was an order that One West deliver the motorcycle to him, and in the alternative, damages.

[14] In response to Mr. Tichopad’s claim, One West took the position that ownership of the motorcycle never changed hands, and that One West had the right to cancel the sale when Mr. Tichopad refused to pick up the motorcycle upon notification that it was ready. One West opposed the order compelling delivery of the motorcycle to Mr. Tichopad, but did not dispute his entitlement to the return of the purchase price.

The Chambers Judge’s Decision

[15] Mr. Tichopad applied for judgment in his favour by way of a summary trial.

[16] In reasons for judgment indexed as *Tichopad v. One West Auto Ltd.*, 2024 BCSC 579 (the “Reasons”), the chambers judge found in favour of One West.

[17] After setting out the facts, the chambers judge determined that Mr. Tichopad’s claim raised four issues. However, in the end the judge decided that the outcome was driven by the first issue, namely whether ownership of the motorcycle passed from One West to Mr. Tichopad on 19 October 2022. The judge reasoned this “pivotal question” could be restated by asking: “did the plaintiff take delivery of the [m]otorcycle when he first drove it off the lot, and did he return to the dealership only to have it repaired, or was the delivery of the [m]otorcycle to the plaintiff deferred, conditional upon it being repaired?”: Reasons at para. 23.

[18] The chambers judge then considered s. 22 of *SOGA*. Section 22(1) provides that if there is a contract for sale of “specific or ascertained goods”, property in those goods “is transferred to the buyer at the time the parties to the contract intend it to be transferred”. Section 22(2) provides that in “ascertaining the intention of the parties, regard must be had to the terms of the contract, the conduct of the parties and the circumstances of the case”: Reasons at para. 24.

[19] The chambers judge reasoned that the evidence of the parties concerning their subjective intentions was “not particularly helpful”, and that the opinions of third parties — in this case, the VSA — were “equally unhelpful”: Reasons at para. 26.

[20] The chambers judge next considered the parties’ conduct. In the judge’s view, the fact that Mr. Tichopad paid the full purchase price weighed in favour of his litigation position that ownership of the motorcycle passed to him at that time: Reasons at para. 28.

[21] The judge questioned the value of the contemporaneously stated positions of the parties as set out in their text messages, because those positions were inconsistent with their subsequent litigation positions: Reasons at paras. 34–35. In particular:

- (a) Mr. Tichopad’s initial position, as stated in his contemporaneous text messages, was that ownership of the motorcycle did not pass when he drove it off the lot, because it was unsafe and not in compliance with the *MVA*.

Later, Mr. Tichopad changed his position, asserting that ownership of the motorcycle passed to him as soon as he paid the purchase price and drove it off the lot.

- (b) One West’s initial position, as stated in the contemporaneous text messages of its Principal Dealer, was that even after Mr. Tichopad returned the motorcycle to the dealership, it continued to be his vehicle. After the brakes had been repaired and the motorcycle passed two inspections, One West changed its position, asserting that the motorcycle was then ready for delivery and if Mr. Tichopad did not accept delivery the contract would be cancelled and the purchase price refunded.

[22] The chambers judge also considered s. 17(1) of the *MVA*, which states that if title to a motor vehicle is transferred, the transferor and transferee “must immediately sign a notice of the transfer” in the form required by the Insurance Corporation of British Columbia (“ICBC”). Thereafter the transferee “must”, within ten days, deliver the notice to ICBC “for registration”. At the same time the transferee must pay the prescribed fees, insurance premiums, and the vehicle transfer tax. The chambers judge found it highly relevant and cogent that there was “no evidence” of a transfer notice that had been signed by the transferor and transferee “as required” under s. 17: Reasons at para. 39.

[23] The chambers judge concluded:

[40] On the basis of the foregoing evidence ... ownership of the property did not pass to the plaintiff on October 19, 2022. The defendant remained the legal owner of the Motorcycle after October 19, 2022 and remains so today. I find that if the plaintiff had found the Motorcycle to be in satisfactory condition after he left the dealership lot on October 19, 2022, he would have had to return to the dealership to sign the transfer forms.

[24] The chambers judge went on to hold that once Mr. Tichopad had been notified that the motorcycle passed two inspections and was ready for pick up, he was not entitled to wait for VSA’s opinion before taking delivery. In deciding not to collect the motorcycle when notified that it was ready, Mr. Tichopad “risked having the [Purchase Agreement] cancelled”. One West was “entitled to and did” exercise

its right to cancel the sale under term 6 of the Purchase Agreement: Reasons at paras. 47–49.

[25] The chambers judge concluded that since ownership of the motorcycle did not pass to Mr. Tichopad, there was no claim in conversion against One West: Reasons at para. 51. He also ruled that since One West had cancelled the sale after Mr. Tichopad failed to accept delivery of the motorcycle when notified that it was ready, there was no basis for ordering the contractual remedy of specific performance: Reasons at para. 50. Finally, the chambers judge ruled that One West was required to return the purchase price to Mr. Tichopad as provided by term 6 of the Purchase Agreement: Reasons at para. 53.

On Appeal

[26] Before addressing the merits of the appeal, it is necessary to comment briefly on the potential lack of alignment between the cause of action pleaded and the relief sought. While Mr. Tichopad’s notice of civil claim pleaded the tort of conversion — normally remedied in damages (*Lepage v. Bowen Island Municipality*, 2021 BCSC 1077 at paras. 27–28), the relief he sought was an order that the motorcycle be delivered to him — a remedy for the tort of detinue (*Viking Air Limited v. Cascade Aerospace Inc.*, 2024 BCSC 841 at para. 141). However, in my view, the outcome in this matter should not turn on such a technical point. Mr. Tichopad’s claim has always been focused on an order for the delivery of the motorcycle to him, and One West has never objected on the basis of a deficiency in the pleadings.

[27] Mr. Tichopad advances two grounds of appeal, briefly summarized as follows.

[28] First, the chambers judge erred in holding that ownership of the motorcycle did not pass to Mr. Tichopad on 19 October 2022. In support of this position, Mr. Tichopad asserts that: (a) the chambers judge erred in law in failing to consider and apply s. 23(2) of *SOGA*, which provides that where the parties enter into an “unconditional contract for the sale of specific goods in a deliverable state”, ownership of the goods passes to the buyer “when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, are

postponed”; (b) the chambers judge erred in law in treating the absence of an executed vehicle transfer notice as dispositive; and (c) in the alternative, if the chambers judge made no error in basing his decision principally or primarily on the absence of a vehicle transfer notice, then Mr. Tichopad seeks to admit fresh evidence to show that the parties did in fact execute a vehicle transfer notice.

[29] Second, even if the chambers judge was correct that ownership of the motorcycle was never transferred to Mr. Tichopad, the judge erred in concluding that One West lawfully exercised term 6 of the Purchase Agreement to cancel the sale.

Standard of Review

[30] The proper interpretation of a contract is generally a matter of mixed fact and law: *Creative Energy Vancouver Platforms Inc. v. Concord Pacific Developments Ltd.*, 2025 BCCA 52 at para. 56, applying *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 50. Although an exception to this general rule may arise in relation to the interpretation of a standard form contract, I would not apply that exception to the interpretation of the Purchase Agreement in issue in this case because, as explained below, s. 22(2) of SOGA provides that the conduct of the parties and the surrounding circumstances must be considered in ascertaining contractual intent. The chambers judge’s analysis involved a consideration of case-specific circumstances informing the contractual intent of the parties to this particular Purchase Agreement. I therefore proceed on the footing that the chambers judge’s interpretation of the Purchase Agreement to find that ownership of the motorcycle never passed from One West to Mr. Tichopad cannot be disturbed unless it is shown to rest on a palpable and overriding error, or the judge’s analysis is tainted by some extricable error of law: *Creative Energy Vancouver* at para. 56, applying *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 26, 30–31.

Issue (1): Whether the Chambers Judge Erred in Holding that Ownership of the Motorcycle Did Not Pass to Mr. Tichopad on 19 October 2022

[31] Mr. Tichopad submits that the chambers judge’s finding that ownership of the motorcycle never passed to him is tainted by extricable errors of law, first in failing to

apply s. 23(2) of *SOGA* to an “unconditional contract for the sale of specific goods in a deliverable state”, and second in treating s. 17 of the *MVA* as dispositive. If unsuccessful on either of these points, Mr. Tichopad’s alternative submission is that the chambers judge made a palpable and overriding error in placing undue weight on the absence of executed transfer documents, and he applies for leave to adduce fresh evidence showing that transfer documents were, in fact, executed.

(a) Whether the Chambers Judge Erred in Failing to Apply s. 23(2) of *SOGA*

[32] Mr. Tichopad argues that the Purchase Agreement was an “unconditional contract for the sale of specific goods in a deliverable state”. He says the chambers judge erred in failing to recognize that under s. 23(2) of *SOGA*, ownership of the motorcycle passed from One West to Mr. Tichopad when the Purchase Agreement was made, regardless of when the motorcycle was actually “delivered” to him.

[33] One West says the Court should not entertain this ground of appeal because it is a new argument, not advanced in the court below. I have some sympathy for One West’s position. Before the chambers judge, Mr. Tichopad advanced the theory that ownership of the motorcycle passed when he drove it off the dealership lot. The chambers judge analyzed that theory and ultimately rejected it. On appeal, Mr. Tichopad advances a different theory, that given the nature of the Purchase Agreement as an “unconditional contract for the sale of specific goods in a deliverable state”, the judge was bound to apply s. 23(2) of *SOGA* to hold that ownership of the motorcycle passed as soon as the agreement was signed. It is hard to fault the chambers judge for failing to consider and rule upon a legal theory that does not appear to have been argued before him. Counsel for One West also points out that s. 23(2) of *SOGA* is not cited in Mr. Tichopad’s notice of civil claim, or in his application for summary trial.

[34] Despite my sympathy for One West’s objection, I would not give effect to it. It is evident from the chambers judge’s reasons that he was invited to consider *SOGA*. The judge cited and applied s. 22. It is also relevant that One West’s application

response relied, in part, on s. 23(3). The structure of the relevant SOGA provisions as discussed below suggests that ss. 22 and 23 are closely related. Consideration of s. 22 will often lead to consideration of s. 23, and consideration of one of the subsections in s. 23 will often lead directly to consideration of others. In these circumstances, I would not bar Mr. Tichopad from relying on s. 23(2) to argue that there was some reviewable error in the chambers judge's interpretation of the Purchase Agreement.

[35] Mr. Tichopad argues that the chambers judge made an extricable error in law in failing to apply s. 23(2) of SOGA to an "unconditional contract for the sale of specific goods in a deliverable state". I take Mr. Tichopad's submission to be that the chambers judge erred in law in applying the general test for ascertaining intent of the contracting parties as set out in s. 22(2) of SOGA, when on the chambers judge's findings of fact, the contract was one contemplated in s. 23(2).

[36] The relevant portions of SOGA read:

Property passes according to intent of parties

22 (1) If there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at the time the parties to the contract intend it to be transferred.

(2) For ascertaining the intention of the parties, regard must be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Intention of the parties as to the passing of the property in the goods

23 (1) Unless a different intention appears, the intention of the parties as to the time at which the property in the goods is to pass to the buyer is governed by the rules set out in this section.

(2) If there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, are postponed.

(3) If there is a contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until that thing is done and the buyer has notice of it.

[37] As the heading above it suggests, the general theme of s. 22 is that ownership of goods passes according to the intent of the parties as provided for in the contract. Section 22(2) identifies what the court must consider in ascertaining the contractual intent of the parties. The starting point is the contract itself. The conduct of the parties and the surrounding circumstances must also be considered.

[38] This was the approach the chambers judge took. He considered the terms of the contract, the conduct of the parties, and the surrounding circumstances, taking the view that the most significant circumstance was the absence of any evidence of a vehicle transfer notice or transfer of registration under s. 17 of the *MVA*.

[39] Mr. Tichopad's argument that the chambers judge erred in failing to apply s. 23(2) in respect of an "unconditional contract for the sale of specific goods in a deliverable state" overlooks the general instruction in s. 22(2) to ascertain the intent of the parties having regard to the contract, the conduct of the parties, and the surrounding circumstances. Mr. Tichopad's argument also ignores the text of s. 23(1), which provides that ss. 23(2) to (8) apply, "[u]nless a different intention appears" based on a proper interpretation of the contract. As explained in *Butler Auto Sales Ltd. v. Rudlang*, [1986] B.C.J. No. 1290, 1986 Carswell BC 2485 (Co. Ct.) at para. 20, "the presumptive rules laid down in those sections may be set aside in the event that the evidence discloses that the parties expressed a different intention".

[40] On my reading of the chambers judge's reasons as a whole, he determined that the intention of the contract was that ownership of the motorcycle would not pass from One West to Mr. Tichopad until it was inspected to confirm its roadworthiness, Mr. Tichopad was notified that it was ready for delivery, and Mr. Tichopad accepted delivery. In other words, the intent was for ownership of the motorcycle not to pass until it was in a deliverable state. This effectively ousted s. 23(2), which applies "[u]nless a different intention appears".

(b) Whether the Chambers Judge Erred in Relying on s. 17 of the MVA

[41] Mr. Tichopad argues in the alternative that the chambers judge erred in law in treating s. 17 of the *MVA* as dispositive. As I understand Mr. Tichopad's submission, he says the transfer of ownership of the motorcycle was governed by the terms of the Purchase Agreement and the relevant provisions of *SOGA*, not s. 17 of the *MVA*. Mr. Tichopad says s. 17 of the *MVA* does not dictate when ownership of a vehicle is transferred, but rather sets up a process for registration of title once ownership has been transferred.

[42] Mr. Tichopad's interpretation of s. 17(1) of the *MVA* is consistent with the text of the statute. Section 17(1) provides that "[i]f the title or interest ... in a motor vehicle ... is transferred ...", then the transferor and the transferee must "immediately sign" a "notice of the transfer". The literal meaning of the text is that it is the transfer of the vehicle from one party to another that engages the legal obligation to sign a "notice of transfer". The notice of transfer is not the transfer itself, but rather "notice" of the transfer, which is then to be delivered to ICBC for registration.

[43] Mr. Tichopad's interpretation is also supported by case law. In both *Butler Auto Sales Ltd.* and *Seawest Financial Corp. v. Town Centre Chevrolet Oldsmobile Ltd.*, [1984] B.C.J. No. 1301, 1984 Carswell BC 1129 (Co. Ct.), the question of when ownership to a vehicle transferred from a buyer to a seller was determined by reference to the law of contract, and the relevant *SOGA* provisions. The conduct of the parties in executing or not executing the transfer notice as required under what is now s. 17 of the *MVA* was not determinative of the issue, but was merely one feature of the conduct of the parties and circumstances considered in ascertaining contractual intent. In other words, execution of transfer notice is not determinative of a transfer in ownership, but merely evidence relevant to the assessment of contractual intent.

[44] Mr. Tichopad argues that while the chambers judge set out the appropriate test from s. 22 of *SOGA* and referred to some of the requisite factors, he made an extricable error of law in deciding the matter solely based on the lack of executed

transfer notice. In response, One West submits that this is not an extricable error of law. In One West's submission, the chambers judge considered the absence of an executed transfer as part of the surrounding circumstances relevant to ascertaining the contractual intent of the parties, characterizing it as "the most important indication" that ownership of the motorcycle had not passed: Reasons at para. 36.

[45] I agree with One West that there is no extricable error of law in the chambers judge's consideration of s. 17 of the *MVA*. The judge did not implicitly apply a different test than was explicitly set out in his description of the legal test: *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32 at para. 44. The chambers judge cited the factors listed in s. 22(2) of *SOGA* and went on to consider evidence bearing on those factors. When read as a whole, the chambers judge's reasons demonstrate that while he found the lack of executed transfer documents to be "the most important" evidence in the circumstances of this case, he did so as part of his consideration of terms of the contract, the conduct of the parties, and other circumstances of the case as required by s. 22(2) of *SOGA*.

[46] Having found no extricable error of law, I now turn to Mr. Tichopad's argument that the chambers judge made a palpable and overriding error in placing as much weight as he did on the lack of executed transfer documents. I find no such error. It was up to the chambers judge to decide how much weight to give to the various aspects of the evidence. The chambers judge could not be faulted for placing significant weight on the absence of a vehicle transfer notice when neither of the parties were able to point him to an executed transfer notice in the summary trial record. The judge did not commit any palpable or overriding error in his assessment of the evidence, based on the submissions of the parties at the summary trial.

(c) Whether the Fresh Evidence Should be Admitted

[47] Mr. Tichopad seeks to tender fresh evidence to show that, contrary to the chambers judge's conclusion, the parties did in fact execute a vehicle transfer document on 19 October 2022. Mr. Tichopad says he never delivered it to ICBC for

registration of the change in title because he intended to license the motorcycle in Alberta.

[48] In determining whether to admit fresh evidence, the appeal court must consider whether the evidence: (i) could not, with due diligence, have been adduced at trial; (ii) is relevant; (iii) is credible; and (iv) could be expected to have affected the result: *Palmer v. The Queen*, [1980] 1 S.C.R. 759, 1979 CanLII 8. Appellate courts are required to apply these criteria “to determine whether finality and order in the administration of justice must yield in service of a just outcome”, with the “overarching consideration” being the “interests of justice”: *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 3.

[49] Mr. Tichopad’s proposed fresh evidence consists of an affidavit from his trial counsel, explaining that due to an “oversight”, counsel failed to include the executed vehicle transfer notice in Mr. Tichopad’s list of documents, and consequently failed to include it in Mr. Tichopad’s summary trial application materials. Counsel further explained that when he “discovered the oversight after the summary trial”, he promptly notified opposing counsel and disclosed a copy of the transfer form. A copy of the executed transfer notice is attached to counsel’s affidavit. The transfer notice is signed by a representative of One West as the seller and Mr. Tichopad as the buyer, and lists the date of sale as 19 October 2022 (the same date when Mr. Tichopad paid the purchase price and drove the motorcycle off the dealership lot).

[50] Mr. Tichopad argues on appeal that it is in the interests of justice to admit the executed transfer notice, because the chambers judge considered the absence of an executed transfer notice as “the most important indication” that the parties did not intend to transfer ownership of the motorcycle when Mr. Tichopad drove it off the dealership lot on 19 October 2022. Recall the chambers judge reasoned that “if the plaintiff had found the [m]otorcycle to be in satisfactory condition after he left the dealership lot”, he “would have had to return to the dealership to sign the transfer

forms”: Reasons at para. 40. The fresh evidence is intended to show that the parties did, in fact, execute the transfer notice on 19 October 2022.

[51] In my view, the affidavit of Mr. Tichopad’s trial counsel should not be admitted as fresh evidence because there was an absence of due diligence, its admission raises serious credibility concerns, and it would not have affected the result in any event, such that its admission is not required in the interests of justice. I will explain each of these conclusions in turn.

[52] Mr. Tichopad acknowledges that counsel’s “oversight” in failing to include the executed transfer notice does not meet the due diligence threshold, but submits that counsel’s lack of diligence should not be determinative when the fresh evidence goes to the heart of the chambers judge’s analysis on the key question. The lack of due diligence was not limited to counsel’s failure to include the document in his list of documents, or a failure to appreciate its relevance. In the course of submissions on the summary trial, the chambers judge suggested that the absence of an executed transfer document could be an important consideration in his analysis. Despite the potential significance of the evidence in light of this exchange, there was no application for leave to tender further affidavits on the summary trial. It was only after the chambers judge ruled against Mr. Tichopad that counsel identified the “oversight” and took steps to address it.

[53] Mr. Tichopad submits that the due diligence criterion ought not to be applied so strictly as to lose sight of the interests of justice. He submits that, despite the conceded lack of diligence of his trial counsel, the fresh evidence should be admitted because it is relevant and credible and shows that the chambers judge’s decision was based on a faulty factual premise, making the outcome fundamentally unjust.

[54] I would not discount the importance of the due diligence criterion. The expectation that litigants will be duly diligent in marshalling and presenting the evidence in the court of first instance is vital to the interests of finality and orderliness, which in turn play a significant role in achieving a just result. However, in this case the fresh evidence application fails not only because of a lack of due

diligence, but also because of the credibility concerns discussed below, and because this evidence would not affect the result in any event.

[55] I turn next to credibility. Mr. Tichopad relies on his trial counsel's affidavit, attaching an executed copy of the vehicle transfer notice, to support his assertion that both parties executed it before he drove the motorcycle off the dealership lot on 19 October 2022. The veracity of that assertion is undermined by the fact that the VSA file, which was appended to one of the affidavits filed on the summary trial application, contains a copy of the transfer notice that is signed by the seller but not the buyer. (This document can be found at pages 386 and 415 of the appeal book.) Neither party brought this partially executed copy of the transfer notice to the Court's attention during the hearing of the appeal, and the Court was not provided with an explanation for why the version given to the VSA was not signed by both parties. However, its presence in the VSA file suggests that, while the seller may have signed the transfer notice on 19 October 2022, the buyer's portion was not filled in and signed until some time afterward. This calls into question the soundness of Mr. Tichopad's assertion that both parties signed the transfer notice before he drove the motorcycle off the lot on 19 October 2022.

[56] Finally, I turn to the question of the significance of the fresh evidence to the result. In my view, even if one were to accept that the title transfer notice was fully executed before Mr. Tichopad drove the motorcycle off the lot on 19 October 2022, the result would have been the same. The text of the contract, the conduct of the parties, and the surrounding circumstances all support the conclusion the contractual intent required One West to have the motorcycle inspected to ensure its roadworthiness upon Mr. Tichopad's return to the dealership on 19 October 2022, and to then notify him when it was ready for delivery, at which point Mr. Tichopad would take delivery.

[57] Over the course of the proceedings, Mr. Tichopad has presented two different interpretations of the Purchase Agreement under which he claims to have become the owner of the motorcycle. On Mr. Tichopad's first interpretation, he took

ownership as soon as he drove the motorcycle off the lot on 19 October 2022. On his second interpretation, the Purchase Agreement was an “unconditional contract for the sale of specific goods in a deliverable state”, under which he became the owner of the motorcycle as soon as the contract was signed. In my view, neither interpretation is sound, even if I accept that the parties fully executed the title transfer document before Mr. Tichopad drove the motorcycle off the lot on 19 October 2022.

[58] The latter theory, that ownership passed upon execution of the contract, is inconsistent with the terms of the Purchase Agreement. Term 1 confirms that delivery of the motorcycle would not necessarily occur at the time the contract was signed. Term 5 makes it clear that One West was to notify Mr. Tichopad when the motorcycle was available for delivery, at which point Mr. Tichopad would be obliged to accept it. The right of One West to re-sell the motorcycle and to claim damages (including loss of profit) if Mr. Tichopad failed to accept the motorcycle makes it clear that ownership would not be transferred until Mr. Tichopad took delivery. This is confirmed by term 6, which provides that if, for any reason, One West was unable to make the motorcycle available for delivery, either party could cancel the contract. All of these provisions are inconsistent with a contractual intention that ownership of the motorcycle was to pass as soon as the Purchase Agreement was signed.

[59] The former theory, that the parties intended for ownership to pass as soon as Mr. Tichopad took possession of the motorcycle on 19 October 2022, is fundamentally inconsistent with the conduct of the parties viewed in light of the terms of the Purchase Agreement. Ten minutes after driving the motorcycle off the lot, Mr. Tichopad returned it to the dealership, expecting that it would be inspected and made roadworthy. It is noteworthy that the contract price included “dealer prep” and “administrative” fees, which Mr. Tichopad asserted in his affidavit to include the cost of an inspection to ensure the motorcycle’s roadworthiness. One West had thus charged for an inspection but was unable to verify that one had been performed. When Mr. Tichopad brought the motorcycle back to the dealership, One West made repairs to the brakes, and arranged for two inspections to confirm the motorcycle’s

roadworthiness. Examining the conduct of both parties in light of the terms of the Purchase Agreement, I am driven to the conclusion that the contractual intent was for One West to inspect the motorcycle to ensure its roadworthiness before notifying Mr. Tichopad that it was ready for delivery, and that Mr. Tichopad would become the owner of the motorcycle upon accepting delivery.

[60] The chambers judge therefore reached the correct conclusion in his assessment of contractual intent as contemplated in s. 22 of *SOGA*. On a contextual interpretation of s. 17 of the *MVA*, the status of the vehicle transfer document was not determinative of ownership. It was merely evidence relevant to an assessment of contractual intent. Even if the parties had fully executed a transfer notice on 19 October 2022 (a conclusion which is questionable in light of the presence of the partially executed version contained within the VSA file), this would not alter the conclusion that the intent of the contract, interpreted in light of the conduct of the parties and the surrounding circumstances, was for ownership of the motorcycle to change hands after it had been inspected to determine roadworthiness, and Mr. Tichopad accepted delivery. He never did so. It follows that admission of the fresh evidence would not have altered the outcome.

Issue (2): Whether the Chambers Judge Erred in Finding that One West Lawfully Invoked Term 6 of the Purchase Agreement to Cancel the Sale

[61] Mr. Tichopad argues that the chambers judge erred in interpreting term 6 of the Purchase Agreement to allow One West to cancel the sale on account of a delivery failure that was within One West’s control. He says that the words “[i]f, for any reason the dealer is unable to deliver the motor vehicle” in term 6 must be read in light of the entire Purchase Agreement. Because term 1 makes delivery subject only to things outside the dealer’s control (“contingencies of transportation, fires, strikes or other causes beyond the control of the Dealer”), lawful reasons to cancel the sale under term 6 must also be restricted to reasons outside the dealer’s control.

[62] Mr. Tichopad advanced this ground of appeal in his factum but did not press it in oral submissions. In my view, it has no merit. Even if I accept Mr. Tichopad’s

interpretation of term 6 to hold that One West could only cancel the sale if factors outside of its control prevented delivery, Mr. Tichopad’s refusal to accept delivery was a factor outside of One West’s control. On multiple occasions, One West notified Mr. Tichopad that the motorcycle had been inspected and was ready to be picked up. Mr. Tichopad did not pick it up. Accordingly, no basis has been shown for interfering with the chambers judge’s conclusion that One West was “entitled to and did” exercise its right to cancel the sale under term 6 of the Purchase Agreement.

Conclusion

[63] I would dismiss both the fresh evidence application and the appeal itself.

“The Honourable Justice Riley”

I AGREE:

“The Honourable Justice Gomery”

I AGREE:

“The Honourable Justice MacNaughton”