

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Segarich v. Andrews*,
2026 BCSC 613

Date: 20260409
Docket: M207673
Registry: Vancouver

Between:

Patricia Ann Segarich

Plaintiff

And:

Brayden Dylan Antone and Diane Gayle Andrews

Defendants

And:

Insurance Corporation of British Columbia

Third Party

Before: Associate Judge Robinson

Reasons for Judgment

Counsel for the Plaintiff:

D. Kolb
J. Cameron

Counsel for the Defendants:

L. Kramchynski

Place and Date of Hearing:

Vancouver, B.C.
March 31, 2026

Place and Date of Judgment:

Vancouver, B.C.
April 9, 2026

INTRODUCTION

[1] This plaintiff brings this application in which she seeks leave to amend her notice of civil claim, filed on July 22, 2020 to raise new allegations and causes of action.

[2] The proposed amendments are two-fold. First, the plaintiff seeks leave to plead that the defendants (and the defendant, Brayden Antone, in particular) are estopped from denying liability at trial since Mr. Antone pleaded guilty to two charges related to the dangerous operation of a motor vehicle. Second, the plaintiff seeks leave to allege that the defendant, Diane Andrews, committed the torts of deceit and fraud in denying that, as the owner of the vehicle involved in the collision, she had consented to its use by Mr. Antone.

[3] The defendants oppose the application.

BACKGROUND

[4] To place this application into context, it is necessary to briefly outline the circumstances in which it arisen.

[5] As indicated, the underlying claim concerns a motor vehicle accident (the “Accident”) which occurred in Surrey, BC on or about July 26, 2018. The plaintiff contends that she was lawfully operating her vehicle in a southbound lane on 176th Street when her vehicle was struck by a northbound vehicle that crossed the centre line. That vehicle was owned by Ms. Andrews and was being driven by Mr. Antone at the time of the Accident.

[6] The plaintiff alleges that Mr. Antone was operating Ms. Andrews’ vehicle with her express or implied consent. In taking this position, the plaintiff says that Mr. Antone had acquired possession of the vehicle from Michael Campagna. Mr. Campagna was Ms. Andrews’ subtenant and had lived with her since May 2018. The plaintiff’s theory is that there was a kind of “standing arrangement” in place between Mr. Campagna and Ms. Andrews whereby he was permitted to use her vehicle without (or with minimal) restrictions and that when he availed himself of the use of

her vehicle, Ms. Andrews was aware that another person would drive it since Mr. Campagna's drivers' license was subject to certain restrictions.

[7] The plaintiff relies on the foregoing allegations as a basis on which Ms. Andrews may face liability for the Accident pursuant to s. 86 of the *Motor Vehicle Act*, RSBC 1996, c 318.

[8] From the outset, Ms. Andrews has denied liability. In her response to civil claim, filed March 18, 2022, she expressly denies having consented to the use of her vehicle by Mr. Antone.

[9] The plaintiff submits that Ms. Andrews' position is patently and demonstrably false. In this regard, the plaintiff points to:

- a) Ms. Andrews' responses to questions raised in a police interview following the accident on August 6, 2018. The plaintiff says that a summation of her responses confirms the standing arrangement in existence between her and Mr. Campagna which precludes any denial of consent;
- b) The general occurrence traffic form completed by police following the accident which does not indicate that Ms. Andrews' vehicle was stolen at the time of the Accident; and
- c) A statement given by Ms. Andrews to her insurer following the accident wherein she advised that she and Mr. Campagna had an "arrangement" allowing him to take the car without permission, provided he had another driver with a valid driver's license.

[10] According to the plaintiff, the foregoing constitutes a basis on which to raise claim for fraud and deceit. The fraud and deceit concern the allegations as set out in Ms. Andrews' response to civil claim (wherein she denies having consented to Mr. Antone's use of her vehicle) and also her statement to her insurer which the plaintiff says has resulted in the insurer regarding and treating the plaintiff's claim as uninsured.

LAW

[11] As a starting point, the court has broad discretion to grant leave to amend pleadings. This discretion is conferred by Rule 6-1. While Rule 6(1)(b) confers discretion to grant leave to amend pleadings, it offers no insight as to the factors which ought to inform the exercise of that discretion. Instead, the applicable principles can be discerned from a review of the authorities.

[12] In *Jazette Enterprises Ltd. v. Gould*, 2022 BCSC 2206 (aff'd 2023 BCSC 180), those principles were outlined at para. 9:

- a) Amendment to pleadings ought to be allowed unless pleadings fail to disclose a cause of action or defence;
- b) Amendments are usually permitted to determine the issues between the parties and ought to be allowed unless it would cause prejudice to party's ability to defend an action;
- c) The party resisting an amendment must prove prejudice to preclude an amendment, and mere, potential prejudice is insufficient to preclude an amendment;
- d) Costs are the general means of protecting against prejudice unless it would be a wholly inadequate remedy; and
- e) Courts should only disallow an amendment as a last resort.

[13] The proposed amendments are to be considered on their face. No evidence in support of the amendment needs to be filed by the party seeking the amendment, nor is it appropriate for a court to weigh the evidence that relates to the intended amendment in deciding whether to grant the application: *McNaughton v. Baker*, 1988 CanLII 3036 (BC CA) at paras. 23-24). A party seeking an amendment need only plead sufficient facts that, if proved at trial, would support a reasonable cause of action.

[14] Despite a liberal approach to allowing amendments, the court will not permit "useless amendments" that are bound to fail: *Berthin v. Berthin*, 2019 BCCA 157.

[15] In determining whether proposed amendments are useless, the threshold question is determined by assessing whether it is plain and obvious that the

amendments are bound to fail. Put another way, the court is required to determine whether it is clear that the proposed pleadings fail to raise an arguable claim (or defence, as the case may be). This is sensible since it would serve no purpose to permit amendments which are susceptible to being struck on an application brought pursuant to R. 9-5.

DISCUSSION

[16] With the foregoing in mind, I turn to apply the foregoing principles to the present application.

[17] Here, it is my view that the plaintiff has failed to meet the low threshold of establishing that the proposed amendments are not “useless”.

[18] Regarding the proposed pleadings of *res judicata* and issue estoppel, these pleadings are not required for the plaintiff to argue at trial that Mr. Antone’s guilty plea is evidence of his liability. This argument is logical.

[19] However, there is no basis on which a party can be said to be estopped or barred by the doctrine of *res judicata* from denying liability in a civil action after having pleaded guilty in a related criminal proceeding. A guilty plea is not a definitive capitulation to liability in a related civil proceeding. Rather, subject to certain, narrow exceptions, it is *evidence of liability*.

[20] In short to allow the amendments related to pleas of estoppel and *res judicata* would serve no purpose. The plaintiff’s ability to rely upon Mr. Antone’s guilty plea is not dependent on a specific pleading and the existence of a specific pleading of estoppel will not preclude Mr. Antone (or for that matter, Ms. Andrews) from continuing to deny liability for the Accident. These proposed pleadings serve no discernible purpose and accordingly, I decline to exercise my discretion to grant leave to make them.

[21] The proposed pleadings of fraud and deceit are similarly problematic. The proposed pleadings reference two occasions on which Ms. Andrews allegedly proffered false or misleading information.

[22] The first instance allegedly occurred when she advised her insurer that she had not consented to the use of her vehicle by Mr. Antone. For the purposes of this application (but without making any final determinations), I am required to assume that this advice was untrue and that Ms. Andrews had lied to her insurer. If that is the case, the only conceivable person to seek redress in respect of the untruth is the insurer. The plaintiff has no standing to advance a claim in this context.

[23] This is not to say that the plaintiff's interests are necessarily unaffected by the untruth. The plaintiff points out that that by misleading her insurer, the plaintiff has caused the insurer to treat the claim as uninsured. This may affect the plaintiff's ultimate ability to recover on any judgement obtained, but that does not give rise to the plaintiff's proposed claim in fraud.

[24] Ultimately, the plaintiff has the onus in the litigation to establish liability. That onus includes satisfying the court that Mr. Antone was operating the vehicle with Ms. Andrews' express or implied consent. The onus exists independent of any representations made by Ms. Andrews to her insurer. If the plaintiff establishes consent, the statements made by Ms. Andrews to her insurer are irrelevant to a determination of her liability.

[25] The claims of fraud and deceit arising from statements or representations made by Ms. Andrews to her insurer are plainly and obviously bound to fail, and I decline to allow them.

[26] The second instance of fraud and deceit concerns the position taken by Ms. Andrews in her response to civil claim and in particular, her express denial of having consented to the use of her vehicle by Mr. Antone.

[27] In the course of hearing this application, counsel for the plaintiff was invited to draw the court's attention to any authority which supports liability being founded

upon “tortious pleadings”, since that is what is being asserted. No such authority was provided and I expect that is because no such authority exists.

[28] Pleadings are, in many respects, aspirational. They set out what a party says it will prove or what it intends to prove at trial. In many cases, pleadings are drafted with imperfect knowledge and in anticipation of arguments that a part may wish to raise at trial. Pleadings are often drafted based on an incomplete body of evidence.

[29] Accordingly, parties have wide latitude to assert claims and defences in pleadings. The allegations may not be pursued at trial, but by setting them out in the pleading a party provides notice to its adversary of the issues to be addressed.

[30] To recognize or permit a party to claim damages or assert a cause of action on the basis of an opposing parties’ pleadings would be to fundamentally undermine that purpose. Moreover, it would open a potentially endless stream of claims in circumstances where an adverse party has confidence in their ability to refute assertions in pleadings. This would not merely open metaphorical floodgates, it would obliterate them.

[31] If a party raises unfounded or obviously untrue allegations in pleadings, the adverse party’s recourse is not in tort. Instead, it is a matter which may be addressed by an order as to costs at the conclusion of the proceeding.

[32] By taking the position that she did not give consent to Mr. Antone’s use of her vehicle, Ms. Andrews is placing the plaintiff on notice that she has the onus of proving consent. There is nothing unlawful or tortious in doing so. It may be that Ms. Andrews’ prior out-of-court statements serve to undermine her credibility insofar as the issue of consent is concerned (and I make no findings in that regard). However, that is to the plaintiff’s benefit in satisfying her onus of proof.

[33] In summary, the plaintiff has failed to meet the low threshold necessary for the amendments sought and has failed to raise allegations which, assuming they are true, constitute a reasonable cause of action.

CONCLUSION

[34] The plaintiff's application is dismissed. As the defendants have been entirely successful, they shall have their costs at Scale B, in any event of the cause.

“Associate Judge Robinson”