

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tichopad v. One West Auto Ltd.*,  
2024 BCSC 579

Date: 20240410  
Docket: S232860  
Registry: Vancouver

Between:

**Jiri Tichopad**

Plaintiff

And

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

Defendant

Before: The Honourable Justice K. Loo

## Reasons for Judgment

Counsel for the Plaintiff:

A.S. Mand

Counsel for the Defendant:

R.L. Darnell  
A. Banerjee, Articled Student

Place and Date of Hearing:

Vancouver, B.C.  
March 28, 2024

Place and Date of Judgment:

Vancouver, B.C.  
April 10, 2024

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**Introduction**

[1] This summary trial involves a dispute over the contract for the purchase and sale of a Ducati motorcycle (the “Motorcycle”) whose purchase price was \$13,647.90.

[2] The plaintiff Jiri Tichopad claims delivery of the Motorcycle or, in the alternative, specific performance, return of the purchase price and/or damages for conversion. The defendant One West Auto Ltd. submits that no contract was completed and that the plaintiff is entitled to no more than the return of the purchase funds. The defendant says that it has attempted to return the purchase funds to the plaintiff but they have been refused.

[3] Neither party takes the position that the matter is unsuitable for determination by summary trial under Rule 9-7 of the *Supreme Court Civil Rules*.

**Factual Background and Chronology**

[4] The plaintiff describes himself as a motorcycle enthusiast. The defendant is in the business of selling motor vehicles.

[5] On October 12, 2022, the plaintiff contacted the defendant's salesperson to inquire about the Motorcycle, which had been advertised by the defendant for sale.

[6] On October 19, 2022, the plaintiff and defendant executed an agreement (the “Agreement”) under which the Plaintiff agreed to purchase the Motorcycle from the defendant for \$13,647.90. The plaintiff paid the purchase price.

[7] The plaintiff subsequently drove the Motorcycle off the lot. The plaintiff asserts that when he did so, he discovered that the Motorcycle had faulty tires and brakes.

[8] The plaintiff asserts that the purchase and sale was complete at this point and that, but for his discovery of the allegedly faulty tires and brakes, he would not have returned to the dealership. The defendant submits that the plaintiff took the Motorcycle for a “test drive” and was always intending to return.

[9] In any event, the plaintiff returned to the dealership lot and complained that the rear brakes were not operating correctly and that the tires were dangerous and non-compliant with the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 (“*MVA*”). The defendant disputes these complaints. It says that the motorcycle was safe and compliant.

[10] The Motorcycle was left with the defendant. As will be discussed below, one of the key questions in this proceeding is whether the Motorcycle was at that point owned by the plaintiff who left the Motorcycle with the defendant so that it could be repaired, or whether completion of the Agreement including the transfer of ownership in the Motorcycle was deferred, pending repairs which would address the tire and brake issues complained about by the plaintiff.

[11] On October 27, 2022, the defendant caused an inspection of the Motorcycle to be carried out by North Shore Motorsports and the result was shared with the plaintiff. The inspection concluded that the Motorcycle was safe and compliant with the *MVA*. It did not identify any issues with the brakes or the tires.

[12] On October 28, 2022, the defendant's representative exchanged text messages advising the plaintiff to either collect the Motorcycle by the end of the day or to collect the refund of the purchase price. The plaintiff refused to take delivery or to accept the refund.

[13] On October 28, 2022, plaintiff's counsel requested another inspection.

[14] On November 4, 2022, the defendant caused an inspection to be done by Burnaby Kawasaki. This inspection also concluded that the Motorcycle was safe and compliant with the *MVA*, and did not identify any issues with the brakes or the tires. These inspection results were shared with plaintiff's counsel on November 6, 2022.

[15] On November 24, 2022, the defendant tendered repayment in full of the entire purchase price of the Motorcycle to the plaintiff. The refund and cover letter were sent to the plaintiff by registered mail but they were returned to the defendant. The plaintiff deposes that he did not receive this letter or the enclosed cheque.

[16] Sometime in October the plaintiff enlisted the assistance of the Vehicle Sales Authority of British Columbia (the “VSA”). There is a dispute on the evidence regarding that organization’s jurisdiction but it appears that the plaintiff sought its advice both regarding the Agreement and the state of the Motorcycle.

[17] On December 22, 2022, a representative of the VSA wrote to the plaintiff, advising that the Motorcycle had “gone through two separate inspections at two different motorcycle shops and each time the bike was issued a pass” and, in particular, that the Kawasaki inspection showed that the tires had sufficient tread depth.

[18] The plaintiff deposes that he did not “necessarily agree” with the VSA’s determination, but he “accepted it”.

[19] On December 23, 2022, the plaintiff sent a text message advising him that defendant was holding his “private property in violation of the Criminal Code”. Mr. McKenna responded:

Condition six of your sales contract allows either party to cancel the sale if the vehicle cannot be delivered in a reasonable time period. You have refused to pick up the vehicle since October 28 of this year. As a result of your refusal to take the delivery the transaction has been cancelled and your refund was sent by registered mail to your listed address.

[20] Subsequently on December 23, 2022, the plaintiff attended at the defendant’s premises with a police officer seeking the return of the Motorcycle. On January 30, 2023, the plaintiff again sought the return of the Motorcycle, this time through counsel. On each of these occasions, his demands were refused.

### **Issues**

[21] Both parties complain about the behavior of the other during the events underlying this action. It is evident that Mr. Tichopad and the defendant’s representative, Nairn McKenna, had little patience for each other. While some of their behavior, particularly that of the plaintiff, appears to have been regrettable, neither that behavior nor the defendant’s clearly stated objective – to rid itself of any

further dealings with the plaintiff because of his allegedly “aggressive, threatening and combative behavior” – are legally relevant to the determination of this action.

[22] Rather, the rights of the parties to the Motorcycle is to be determined by reference to the principles of contract law and the relevant statutory provisions. In my view, the following questions arise to be determined:

- a) Did ownership in the Motorcycle pass from the defendant to the plaintiff on October 19?
- b) If so, does the defendant have any legal excuse now not to return the Motorcycle to the plaintiff?
- c) If not, was the defendant entitled to cancel the Agreement or is the plaintiff entitled to specific performance in respect of it?
- d) If the plaintiff is successful either on the basis of his claim of a proprietary right or his claim for specific performance, is he entitled to damages?

## **Discussion**

### **Ownership of the Motorcycle**

[23] The first question - whether property in the Motorcycle passed from the defendant to the plaintiff on October 19, 2022 - is the pivotal question in this case. Put another way: did the plaintiff take delivery of the Motorcycle 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 Motorcycle to the plaintiff deferred, conditional upon it being repaired?

[24] Section 22 of the *Sale of Goods Act*, R.S.B.C. 1996, c. 410 (“SOGA”), provides:

- 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.

[25] Section 22(2) provides that this Court is to ascertain the intention of the parties by having regard to the terms of the contract, the conduct of the parties and the circumstances of the case.

[26] The parties' evidence concerning their subjective intentions is not particularly helpful and neither are opinions from third parties. A representative of the VSA has expressed, in correspondence, an opinion as to the "rightful owner" of the Motorcycle, but I have attributed no weight to that opinion.

[27] Turning to the conduct of the parties, arguments were made in support of the positions taken by both the plaintiff and the defendant.

[28] In the plaintiff's favour, the Agreement was executed and the purchase price paid. Although the defendant argues that the Agreement was made simply so that the plaintiff could lawfully take the Motorcycle on a test drive, neither the Agreement nor the contemporaneous written communications demonstrate that the Agreement was qualified or conditional in this way. As argued by the plaintiff, if the defendant were concerned about the security of the Motorcycle, it could simply have asked for a deposit or identification, as opposed to requiring the Agreement to be executed and the purchase price paid.

[29] Further, in a text message sent to the plaintiff on October 28, 2022, Mr. McKenna wrote:

Hi Jiri, this is Nairn McKenna from Vancouver Mitsubishi. You were instructed to remove your motorcycle from our premises by end of business yesterday. As a courtesy we have kept your motorcycle overnight. You have until the end of the day to come collect your property. Failure to do so will result in storage charges accrued at \$100.00 per day until such times you retrieve your Ducati.

[Emphasis added.]

[30] Later that same day, Mr. McKenna wrote:

You can either come and collect your motorcycle or you can come and collect a refund by end of business today. If you fail to do so you will need to pay the storage before removing your property.

[Emphasis added.]

[31] Mr. McKenna's repeated references to the Motorcycle in these messages as being "your" property are inconsistent with the position taken by the defendant now that ownership never passed and the Motorcycle remained undelivered up to the date upon which the defendant cancelled the agreement.

[32] On the other hand, in the text messages between Mr. McKenna and the plaintiff, the plaintiff twice wrote that he would not accept delivery. On October 22, 2022, he wrote:

The tires are expired and unsafe. I will not be taking delivery with those tires on the bike.

[Emphasis added.]

[33] On October 27, 2022, he wrote:

... I cannot take per regulation take delivery until that's rectified or the VSA investigation is complete.

[Emphasis added.]

[34] In the same way that Mr. McKenna's text messages are inconsistent with the defendant's position, the plaintiff's contemporaneous text messages are inconsistent with the position taken by him at this summary trial.

[35] At the end of the day, although the parties' text messages are undoubtedly relevant, I have concluded that this matter ought not to be decided based on the use of words in text messages by Mr. Tichopad and Mr. McKenna, neither of whom are legally trained.

[36] In my view, the most important indication of ownership of the Motorcycle is the fact that title to the Motorcycle was not in fact transferred. The plaintiff has advanced evidence that he was able to register the vehicle in his name in Alberta and that he was able to insure it in his name, but neither of these facts establish ownership.

[37] Section 22 of the *SOGA* directs the Court to ascertain the intention of the parties by reference to the "terms of the contract, the conduct of the parties and the



circumstances of the case” but in my view, the context and surrounding factors are most important in situations wherein there is no formal mechanism for transferring ownership of an item. With respect to motor vehicles, as for real property, the province has enacted legislation and has put in place a legal framework which determines ownership in most cases.

[38] In particular, section 17 of the *MVA* provides:

17 (1) If the title or interest of a person in a motor vehicle or trailer registered under section 3 is transferred, whether by gift, exchange, barter, or sale, the transferor and the transferee of the title or interest must immediately sign a notice of the transfer in the form required by the Insurance Corporation of British Columbia, and the transferee must within 10 days from the day of the transfer deliver the notice to the corporation for registration by the corporation, accompanied by the prescribed fee and the insurance premium in respect of the transfer and the amount of tax owing in respect of the motor vehicle under the *Social Service Tax Act*, the *Consumption Tax Rebate and Transition Act*, section 212.1 or 218.1 or Division IV.1 of Part IX of the *Excise Tax Act* (Canada) or the *Provincial Sales Tax Act*.

[Emphasis added.]

[39] There is no evidence that a transfer notice form was signed by the transferor and transferee as required. There is evidence that in 2021, the Motorcycle was registered in the defendant’s name. There is some evidence from the president of an automobile insurance broker, although it is hearsay, that the vehicle ownership was never transferred and that it remained in the name of the defendant.

[40] On the basis of the foregoing evidence, I have concluded that 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.

**Plaintiff’s Rights if Ownership Passed**

[41] Given my conclusion on the first question, it is not necessary to address this issue.

**Plaintiff's Rights if Ownership Did Not Pass**

[42] As I have concluded in answer to the first question above that ownership of the Motorcycle did not pass from the defendant to the plaintiff on October 19, 2022, the legal implication is that the Agreement was an executory purchase and sale contract which was not completed.

[43] In the period after October 19, 2022 to December 23, 2022, the plaintiff was entitled to complete the contract by taking delivery of the Motorcycle. As stated above, the Motorcycle was offered to the plaintiff on October 28, 2022, but he refused to take delivery. His position is that he was entitled to wait until he had an assessment from the VSA before accepting delivery.

[44] As discussed above, the defendant had two independent inspections done on the Motorcycle – on October 27, 2022 and November 4, 2022. The October 27 inspection was shared with the plaintiff on that day, and the November 4 inspection was shared with the plaintiff's lawyer on November 6.

[45] Those inspections concluded that the Motorcycle was safe and compliant with the MVA, and neither inspection identified issues with the brakes or the tires. There is no evidence other than the evidence of the plaintiff himself which contradicts the findings of these inspections.

[46] In communications with the defendant, the plaintiff asserted that North Shore Motorsports was not an independent entity and was affiliated with the defendant but it appears clear on the evidence that this belief was unfounded.

[47] In my view, given the unequivocal nature of the October 27 and November 4 inspection reports, the plaintiff was not entitled to wait until he received advice from the VSA before taking delivery of the Motorcycle. By refusing to take delivery on October 28, 2022, the plaintiff risked having the Agreement cancelled by the defendant at any time after that.

[48] The defendant's position is that on December 23, 2022, it was entitled to and did cancel the agreement pursuant to s. 6 of the Agreement which stated as follows:

If, 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, and in such event the Dealer shall return:

... the partial payment, if any ... [and]

the return of the partial payment and the trade-in vehicle, if any, or the value thereof as set out above, shall be a full release of all claims whatsoever which the Purchaser may have against the Dealer, for or by reason of such non- delivery, without any further or other releases from the Purchaser.

[49] I should note that if in answer to the first question, I had found that the ownership of the Motorcycle had passed to the plaintiff, s. 6 would not have assisted the defendant. The section only applies when the vehicle in question has not been delivered. However, given the circumstances of this case, I find that the defendant was entitled to exercise its rights under this section and to cancel the Agreement when it did so.

[50] The plaintiff argues that if the ownership in the Motorcycle did not pass on October 19, 2022, he is entitled at this summary trial to specific performance of the Agreement. However, in my view, any claim to specific performance is defeated by my finding that the defendant lawfully cancelled the Agreement in December 2022. After that date, there was no Agreement left to specifically perform.

### **Damages**

[51] As I have found that ownership of the Motorcycle did not pass to the plaintiff in October 2022, there is no claim in conversion against the defendant. The plaintiff's claim for damages for conversion is dismissed.

### **Conclusion**

[52] For the reasons stated, the plaintiff's claims to a proprietary interest in the Motorcycle, his claim for specific performance, and his claim for damages for conversion are dismissed.

[53] The defendant shall return the purchase price to the plaintiff as required by s. 6 of the Agreement.

**Costs**

[54] Costs shall be payable by the plaintiff to the defendant at Scale B. Although Rule 14-1(10) imposes a limit on a plaintiff's entitlement to costs when the amount recovered is within the jurisdiction of the Small Claims Court, it does not limit a defendant's entitlement in those circumstances, presumably because it was the plaintiff who chose the court in which to proceed: *Zhang v Cute-Go Novelty Inc (cob Grand East Development)*, 2016 BCSC 638.

[55] Counsel invited me to review a series of "with prejudice offers" which they submitted are relevant to the determination of costs in this proceeding pursuant to Rules 9-1(4) and (6) which provide:

(4) The court may consider an offer to settle when exercising the court's discretion in relation to costs.

...

(6) In making an order under subrule (5), the court may consider the following:

- (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
- (b) the relationship between the terms of settlement offered and the final judgment of the court;
- (c) the relative financial circumstances of the parties;
- (d) any other factor the court considers appropriate.

[56] I have reviewed the offers but they do not change my conclusion as to costs. The offers from both parties contained terms which were different and more favourable to the offerors than this Court's decision. In particular, the defendant's offer required the plaintiff to execute a general release, a non-disclosure agreement,

and a non-disparagement agreement. Given those terms, it was not unreasonable for the plaintiff to refuse the defendant's offer.

“The Honourable Justice Loo”