

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Taylor v. Dr. Lens Change Inc.*,  
2023 BCSC 2459

Date: 20231107  
Docket: S-229720  
Registry: Vancouver

Between:

**Skye Taylor**

Plaintiff

And

**Dr. Lens Change Inc.**

Defendant

Before: The Honourable Mr. Justice Elwood

## Oral Reasons for Judgment

In Chambers

The Plaintiff: Appearing on his own behalf  
by videoconference:

S. Taylor

Counsel for the Defendant:

R. Eichler

Place and Date of Trial/Hearing:

Vancouver, B.C.  
October 11, and November 6, 2023

Place and Date of Judgment:

Vancouver, B.C.  
November 7, 2023

[1] **THE COURT:** The defendant, Dr. Lens Change Inc., applies on a summary trial application pursuant to Rule 9-7 for an order that the plaintiff's claim of fraud and breach of contract be dismissed, an order that the defendant be awarded damages on its counterclaim for libel and breach of privacy, including aggravated and punitive damages, and costs, including special costs.

**A. Facts**

[2] Dr. Lens is a retailer of prescription eyewear. Dr. Lens sells various types of lenses with coatings and options their customers may select online and that Dr. Lens will install in existing frames. Dr. Lens also sells frames.

[3] The plaintiff, Skye Taylor, was in the market to purchase replacement lenses for two pairs of eyeglasses frames. Mr. Taylor wanted to replace his lenses with lenses that had blue light blocker coating to help reduce eyestrain. Mr. Taylor wanted the coating in particular because he spends long hours on the computer and the anti-reflective quality of the coating helps reduce the glare from the screen. Based on past experience, Mr. Taylor did not want a less expensive blue light blocker that might be included as part of the lens itself.

[4] Mr. Taylor searched online for eyeglass lens retailers in Vancouver and came across the Dr. Lens website. A number of statements on the website caught Mr. Taylor's attention: (a) Dr. Lens advertised a blue light blocker coating for standard clear lenses; (b) Dr. Lens stated on its website that "all of our lenses are included with anti-scratch coating"; (c) the website said that Dr. Lens is based in Vancouver; (d) Dr. Lens advertised free two-way shipping, stating that shipping is "hassle free, safe, secure and absolutely free"; and lastly, (e) Dr. Lens advertised a 14-day product and vision guarantee.

[5] The terms of the guarantee and return policy on the date that Mr. Taylor placed his order with Dr. Lens are in dispute. I will return to that dispute later in these reasons.

[6] Mr. Taylor placed an order with Dr. Lens on June 24, 2022. On its website, Dr. Lens Change uses a five-step purchase process. On step one, Select Your Vision, Mr. Taylor selected progressive lenses. On step two, Select the Lens Brand, Mr. Taylor selected one pair of regular and one pair of digital HD progressive Jena lenses. According to the website, both of these options had an anti-scratch coating that was included with this lens brand. On step three, Select the Lens Index, Mr. Taylor selected regular 1.5 index lenses for both orders. On step four, Select the Lens Type, Mr. Taylor selected standard clear lenses for both lenses, noting that the clear lens came at no additional cost. Notably for the dispute that unfolded later, Mr. Taylor did not select a number of other lens types with additional costs, including UV sun protection which would have been an additional \$15 per lens. On step five, Select Lens Coatings, out of the four different individual coatings listed, Mr. Taylor selected the blue light blocker and UV 400 protection coating. Notably, he did not select anti-reflection, easy clean, anti-smudge or anti-fog coatings.

[7] Mr. Taylor uploaded a photo of a prescription dated November 30, 2021, which he says he was told by his eye doctor was valid for two years from the date of the prescription.

[8] I find on the evidence that Mr. Taylor paid Dr. Lens \$287 for the following order: (a) \$113 for one pair of Jena Premium standard clear lenses with anti-scratch coating; (b) \$139 for one pair of Jena 4 standard clear lenses with anti-scratch coating; and (c) \$60 for blue light blocker and UV 400 protection coatings for both pairs of lenses. Mr. Taylor received a \$25 lens discount for buying two pairs of lenses at the same time. The total charge was \$287. The shipping was stated to be free.

[9] On July 7, 2022, Mr. Taylor received the replacement lenses from Dr. Lens Change by Canada Post. The package included two certificates of authenticity stating that the lenses were Jena brand with LuxAR coating on them. The Jena lenses are manufactured by Optik K&R. The Jena LuxAR includes an anti-reflection coating and an anti-scratch coating.

[10] Mr. Taylor found the new lenses were slightly blurry. On July 7, he sent an email to Dr. Lens complaining that his vision was blurry. He called his optometrist and booked an appointment for July 11. On that date, he saw a Dr. Navjit Sodhi. He learned from Dr. Sodhi that his prescription needed updating. He also learned from Dr. Sodhi that the lenses did not have a blue light blocker coating.

[11] On July 12, Mr. Taylor emailed Dr. Lens Change asking for his money back. He complained to Dr. Lens Change, "I ordered lenses with the blue light filter and you charged me \$60, \$30 per pair for the coating. You charged me. I paid you... You didn't put the coating on."

[12] Dr. Lens Change wrote back, "We have ordered exactly what you have ordered ... Please see the attached pictures for your reference... The invoice from Jena which states the progressive lenses and blue light blocker."

[13] The invoices from Optik K&R state that the lenses are Jena Blue Barrier.

[14] The defendant's deponent explains that there are three ways to provide a blue light filter to a lens: (a) a barrier made as part of the lens itself; (b) a coating on the lens; or (c) a combination of the two.

[15] Mr. Taylor argues that he ordered and paid for clear lenses with a blue light filter coating. Dr. Lens argues that the only option available to Mr. Taylor was a barrier within the lens itself. According to the defendant's deponent, this is because the coating always comes with other options such as anti-glare and easy clean, which Mr. Taylor rejected.

[16] I agree with Mr. Taylor that the defendant's position makes no sense on the evidence. Mr. Taylor ordered clear lenses with an anti-scratch coating at stage two of the order process. He did not order UV sun protection lenses which would have included a blue light barrier as part of the lens itself. Instead Mr. Taylor ordered blue light blocker as a coating at stage five of the process. What he received was something called Blue Barrier with no coating, which is not what he ordered.

[17] Mr. Taylor returned the glasses to Dr. Lens apparently using a shipping label or shipping code provided on the website for returns. Dr. Lens offered to replace the lenses if Mr. Taylor would pay \$30 for shipping and a \$10 handling fee. The parties then came to a disagreement on how to move forward.

[18] Mr. Taylor wanted both of the issues he raised fixed, that is, his blurry vision and the lack of a blue light blocker coating, without paying for any shipping fees, based on his understanding of the product and vision guarantee. Dr. Lens was willing to update the prescription, but only if Mr. Taylor paid the shipping fees, because, in their view, they had delivered what Mr. Taylor ordered and a change of prescription was something that was outside of their control.

[19] The parties were unable to resolve this disagreement. Ultimately, in July Dr. Lens returned the frames to Mr. Taylor and refunded \$227, but retained \$60. The \$60 was made up of \$30 for the original shipping, which Dr. Lens claims was included in the purchase price (although the purchase order states that shipping is free), and \$30 to return the frames to Mr. Taylor.

[20] After the parties could not agree about the \$60 of shipping fees, Mr. Taylor made a complaint with the Better Business Bureau. There was an attempt to resolve the dispute through the BBB's dispute resolution facilities, but it failed.

[21] It appears there was a misunderstanding between the parties on the terms of a possible settlement. Acting on his understanding of an offer by Dr. Lens to change the lenses, Mr. Taylor returned his glasses once again, and paid another \$30 for the shipping. Unfortunately, the matter was not resolved. The case has now ended up in court.

## **B. Analysis**

[22] In my view, Mr. Taylor's claim can be addressed as a breach of contract claim. I find that on Dr. Lens Change's website, at stage five of the purchase process, Select Lens Coatings, Dr. Lens offered blue light blocker and UV 40 protection as a coating, with no conditions attached. I find that Mr. Taylor accepted

the offer by selecting blue light blocker and UV 40 protection as a lens coating. I find that Mr. Taylor provided consideration for this contract by paying for two pairs of lenses with the options that he selected.

[23] I find that Dr. Lens breached the contract by delivering Blue Barrier lenses, which is not what Mr. Taylor ordered and paid for. Regardless of whether the Blue Barrier lenses provide some form of blue light filtering, they are not what Mr. Taylor ordered or paid for. I reject the argument by Dr. Lens that Mr. Taylor accepted Blue Barrier lenses when he sent his frames back to have the lenses replaced. Mr. Taylor expected both of the issues that he had raised to be resolved by Dr. Lens: both the prescription and the coating. He expressly refused the offer by Dr. Lens to swap out the lenses if he paid the shipping and handling fees.

[24] In my view, Mr. Taylor never accepted anything other than the clear lenses with blue light coating that he ordered. If what Mr. Taylor ordered was not possible to fulfill, Dr. Lens was required by the terms of the contract to refuse the order or to refund his purchase entirely, and not to provide him with some other lenses and charge him for the shipping.

[25] Moreover, the lenses that Dr. Lens provided were not the lenses authenticated by the certificates delivered along with the order. The certificates stated that the lenses were Jena LuxAR, which would have provided anti-reflective and blue light coating. What Dr. Lens actually provided to Mr. Taylor was Jena Blue Barrier lenses without the blue light coating.

[26] Mr. Taylor further argues that Dr. Lens refused to honour its product in vision guarantee. He argues that Dr. Lens ought to have provided a full refund or else covered the shipping to resolve the issues he had raised with the lens product and with his vision.

[27] There is, as I say, a dispute in the evidence as to what the policy was on the date that Mr. Taylor placed his order. I find that it is unnecessary to resolve that dispute. As I will explain at the conclusion of these reasons, I am unable to resolve

the dispute as to what the website said in terms of the refund policy on the date that Mr. Taylor placed his order. I am, however, able to find the facts as stated to find a breach of contract.

[28] I find that Mr. Taylor is entitled to damages in breach of contract for the shipping fees that he has paid to Dr. Lens. I would award \$90 as damages for breach of contract.

[29] Mr. Taylor also claims damages in fraud, as well as a declaration of fraud. While Mr. Taylor has established a breach of contract, the evidence does not support a finding of fraud.

[30] The four elements of the tort of civil fraud are: (a) a false representation by the defendant; (b) some level of knowledge of a falsehood of the representation on the part of the defendant, whether through knowledge or recklessness; (c) the false representation caused the plaintiff to act; and (d) the plaintiff's actions resulted in a loss; see *Bruno Appliance and Furniture v. Hryniak*, 2014 SCC 8, at paragraph 21.

[31] The statements on the defendant's website and in their emails to Mr. Taylor are not in my view false representations of fact that would ground a claim of fraud. An example of false representation would be that a lens has certain qualities which the defendant knew it did not. Instead, in my view of the evidence, what happened in this case is that Mr. Taylor ordered a certain lens with a certain coating which the defendants either could not or would not fulfill.

[32] I am not persuaded that Dr. Lens acted with the intent to deceive Mr. Taylor. While I agree that he did not receive what he ordered, Mr. Taylor has not demonstrated that Dr. Lens acted dishonestly or fraudulently.

[33] In my view, this issue can be decided on a summary trial. The communications that Mr. Taylor relies on for fraud are all in writing. A trial would add nothing to this issue.

[34] The claims for a declaration of fraud and damages for fraud are dismissed.

[35] I turn to the counterclaim by Dr. Lens for defamation and breach of privacy.

[36] On August 22, 2022, the Better Business Bureau informed Dr. Lens that the BBB had received a complaint from a customer and offered Dr. Lens an opportunity to respond. Initially, the complaint - which was by Mr. Taylor - appeared to centre on the shipping fees.

[37] On September 20, the BBB asked Dr. Lens to respond to a further complaint from Mr. Taylor concerning the blue light filter. That complaint stated as follows, "Customer concern: 'If you're wondering about the blue light filter issue, when I got the lenses my doctor tested them and said that Dr. Lens Change sent me lenses without the blue light filter even though I paid for the filters. This was an issue but I didn't bother to write it in the BBB complaint because Dr. Lens disputes it and because I've already sent the lenses back.'"

[38] Dr. Lens alleges that the complaint was false.

[39] Dr. Lens acknowledges that the complaint to the BBB itself would attract the defence of qualified privilege. This is an appropriate acknowledgment by Dr. Lens. In *DDI Diamonds Direct Inc. v. Raney*, 2006 BCSC 952, Justice Wong quoted with approval from an Ontario decision, at paragraph 33:

I am satisfied that the mediation facilities provided by the BBB in the context of consumer complaints are the very kind that should attract the availability of this defence: It is in the public interest that this informal and inexpensive procedure be assiduously fostered. I find that Mr. De Roux's response dated December 22, 1995 is subject to a qualified privilege.

[40] In paragraph 34 of *DDI Diamonds Direct*, Justice Wong found that the same defence was available to a disgruntled consumer.

[41] Dr. Lens submits that Mr. Taylor lost the protection of qualified privilege at the end of the BBB dispute resolution process, when, Dr. Lens alleges, Mr. Taylor published his complaint.



[42] Dr. Lens alleges a particular version of Mr. Taylor's complaint that is set out at paragraph four of the amended counterclaim filed June 23, 2023:

4. Among the various posts, the Plaintiff wrote as follows:

Details: When I received the lenses they were blurry. This was really strange because the glasses I'm wearing right now have the exact same prescription in them and they are 100% clear. For this reason I brought them to an eye doctor and he checked the glasses for me. He said they should be clear but would find tune my prescription. After he did that I asked him to confirm if there was a blue light filter coating on them. He said NO!.... I then got him to check again, and he confirmed again that there was NO blue light blocker lens coating on them as I paid for.

Note that the actual lenses themselves do have blue light filtering properties in the material that help reflect light. They are called, "Blue Barrier lenses" however those are lenses for all occasions and have NOTHING to do with the blue light filter coating. The blue light blocker lens coating is designed solely for the purpose of blue light and is called "\*\*\*\*\*Clear Blue coating".

I feel bad for all of the people Dr. Lens Change has ripped off. Charging for lens coating and then sending lenses without the coating. In my case, not only did a doctor confirm there was NO blue light blocker lens coating on the lenses, but Dr. Lens Change own invoice from the manufacturer also confirmed this as well. As such, Dr. Lens Change has been caught red handed!

Currently Dr. Lens Change owes me, \$60 + \$30 + \$535, for a total of \$635. I demand payment and my frames back.

If you need lenses don't take a chance with Dr. Lens Change. You might get cheap lenses but how will you know if you'll receive what you ordered? I've read various complaints about Dr. Lens Change and this isn't the first time Dr. Lens Change has pulled a fast one and sent someone inferior lenses that they didn't order.

Not important at this point, however the lenses I did receive were not only blurry but they reflected light back to me.

[43] Dr. Lens alleges that the sting of this complaint was threefold: (1) Dr. Lens did not provide blue light blocker coating; (b) Dr. Lens charged for blue light blocker coating but provided Blue Barrier lenses, that is Blue Barrier lenses with blue light filtering properties; and (c) Dr. Lens owed Mr. Taylor \$60 plus \$30 plus \$530 for a total of \$635; and (d) Mr. Taylor had read other complaints to BBB about Dr. Lens.

[44] In my view, (a), (b) and (d) are true statements. Statement (c) is incorrect in my view. The additional \$530 referred to by Mr. Taylor would appear to be court

costs, which Mr. Taylor feels he was entitled to, because he had been forced to file a court process. But the impression he created in the complaint is that he paid a total of \$635 for his lenses which Dr. Lens had not refunded, which is not true.

[45] However, there is no evidence that the complaint alleged at paragraph four of the amended counterclaim was ever published to anyone except BBB or accessed by anyone except Dr. Lens. The actual complaint alleged at paragraph four of the amended counterclaim is not anywhere in the evidence. Dr. Lens says this is because the original post was taken down after the counterclaim was filed.

[46] To access a BBB complaint, one would need to log into a secure login with a link provided by the BBB. Dr. Lens was provided with the secure link by the BBB. This is how Dr. Lens saw the complaint. After the complaint process closes, the BBB offers to publish the complaint on their public website. However, Mr. Taylor's sworn evidence is he opted not to have the complaint published. On August 10, 2022, the BBB confirmed to Mr. Taylor that, "As per your request the complaint you submitted will not be published."

[47] There is no evidence that Mr. Taylor published the complaint before or after Dr. Lens filed the counterclaim in this proceeding.

[48] In short, I find that there is no evidence the complaint alleged at paragraph four of the amended counterclaim was published anywhere except the secure area of the BBB website, and no evidence that it was accessed by anyone except the BBB dispute resolution officers and Dr. Lens in the dispute resolution process.

[49] The complaint alleged in paragraph four and elsewhere in the counterclaim was, in my view, protected by qualified privilege. Dr. Lens has not shown that Mr. Taylor exceeded the limits of the BBB dispute resolution process, nor has Dr. Lens shown that Mr. Taylor acted with actual malice in making his complaint, which would be the only grounds on which to defeat the defence of qualified privilege in this case.

[50] The definition of actual malice adopted by the court in *DDI Diamonds* at paragraph 46 is that:

A defendant is actuated by express malice if he or she publishes defamatory expression:

1. Knowing it is false; or
2. With reckless indifference whether it is true or false; or
3. For the dominant purpose of injuring the plaintiff because of spite or animosity; or
4. For some other dominant purpose which is improper or direct, or also, if the occasion is privileged, for a dominant purpose not related to the occasion.

[51] Mr. Taylor may have sought to pressure Dr. Lens to resolve his complaints, but he did so legally through an appropriate dispute resolution process. Even if an aspect of the complaint was incorrect, Dr. Lens has not shown that Mr. Taylor acted with a dominant purpose of malice or for some purpose unrelated to dispute resolution.

[52] The claim by Dr. Lens in defamation is dismissed.

[53] I turn to the claim of breach of privacy.

[54] Section one of the *Privacy Act*, RSBC 1996, c. 373, reads as follows:

1 (1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of another.

(2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.

[55] Dr. Lens provided Mr. Taylor with an invoice from the manufacturer of the lenses in support of Dr. Lens's argument that they had provided the lenses that Mr. Taylor had ordered. Mr. Taylor used this information to contact the manufacturer to have the invoice clarified and to discuss the Jena products offered by the manufacturer.

[56] Dr. Lens alleges, without evidence in my view, that Mr. Taylor also used Dr. Lens's account number and passed himself off as an employee of Dr. Lens to obtain private information.

[57] The interests which the *Privacy Act* serves to protect were described by this court in *Nesbitt v. Neufeld*, 2010 BCSC 1605, at paragraph 88, quoting from an article by Professor Prosser in the United States:

1. Intrusion upon the plaintiff's seclusion or solitude, or into his [or her] private affairs;
2. Public disclosure of embarrassing private facts about the plaintiff;
3. Publicity which places the plaintiff in a false light in the public eye;
4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness.

[58] Assuming for the sake of discussion that a business like Dr. Lens is a person for the purposes of section one of the *Privacy Act* - which I need not decide in this case - the only interest under that definition of privacy that could qualify on the allegations in this case is the alleged appropriation of Dr. Lens's name or identity for Mr. Taylor's advantage.

[59] In my view, Dr. Lens had no expectation of privacy that Mr. Taylor would not speak to the supplier about the invoices or about the order.

[60] There is no evidence that Mr. Taylor passed himself off as an employee of Dr. Lens in his dealings with the supplier.

[61] Dr. Lens notes that some of Mr. Taylor's interrogatories and submissions have included information about Jena Lens products and pricing. Mr. Taylor may have obtained this information from Optik K&R. However, the allegation that Mr. Taylor impersonated a Dr. Lens employee to obtain the information is, in my view, pure speculation.

[62] Dr. Lens relies on an affidavit from the owner of Optik K&R which attaches a letter from a laboratory manager which states that the company does not allow its customer service department to discuss any issues directly with retail customers.

[63] Regardless of what this letter says, the evidence shows that the customer service department readily discussed the invoice with Mr. Taylor and discussed with him the products that Optik K&R provides. There is no evidence that Mr. Taylor misappropriated Dr. Lens' name or likeness for this purpose.

[64] Accordingly, Dr. Lens has not shown that Mr. Taylor did anything to breach its legitimate privacy interests in the circumstances.

[65] The counterclaim for breach of privacy is dismissed.

### **C. Conclusions**

[66] This brings me to the terms of the orders sought by Mr. Taylor. Mr. Taylor seeks various orders on this summary trial. He asks for the following:

- (a) That Dr. Lens' owner, Behnam Dashtakian, be imprisoned for submitting fabricated documents to the B.C. Supreme Court and committing perjury;
- (b) That Dr. Lens' owner, Mr. Dashtakian, be fined (punished for perjury and document fraud) in the amount of \$10,000, payable on or before, 4:00 p.m. seven days after the Order is pronounced, to the Minister of Finance at the registry of this court in Vancouver;
- (c) That Dr. Lens' counterclaim be dismissed;
- (d) That the court grant all the remedies sought in the plaintiff's civil claim as follows:
  - (i) Issue a declaration that Dr. Lens Change used fraud, as elaborated herein;
  - (ii) That Dr. Lens committed fraud by knowingly advertising selling the plaintiff a blue light blocker coating that he knew he would not provide;
  - (iii) That Dr. Lens committed fraud by advertising and selling an anti-scratch coating included in the price, and then knowingly not ordering it for the plaintiff;

(iv) That Dr. Lens committed fraud by knowingly sending the plaintiff two certificates guaranteeing the anti-scratch quoting that he knew he did not provide;

(v) That Dr. Lens committed fraud by knowingly advertising and selling a vision guarantee included in the price of the lenses, that he knew he ultimately would not provide;

(e) Award a judgment against Dr. Lens Change in the sum of \$90 (\$60 + \$30), to reimburse the amount still not refunded;

(f) Award compensatory damages;

(g) Award punitive damages;

(h) That within seven days of receipt of this order, Dr. Lens Change shall pay special costs of this application in the sum of \$15,000 (\$8,000 for the civil claim, and \$7,000 for the frivolous counterclaim); and

(i) That out of all the funds awarded, the filing expenses in the amount of \$1,142.96 should be reimbursed to the plaintiff, with the remaining amount provided by a bank draft payable to the "Competition Bureau of Canada".

[67] I grant Mr. Taylor judgment against Dr. Lens in the amount of \$90 as damages for breach of contract.

[68] I grant Mr. Taylor an order dismissing the amended counterclaim.

[69] Subject to a determination on the entitlement and scale of costs to which the parties may be entitled, I dismiss the other claims to relief by Mr. Taylor.

[70] I have found the facts necessary to conclude on this summary trial application that Dr. Lens did not commit fraud. Much of the relief that Mr. Taylor seeks is either dependent on a finding of fraud or outside the jurisdiction of the court.

[71] I turn lastly to the issue of costs in this action.

[72] Both parties seek special costs.

[73] Success on the summary trial application was divided. Dr. Lens was successful in having the claims in fraud dismissed. Mr. Taylor was successful in his claim of breach of contract and he was awarded damages. Mr. Taylor was also successful in having the counterclaim dismissed in its entirety.

[74] Mr. Taylor has made some serious allegations in this proceeding. Those include allegations of fraud against Dr. Lens, some of which were unsupported with evidence, and some of which were supported with evidence that went in my view more to a claim of breach of contract than one of fraud.

[75] On the other hand, Dr. Lens also made serious allegations against Mr. Taylor - that he published a false complaint to the BBB and that he impersonated a Dr. Lens employee to obtain confidential information - which I have found were made without evidence.

[76] Both parties also make allegations about the conduct of the other in this litigation. Dr. Lens and its legal counsel have been subjected to a number of allegations by Mr. Taylor, many of which predate my involvement in this proceeding.

[77] The most troubling allegation by Mr. Taylor is that Dr. Lens fabricated evidence for this summary trial.

[78] Mr. Taylor has submitted certified copies of printouts from the Internet archive and Bing searches which he argues show changes in relevant parts of the Dr. Lens website from the date on which Mr. Taylor placed his order to the date on which the Dr. Lens affiant swore affidavits in these proceedings. The changes are to step five of the purchase process and information about the blue light blocker option, as well as to the terms of the guarantee and the return policy and information in the FAQ section of the website concerning returns.

[79] In July 2023, Mr. Dashtakian, the deponent for Dr. Lens, swore an affidavit in which he attached pages from the website. On August 8, 2023, Mr. Taylor swore an

affidavit attaching the evidence which he said demonstrated that Dr. Lens had changed the website and fabricated evidence for this proceeding.

[80] On August 14, 2023, Mr. Dashtakian swore an affidavit in which he deposed, "I did not make any changes to the defendant's website with respect to any of the pages provided by the plaintiff."

[81] I am unable to find the facts necessary to resolve the dispute over changes to the website. I note that on July 12, 2022, Dr. Lens sent Mr. Taylor a link to the refund policy as it existed on that date but it is not possible for me to find which version of the refund policy was provided to Mr. Taylor.

[82] As a result, I am unable to find one way or another on the allegation by Mr. Taylor that Dr. Lens fabricated evidence in this proceeding.

[83] Mr. Taylor has raised a serious issue concerning the defendant's conduct in this proceeding which I am unable to dismiss as unfounded on the evidence. However, I am also unable to reject the sworn evidence denying this conduct by the defendant's affiant.

[84] As a result, I am unable to come to a conclusion on the claims by the parties for special costs of this proceeding.

[85] My preliminary view is that the parties should bear their own costs of these proceedings. It is my view, based on the current evidence, that both parties have some responsibility for the length and complexity of this proceeding in B.C. Supreme Court which resulted in ultimately an award of \$90 for breach of contract and dismissal of the counterclaim.

[86] If either party seeks a different outcome, that is, if either party seeks an order other than an order that they each bear their own costs, they may ask to appear before me and make submissions on costs. It will be necessary, in order to resolve the dispute on the evidence to which I have referred, to have cross-examination on



the affidavit sworn by Dr. Lens's deponent. It will also be necessary in my view to have a full day hearing.

[87] If either party wishes to have a hearing on costs, they must do so within 28 days of today's date by submitting a request to appear for a full day hearing before me to determine entitlement and scale of costs. I am seized of this matter.

[88] If neither party submits a request to appear within 28 days, the order will be that the parties bear their own costs of the action.

[89] So, in summary:

- a) Mr. Taylor is awarded damages in the amount of \$90 for breach of contract.
- b) The claims in fraud are dismissed.
- c) The counterclaim is dismissed in its entirety.
- d) The parties may request a hearing on costs; if no request is made for that hearing within 28 days, the parties will bear their own costs.

[90] Mr. Taylor may appear by MS Teams for the costs hearing.

“Elwood J.”