

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bui v. John Doe*,  
2024 BCSC 1045

Date: 20240618  
Docket: M192318  
Registry: Vancouver

Between:

**Kimberly Bui**

Plaintiff

And

**John Doe 1, John Doe 2 and  
Insurance Corporation of British Columbia**

Defendants

Before: The Honourable Madam Justice Morellato

## Reasons for Judgment

Counsel for the Plaintiff:

M.J. Holroyd  
N.J. Hopewell

Counsel for the Defendant, Insurance  
Corporation of British Columbia:

J.T. Belding  
J.A. MacIver

Place and Dates of Trial:

Vancouver, B.C.  
September 11-15, 2023

Place and Date of Judgment:

Vancouver, B.C.  
June 18, 2024

**I. Introduction**

[1] Ms. Bui was involved in a motor vehicle accident on December 6, 2017 (“Accident”), during her first month of employment with Hertz Canada Ltd. (“Hertz”). She and her assistant manager, Mr. Liu (“Assistant Manager”), had driven together to fetch a rental vehicle and, after doing so, the Hertz vehicle Ms. Bui was driving was rear-ended by a pick-up truck. Immediately after the Accident, Ms. Bui was told to stay in her vehicle by her Assistant Manager and he then spoke with the driver of the pick-up truck. The pick-up driver’s contact information was not obtained.

[2] During the trial of this matter, the parties agreed on the quantum of damages. The only issue before me is whether Ms. Bui has a viable insurance claim given that the driver of the pick-up truck was never identified.

[3] Ms. Bui advances this claim against the Insurance Corporation of British Columbia (“ICBC”) as a nominal defendant pursuant to s. 24 of *the Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231 [Act]. This requires that I assess whether Ms. Bui has satisfied her obligation under s. 24(5) of the Act to make all reasonable efforts to identify the other driver.

**II. Background Facts**

**A. The Accident**

[4] The Accident occurred at approximately 10:30 a.m. on December 6, 2017, near the intersection of Hastings Street and Willingdon Avenue at Burnaby, BC.

[5] On the morning of the Accident, Ms. Bui’s manager, Mr. St. Pierre, asked both Ms. Bui and the Assistant Manager to drive to a dealership in Burnaby to pick up another Hertz rental vehicle and return it to their branch in North Vancouver. The Assistant Manager drove Ms. Bui to the dealership near Brentwood Mall and they picked up the rental car there. Ms. Bui drove behind the Assistant Manager back to their branch office in a rental vehicle, a 2015 Toyota Camry.

[6] Ms. Bui testified that she was driving north on Willingdon Avenue towards Hastings Street when the Accident occurred. She recalled that it was a nice day and that the roads were dry.

[7] As she approached Hastings Street, the flow of traffic slowed down and Ms. Bui slowed down with it. As she was slowing down, she looked in her rear-view mirror and saw a pick-up truck approaching. The driver appeared to be looking down as if he was texting. Ms. Bui did not know what speed the truck was travelling, although she explained that the truck was going fast enough in relation to her own vehicle's speed to cause her concern. Her concern was well placed. The pick-up truck struck the rear end of the vehicle Ms. Bui was driving and pushed the rental vehicle forward, about three car lengths. There was no vehicle in front of her.

[8] Ms. Bui recalled the sensation of being pushed forward by the impact, describing it like a "ride at the PNE". She testified that after the impact, she felt a sense of shock and panic, with "stray thoughts" that were "clouding [her] head". She was also feeling anxious as she was worried about how this Accident would affect her new employment situation. She was also worried about her health, although, immediately after the collision, she was not in any pain. Her hands were shaking and she felt "really frazzled". She later realized that she likely had a "panic attack".

[9] Ms. Bui said that immediately after the impact, she could see that her Assistant Manager had pulled over in front of her, off to the right side of the road. He got out of the car he was driving, and he came towards her "very quickly", although he had to stop for one car that was travelling in front of him. Ms. Bui recalled that her Assistant Manager came up to her passenger side window. He asked her if she was okay, and she indicated that she thought that she was. He then told her to stay where she was. Ms. Bui understood that, as her workplace superior, her Assistant Manager was telling her to stay put and that "he would take care of things."

[10] Ms. Bui testified that her Assistant Manager then walked back to the pick-up truck that was still stopped behind her. Ms. Bui remained in the vehicle as she was told and tried to gather her thoughts and calm down but she was having difficulty.

She said that she could not compose herself enough “to feel normal”. She had “many different emotions” all at once. Her thoughts were scattered. She had difficulty processing what had happened and was not thinking clearly. Ms. Bui described feeling like a failure and thinking: “Oh, my god, I just got into this job for a month and now this problem...”. She was concerned about “failure” and that she would experience “another employment cycle”. Ms. Bui has been gainfully employed at a school board for some years now since the Accident but before her employment with Hertz and the Accident, she held a number of different jobs for relatively short periods of time that did not work out for her. All this contributed to her level of anxiety as she approached the driver of the pick-up truck and her Assistant Manager.

[11] Ms. Bui testified that as she was trying to compose herself after the Accident, she could see the Assistant Manager in one of her mirrors speaking with the driver of the pick-up truck that had hit her. Ms. Bui noticed that it appeared like they were finishing up their conversation.

[12] Despite still feeling panicky, Ms. Bui got out of her vehicle and approached her Assistant Manager and the driver of the pick-up truck but at some distance, approximately six feet away. She was still feeling “frazzled” and continued to accept her Assistant Manager’s lead. She listened but did not speak. She recalled “struggling” with “trying to get a grasp” of the situation. Ms. Bui added that at her workplace, “over 90% of the employees were men” and she “didn’t want to be that girl that was crying at the scene of the accident.”

[13] Ms. Bui overheard part of the conversation as she approached the pick-up truck driver and her Assistant Manager. She recalled that the driver of the pick-up asked if they should exchange contact information, and her Assistant Manager responded that it was not necessary, that they worked for Hertz. She heard the other driver say that he worked at Starbucks.

[14] The evidence establishes that the Assistant Manager took charge of the situation, instructed Ms. Bui to follow his lead, and she attempted to do so. Ms. Bui described how she trusted her Assistant Manager. She recalled that, while still at the

scene of the Accident, she and the Assistant Manager looked at the rear of the car and she observed some minor damage, which she described as a small indentation. While doing so, Ms. Bui remembers feeling concerned about not having the other driver's information and asking her Assistant Manager about this. Ms. Bui recalled that he responded by reassuring her that it "was okay" and was "brushing off" the damage on the vehicle. He asked her again if she was alright and she said she was. (It was not until later that day that Ms. Bui developed muscle strain in her neck and back and her condition subsequently deteriorated before it eventually improved.)

[15] Ms. Bui testified that, as she was getting back into the rental car after the Accident, she felt confused and uneasy about the exchange between her Assistant Manager and the other driver, and also with her latest exchange with her Assistant Manager. She was thinking that maybe she should not trust her Assistant Manager's decision about not getting the pick-up truck driver's information after all. She remembered her "heart was pounding" even more as these and "other thoughts began coming in". Ms. Bui explained that her mind "did not work as clearly as it otherwise does". She had a flood of thoughts. In addition to worrying about the Accident and its effect on her job, she was also worrying about her new partner, her new residence, and her financial obligations.

[16] While in the car before the pick-up truck driver left the scene of the Accident, Ms. Bui "grabbed her phone" to call her partner, Mr. Mitchell Page. As his line was ringing, she looked at the pick-up truck's vehicles licence plate through her car mirror and realized she needed to quickly record the licence plate of the pick-up truck; she started repeating the licence plate number to herself over and over again. She recalled that by the time Mr. Page answered the phone, she was so agitated that she was "yelling at him" saying "write this down, write this down right now" and she "kept repeating the licence numbers again and again". She recalled that her partner wrote the numbers down. Ms. Bui explained that while she was repeating the licence plate numbers to her partner, the driver of the pick-up truck "was taking off".

[17] Ms. Bui testified that she gave Mr. Page more than one licence plate number when she was on the phone with him but felt confident that “at least one” of the plate numbers was correct. She also candidly acknowledged that when she gave him a second variation of the plate numbers, she was starting to question herself.

[18] Ms. Bui explained that she did not want Mr. Liu to know she was calling her partner to give him the licence plate information that “[she] wasn’t supposed to discuss”. She was worried about not following Mr. Liu’s directions.

[19] I accept that Ms. Bui’s felt particularly conflicted by her Assistant Manager taking charge of the situation after she realized he did not have the other driver’s contact information, as he was “taking off”. Ms. Bui testified that it was her understanding that incidents like this were one of the reasons why Hertz employees generally travelled in pairs.

[20] Ms. Bui also explained how all the events of the Accident happened so quickly, and she was not thinking clearly during the five to ten minutes between the time of impact and the other driver leaving. She recalled that her car and the pick-up truck were still in the middle of the road before she got back in the car to drive back to the Hertz branch.

[21] Ms. Bui testified that she did not notify the police of the Accident. She said that she had had a previous car accident and that the police were not notified, as no emergency response was needed. In her mind, the police are to be called in the event of a more significant accident.

[22] Ms. Bui was cross-examined at length, during which she repeatedly explained that, at the time of the Accident, she was emotional, confused and was not certain what to do, particularly as she did not want to be “insubordinate” by not following Mr. Liu’s lead as her Assistant Manager in addressing the situation. I found Ms. Bui to be a candid, forthright and honest witness. I accept not only that she felt constrained by her role as an employee of Hertz at the scene of the Accident and that she felt she should accept Mr. Liu’s lead as her workplace superior, I also find

that that her panicky, heightened and “frazzled” emotional condition impeded her ability to think lucidly under these more complicated employment-related circumstances. As a consequence, despite her concerted effort to “do the right thing”, she was not able to take effective control of the situation.

[23] Mr. Page was the only other witness who testified at trial.

[24] Mr. Page confirmed he was Ms. Bui’s common-law spouse and that he received a phone call from her on the day of the Accident. He testified that Ms. Bui was in a “frantic state” and was asking him “to write down a licence plate.” He was trying to find out if she “was ok” and was looking for a piece of paper to write down the plate numbers. He added that Ms. Bui does not respond well to stressful situations and that she “gets anxiety”, noting that “she can’t really focus” or deliver “one thought coherently” and then, “everything comes out at once”.

#### **B. Events After the Accident**

[25] Ms. Bui decided to report the Accident. She filled in part of a Hertz accident form (“Form”) and also reported the matter to WorkSafeBC. She retained legal counsel about a week after the Accident.

[26] Ms. Bui was cross-examined on the Form, which set out two possible licence plate numbers. The Form also stated, “Driver rear-ended me while on his phone texting and took off”. Notably, while Ms. Bui signed the Form, it contained several irregularities. Ms. Bui testified that the Form had been edited by someone other than herself.

[27] The Form erroneously describes Ms. Bui as the “renter” of the vehicle. Also, Ms. Bui confirmed that she did not date the Form. I accept Ms. Bui’s evidence that the Form was dated by an unknown person. Further, the Form that was provided to the Court was not an original but a poorly scanned copy of the original that appeared to contain different handwriting on it, some of which was identified by Ms. Bui as hers and some of which was not.

[28] For example, the Form contains a section that has a diagram of a car; that section is designed so that the author is to mark an “x” on the portion of diagram of the vehicle where the vehicle has been damaged. Ms. Bui testified that she placed an “x” on the diagram that depicted that the rear of the rental car had been damaged. However, Ms. Bui pointed out that the scanned copy of the Form had a “blank spot” that appeared to have been “whited out” where Ms. Bui had placed the “x” to indicate the location of where the car had been damaged in the Accident (at the rear of the rental car). Furthermore, under the heading “Body damage status”, two of four boxes are “ticked” with a checkmark. The four boxes were described on the Form as: “no damage”, “light”, “heavy”, and “other”. Two of these boxes were checked: “light damage” and “no damage”. Ms. Bui testified that she did not “check off” these boxes. I accept that the boxes were checked off by another unidentified person.

[29] Other irregularities were also apparent on the Form. The location of the Accident was erroneously identified as “Vancouver” instead of Burnaby. Ms. Bui indicated that she was very familiar with the area in Burnaby where the Accident occurred, and she would not have written in “Vancouver”. Ms. Bui also noted that her address and phone number were handwritten on the Form but looked “a little skewed.” She also noted that her address had not been properly filled out on the Form.

[30] No witnesses were called from Hertz to address the circumstances of the Accident or the completion of this Form. We have little information about how Hertz used the Form other than Ms. Bui’s evidence that the vehicle that was in the Accident was rented out later, on the same day as the Accident.

[31] While Ms. Bui was cross-examined on the Form at some length, on balance, I find that the circumstances surrounding its execution are sufficiently ambiguous that they do not compromise the reliability or accuracy of Ms. Bui’s evidence in any material way. Again, I found her to be an honest and reliable witness who stood her



ground during cross-examination. Her evidence was not shaken in regard to this Form or otherwise.

[32] Ms. Bui retained legal counsel to assist her with this case on December 13, 2017. She testified that she did not become aware of the fact that the licence plate numbers she recorded were “not a match” with ICBC’s records until later in December 2017. When she learned this, she conducted her own internet database search. She described how she went “down a rabbit hole” searching for the right licence plate but despite her efforts, she was not able to find the truck, its owner or its driver.

[33] ICBC later inquired into the licence plate issue. The inquiry resulted in the adjournment of the trial. To the parties’ credit, they submitted an Agreed Statement of Facts regarding the licence plate numbers recorded by Ms. Bui:

- (1) According to ICBC records, one of the licence plate numbers recorded by Ms. Bui never existed. However, the second plate number, DL0437, was a match to a plate number that previously existed.
- (2) Between July 12, 2011 and October 11, 2011, DL0437 was last registered on a 1996 Red Ford F150 pick-up truck (“1996 Red Ford F150”).
- (3) The 1996 Red Ford F150 was in an accident on August 11, 2016 and was “a total loss”. At that time, it had a licence plate on it with the number JS4863.
- (4) On October 26, 2011, DL0437 was keyed in by a broker as having been returned on that date.
- (5) ICBC advises that the standard procedure for a broker would be to accumulate a box of licence plates and send them back to ICBC for destruction. However, ICBC does not keep records confirming whether licence plates are destroyed or not.

(6) Ms. Bui has conducted further investigations and has been unable to confirm the identity of either the driver or owner of the truck that was involved in the Accident.

(7) The parties agree that all avenues of investigation in relation to the licence plate DL0437 have now been exhausted and that the driver and owner of the truck involved in the Accident cannot be ascertained.

[34] In addition to her internet search, Ms. Bui testified that she took several further steps to identify the driver or owner of the pick-up truck, including:

(1) Ms. Bui recalled a bus going by around at the time of the Accident; so, she returned to the scene of the Accident and spoke to various bus drivers on the same route at around the time of the Accident, as well as to bus passengers to see if anyone had witnessed the Accident;

(2) Because she recalled the driver worked at Starbucks, she went to several Starbucks coffee shops in the area and spoke to staff members, describing both the man that had hit her vehicle and his truck;

(3) Furthermore, Ms. Bui's legal counsel took the following additional steps:

a. On December 22, 2017, the plaintiff's counsel ran an advertisement in the Burnaby NOW newspaper seeking witnesses to the Accident.

b. On January 23, 2018, the plaintiff's counsel posted signs around the intersection of Willingdon Avenue and Hastings Street seeking witnesses to the Accident.

[35] Notably, the signs posted by legal counsel erroneously described the Accident as a "hit-and-run". However, I am not able to find that Ms. Bui should be held responsible for this descriptive error. Ms. Bui's evidence was that the Accident was not a hit-and-run in the sense that the driver of the pick-up truck failed to stop after the collision.

[36] In any event, none of Ms. Bui’s efforts produced any witnesses or other information that could assist in identifying the driver or owner of the pick-up truck.

[37] On or around January 28, 2018, Ms. Bui’s employment with Hertz ended. While Hertz modified Ms. Bui’s job description and reduced her hours of work, it refused to grant her request to transfer to a branch closer to her home.

[38] Mr. Page also testified that about a week or so after the Accident, he went with Ms. Bui to the place of the Accident at around the same time the Accident occurred to see if “the same or similar vehicle” drove by. At this time, Ms. Bui also “got on to a couple of buses” to ask the bus drivers if they had been working the day of the Accident and if they saw anything. I also found Mr. Page to be a candid, careful and reliable witness.

[39] Ms. Bui’s and Mr. Page’s evidence was uncontradicted. The defendants did not call any witnesses.

**III. Applicable Law**

**A. The Legislation**

[40] Section 24 of the *Act* provides that plaintiffs may bring an action against ICBC as a nominal defendant if the statutory criteria set out in s. 24(5) are satisfied:

24 ...

(5) In an action against the corporation as nominal defendant, a judgment against the corporation must not be given unless the court is satisfied that

- a. all reasonable efforts have been made by the parties to ascertain the identity of the unknown owner and driver or unknown driver, as the case may be, and
- b. the identity of those persons or that person, as the case may be, is not ascertainable.

[41] I am satisfied on the facts before me that the identity of the pick-up truck driver is not ascertainable. Accordingly, the key issue before me is whether “all reasonable efforts have been made by the parties to ascertain the identity of the unknown owner and driver or unknown driver, as the case may be”.

[42] The defendants also note the requirements of s. 68 (1) of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [MVA], which states:

68. (1) The driver or operator or any other person in charge of a vehicle that is, directly or indirectly, involved in an accident on a highway must do all of the following:

- (a) remain at or immediately return to the scene of the accident;
- (b) render all reasonable assistance;
- (c) produce in writing to any other driver involved in the accident and to anyone sustaining loss or injury, and, on request, to a witness
  - (i) the name and address of the driver, operator or other person in charge of the vehicle,
  - (ii) the name and address of the registered owner of the vehicle,
  - (iii) the licence number of the vehicle, and
  - (iv) particulars of the motor vehicle liability insurance card or financial responsibility card and, if applicable, blanket certificate for that vehicle,or such of that information as is requested.

## B. Burden of Proof

[43] I am satisfied that Ms. Bui, as the party seeking judgment against ICBC, has the burden of satisfying the Court that the requirements of s. 24(5) of the have been met: *Wallman v. John Doe*, 2014 BCSC 79, at paras. 431-432.

[44] However, in considering whether the plaintiff has satisfied the onus of establishing that all reasonable efforts were made by the parties to ascertain the identity of the unknown driver, our Court of Appeal in *Greenway-Brown v. MacKenzie*, 2019 BCCA 137, at para. 65, reaffirmed that the analysis is a subjective one and must consider the particular circumstances before the court, including the condition of the plaintiff. Specifically, the Court in *Greenway-Brown* relied on the decision of Justice D. Smith in *Nicholls v. Insurance Corporation of British Columbia*, 2011 BCCA 422, and reasoned:

[65] In *Nicholls*, D. Smith J.A. expressed the view that ...the obligation of a driver under s. 24(5), and held that the main proposition from *Leggett [v. Insurance Corporation of British Columbia]* (1992), 72 B.C.L.R. (2d) 201

(C.A.)] is that the test of reasonableness has a subjective component. This stems from paras. 11–12 of *Leggett*, reproduced in *Nicholls* at para. 29 ...

[66] She concluded (at para. 31) that “the only qualification on the requirement of “all reasonable efforts” in s. 24(5), is the subjective aspect of the test that requires the ‘position and condition’ of the plaintiff to be considered in determining what efforts are reasonable in the circumstances”.

...

[68] ... [A]s this court made clear in *Nicholls*, no particular steps are prescribed, and I repeat: a finding of what constitutes “all reasonable efforts” is a question of fact to be determined on the circumstances of each case.

### C. Common Law Applicable to s.24(5) of the Act

[45] The parties rely on several authorities that inform the application of s. 24(5), including the leading cases of our Court of Appeal in *Leggett*, at paras. 9-13; *Smoluk v. Insurance Corp. of British Columbia* (1993), 83 B.C.L.R. (2d) 328 (C.A.), 1993 CanLII 2167, at paras. 4-11; *McMahon v. ICBC*, 1999 BCCA 612; *Holloway v. I.C.B.C. and Richmond Cabs and John Doe*, 2007 BCCA 175 [*Holloway CA*], at para. 14 (see also trial court decision at 2006 BCSC 135 [*Holloway SC*], at paras. 30-36); *Nicholls*, at paras. 26-27.

[46] In *Leggett*, Justice Taylor addresses the purpose of what is now s. 24(5) of the Act:

[9] ... In my view the overall purpose of the section is to limit the exposure of the corporation to claims brought by persons who, in the matter of seeking to identify those responsible for the accident, have done everything they reasonably could to protect what ordinarily would be their own interests, and which, by virtue of the section, become the interests of the corporation.

[10] The corporation's exposure under the section is limited to claims brought by those who *could not* have ascertained the identity of the parties responsible. It does not, in my view, extend to claims by those who have *chosen not* to do so.

[Emphasis in original.]

[47] On the facts before me, I am unable to conclude that Ms. Bui “chose not” to take the trouble to identify the driver. Rather, she was told by her Assistant Manager that she was to stay where she was in the vehicle after the Accident, and she followed those instructions until it dawned on her that her Assistant Manager had

failed her. Accordingly, she took steps to get the pick-up driver's licence plate before he left the scene of the Accident. While she was unsuccessful in recording the correct licence plate numbers, she nevertheless tried to record it, thereby rectifying the problem created by her Assistant Manager and the other driver at the scene of the Accident. Further, she made additional attempts after the Accident to find the pick-up truck driver, including attending where she understood he likely worked. She also tried to locate potential witnesses (e.g., bus drivers and bus passengers) who may have witnessed the Accident.

[48] As I addressed earlier in these Reasons for Judgment, our Court of Appeal has affirmed the subjective nature of the test of "all reasonable efforts". Justice Taylor in *Leggett* reasons in this regard:

[12] The test seems to me to be subjective in the sense that the claimant must know that the vehicle has been in an accident and must have been in such a position and condition that it would be reasonable for the claimant to discover and record the appropriate information. But the claimant cannot be heard to say: "I acted reasonably in not taking the trouble to find out".

[49] Again, this is not a case where Ms. Bui was cavalier or indifferent about obtaining the pick-up truck driver's information. She stayed in the car as directed by her Assistant Manager. Moreover, even though she was told by her Assistant Manager that it was not necessary to obtain the information and "not to worry", she remained concerned and eventually did take steps to identify the other driver while still at the scene of the Accident. I find Ms. Bui did the best she could, given her emotional and confused state of mind and the pressures of her employment situation, to take steps to identify the driver by calling her partner and giving him what she understood was the licence plate information of the pick-up driver's truck. While that information appears to have been incorrect, despite her confused emotional state, she did take steps to identify the other driver.

[50] The case before me is also distinguishable from *Leggett* in that Mr. Leggett initially decided to abandon "whatever rights he had". Justice Taylor reasons:

[14] In the present case the reason for failing to discover and record the required information was that the respondent had decided not to pursue any claim which he might have.

[51] In *Leggett*, Mr. Leggett had a conversation with the other driver after the collision and each driver agreed they would look after their own damage. Mr. Leggett then drove off without having recorded any information by which the other vehicle, its owner or driver, might be traced. The facts before me are quite distinct in that they do not support the conclusion that Ms. Bui, at any time, decided to not pursue her claim or abandon it. Moreover, given her mental state and the pressures she felt as an employee, I am satisfied she tried her best to rectify a problem created in the first instance by her Assistant Manager.

[52] My conclusion in this regard is also galvanized by other Court of Appeal decisions that have considered the plaintiff's condition and circumstances.

[53] In *Smoluk*, the plaintiff's vehicle was struck from behind by a blue coloured vehicle. The driver of the blue vehicle exited her vehicle first, assessed the damage, then returned to her vehicle and drove away. The plaintiff had no opportunity to speak with or obtain the name or driver's licence number of the other driver. However, the plaintiff managed to write down what she thought was the blue vehicle's licence plate. The Court in *Smoluk*, reasoned in part:

[4] The crucial fact in this case, in my view, is the fact that from the time the unknown motorist drove away the plaintiff thought that she had the license number of the offending vehicle and that she would be able to impose responsibility through that procedure.

...

[9] In my view, the *Leggett* case is distinguishable from this case because the plaintiff in this action made no decision not to pursue her rights. She was prevented by obtaining more information because of the precipitous departure of the wrongdoer, and in my view the plaintiff acted reasonably in taking down the license plate number which would lead any reasonable person to believe that the identity of the person had been or could easily be ascertained. The fact that she got the number wrong in such circumstances does not indicate unreasonableness.

[54] In the instant case, Ms. Bui also thought that one of the two licence plate numbers she recorded were accurate. She should not be faulted for writing down the

wrong licence plate number: see also *Pearce v. I.C.B.C.*, 1998 CanLII 1428 (B.C.S.C.), at para. 31. While the pick-up truck driver did not “hit and run”, he, like the Assistant Manager, erred in not providing and exchanging the required contact and other information regarding the collision: s. 68(1)(c) of the *MVA*. Ms. Bui ought not be faulted for their errors or for her compromised state of mind at the scene of the Accident.

[55] In a similar vein, in *McMahon*, the actions of the plaintiff in attempting to record a licence plate, while unsuccessful, were held to be sufficient to satisfy the obligation of “reasonable efforts” under the *Act*.

[56] The decision in *Holloway SC* is also of assistance. In that case, the plaintiff was struck by a taxicab. After impact, the plaintiff spoke briefly to the taxicab driver. The plaintiff then observed the taxi drive into a nearby parking lot where he got out and checked his vehicle. The plaintiff walked past the parking lot but then returned to the parking lot to obtain the taxicab’s information. However, the taxicab had already left the parking lot. Justice Truscott nevertheless concluded that Ms. Holloway had made all reasonable efforts to identify the taxicab driver:

[32] Here it is the statement of Ms. Holloway that she did not obtain the information immediately because she “was trying to get a hold of herself”, she walked away to “get her composure”, and she came back to get the information “when she snapped out of her shock”.

[33] It is not sufficient in my view for Ms. Holloway to admit that if she had thought about it she would have had time to look at the writing on the side of the cab and get the licence plate number and the driver’s name. The real question is why she never thought about it, and the explanation she has given in her statement is that she was not in such a “condition”, to use that word from *Leggett*, that it would have been reasonable for her to discover the information before she did in fact try to do so.

[34] This is not a case of Ms. Holloway having chosen not to obtain the information and then changing her mind. This is a case, on her evidence, of her being in such a condition before she could regain her composure that it was not reasonable for her to discover the information, and when she snapped out of her shock, it was too late to do so.

[35] On the available evidence before me and on the interpretation put on s. 24(5) by *Leggett*, I conclude that Ms. Holloway did make all reasonable



efforts to ascertain the identity of the unknown owner and driver, considering her position and condition.

[57] Justice Truscott's reasons were upheld on appeal: *Holloway CA*, where the Court reasoned:

[12] ... Reasonableness of conduct is a question to be decided on all of the circumstances of the case. The standard to be met is reasonableness. Whether the conduct falls on one side of the line or the other is a question for the trier of fact. This second ground might more correctly be stated as an assertion that the judge misapplied the standard of reasonableness to the evidence before him. However, viewed from either perspective, it cannot be said that the judge erred in law in asking whether the plaintiff's conduct was "reasonable" (see the Reasons for Judgment at paras. 31 and 35). If the judge erred, it can only have been an error of fact in finding that the plaintiff's conduct was reasonable. I would not give effect to the second ground of appeal.

[13] One comes then to the third ground raised by I.C.B.C., namely that the judge made a palpable and overriding error in finding that the plaintiff had taken all reasonable steps to ascertain the owner and driver of the vehicle which struck her. Counsel for I.C.B.C. agreed, as I understand his submission (see Appellant's Factum, para. 67) that the question of reasonableness contains a subjective element, that is to say, a consideration of the plaintiff's conduct in light of her own physical and mental condition at the time, and in all of the circumstances. Counsel points to the plaintiff's admitted ability to make observation of the driver's and the vehicle's appearance immediately following the accident, details of her conversation with him, where the vehicle went after their conversation and so on. Counsel says this shows that the plaintiff had ample opportunity to obtain information as to the identity of the owner and driver.

[14] However, as the trial judge correctly observed, the important question was not whether the plaintiff had the opportunity to obtain the necessary information, but why she failed to act on that opportunity. He concluded her "condition" as that word is used in *Leggett, supra*, provided an adequate explanation. In my respectful opinion there was evidence to support that conclusion. On the plaintiff's evidence, which was the only evidence before the Court, immediately before impact she heard a screeching vehicle. The vehicle struck her, knocked her off her feet, and carried her some distance on its hood. When she went to speak to the driver he started "shouting" at her. She lost her "composure" and walked away. When she recovered herself and returned to get the necessary information, the vehicle had driven away.

[15] The judge concluded that these post-accident circumstances left her in such a condition that it was not reasonable for her to obtain the information before it was too late. In my respectful opinion, on the uncontested evidence before the judge, this was a conclusion that was reasonably open to him to reach. I see no basis on which this Court could properly interfere in the result. I would dismiss the appeal.

[58] This case is analogous to *Holloway SC*, in regard to Ms. Bui's state of mind at the time of the collision. The uncontradicted evidence of both Ms. Bui and Mr. Page, leads me to conclude that the Accident triggered a heightened state of mental confusion and emotions in Ms. Bui, which, when coupled with her concerns about needing to follow her Assistant Manager's instructions, caused her to lose her composure and focus. It was not until she physically witnessed the interchange between the pick-up truck driver and her Assistant Manager that she realized that the necessary contact information had not been exchanged. Yet, even at that point, she described feeling an intense anxiety and that her heart was pounding. She got in the car and called her partner for help and she tried to record the truck driver's licence plate number. She was vulnerable, confused, scared and anxious. Given the very unique and demanding circumstances before her, it is no wonder Ms. Bui lost her composure. Yet, she made the effort to get the pick-up driver's licence plate in a way that would not arouse her Assistant Manager's suspicion that she was not following his decision not to exchange information.

[59] I would note that none of the case authorities cited by ICBC would hold Ms. Bui to a standard of perfection. Further, as noted by Justice Josephson in *Larsen v. Doe*, 2010 BCSC 333, at para. 35, the language of s. 24(5) of the *Act* requires the plaintiff to make all "reasonable efforts", "not best efforts", to determine the identity of the unknown driver: see also *Godara v. ICBC*, 2008 BCSC 183, at para. 43. In this regard, Justice Josephson's reasons are both instructive and applicable in the instant case:

[36] In determining whether a claimant has made all reasonable efforts, the court must have regard to the subjective condition of the claimant at the time of the accident: [cites omitted]. Therefore, where a claimant fails to obtain the identity of the driver or owner at the time of the accident because she was in a state of shock, the claimant will not be held to have acted unreasonably. In order to find that a claimant was in a state of shock, medical evidence is not required; a finding that the claimant was "taken by surprise and confused" is sufficient: see *Hocaluk v. Insurance Corp. of British Columbia*, 2007 BCSC 170, 69 B.C.L.R. (4th) 360 at para. 56.

[37] Under subsection (b), the phrase "not ascertainable" should not be strictly interpreted to mean "could not possibly have been ascertained" but, rather, whether the identity of the person "could not have been ascertained

had the claimant made all reasonable efforts, having regard to the claimant's position": see *Leggett* at para. 11.

...

[38] I am satisfied that the plaintiff was in a significantly altered emotional state following the collision that rendered her incapable of rationally assessing her duties and obligations. With the meaning of *Leggett*, she was not in a condition that it would have been reasonable for her to discover and record the appropriate information.

[39] Once recovered, she employed all reasonable efforts to ascertain the identity of the owner and driver. While not all possible efforts were employed, those that were fall well within the classification of "reasonable".

[Emphasis added.]

[60] I have carefully reviewed the evidence before me. I am satisfied that Ms. Bui was in a significantly altered emotional state following the collision that rendered her incapable of rationally assessing her duties. In light of the particular circumstances before me, the efforts Ms. Bui made fell, in my view, within the requirements of s. 24(5) of the *Act*: see also; *Hoflin v. Doe*, 2022 BCSC 1473; *Jennings v. Doe*, 2010 BCSC 1595; *Goncalves v. Doe*, 2010 BCSC 1241, at paras. 8-11; *Ghuman v. ICBC*, 2019 BCSC 3. I am also of the view that Ms. Bui efforts in the weeks after the Accident to locate the driver and potential witnesses ought not be disregarded but must be considered in light of the evidence in its entirety.

#### **IV. Disposition**

[61] I find that Ms. Bui has satisfied the requirements of s. 24(5) of the *Act* and has made all reasonable efforts, having regard to her circumstances, to ascertain the identity of the unknown owner or driver of the pick-up truck that collided with the Hertz rental car she was driving.

[62] Accordingly, Ms. Bui is entitled to pursue a claim against the Insurance Corporation of British Columbia as a nominal defendant.

[63] Ms. Bui is entitled to her costs at Scale B.

“Morellato J.”