



No. S205301
Vancouver Registry

In the Supreme Court of British Columbia

Between

Li Zheng

Plaintiff

and

BMO Branch at 595 Burrard Street, Vancouver

Defendant

RESPONSE TO CIVIL CLAIM

Filed by: Bank of Montreal

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant’s Response to Facts

1. The facts alleged in Part 1 of the notice of civil claim are denied.

Division 2 – Defendant’s Version of Facts

1. Bank of Montreal (“BMO”) denies each and every allegation of fact contained in the Notice of Civil Claim save and except for those allegations of fact expressly admitted herein.

2. The Notice of Civil Claim fails to plead any material facts supporting any claim or cause of action either as alleged or at all.

Division 3 – Additional Facts

1. A banker customer relationship is primarily a relationship of debtor and creditor, such that the banker is obliged to act on the directions of its customer for payment and direction of funds on the customer’s account.

2. If the plaintiff was a customer of BMO, then her relationship with BMO was governed by the terms of the account operating agreement, the full terms of which:

- (a) Include obligations on the customer to manage the financial affairs of their account and in the provision of instructions for payment;

- b) Directs BMO to act on instructions initiated by a customer and relieves BMO from liability to the customer where it does so;
- c) Requires the customer to act prudently and to disclose a situation where they have been the victim of fraud, theft, trickery, force or intimidation;
- d) Confirms that the customer is responsible for all authorized activity resulting from the use of their account; and
- e) Obliges the customer to immediately report any unauthorized account activity to BMO, and in any event, within the verification period as prescribed; and
- f) Excludes or limits BMO's liability where BMO has complied with its obligations under the agreement or the customer has breached their obligations under the agreement.

3. If Zheng was aware of suspicious circumstances relating to her personal situation affecting her instructions to BMO to wire transfer funds, it was necessary for her to disclose those concerns to proper authorities, make enquiry of BMO or others and to seek advice. Zheng failed to do so.

4. The loss, if any, was caused by the conduct of others, for whom BMO is not responsible at law.

Part 2: RESPONSE TO RELIEF SOUGHT

1. BMO opposes the granting of the relief sought in Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. The Notice of Civil Claim is woefully deficient and fails to plead or particularize any material facts, either to support a cause of action or any relief, either as alleged or at all.

2. The Notice of Civil Claim is therefore prolix, frivolous and vexing and must be dismissed.

3. The allegations of fact as asserted by Zheng in substance allege that:

- (a) Zheng was personally aware of suspicious circumstances that she kept secret from BMO;
- (b) Zheng personally authorized and instructed BMO to wire transfer funds from her account;
- (c) Zheng did not act prudently, did not make disclosure, did not make enquiry and did not seek advice from BMO or anyone else; and
- (d) BMO, apparently acted on her instructions, and with her authority to process a wire transfer as per her instructions.

4. By implication of the foregoing, BMO acted in accordance with valid instructions, pursuant to the terms of the contractual arrangement between a banker and customer. Further, by implication, Zheng was in breach of her obligations to BMO and Zheng's loss, if any, was caused by others for whom BMO is not responsible at law. Zheng's claims against BMO are excluded by operation of the account operating agreement.

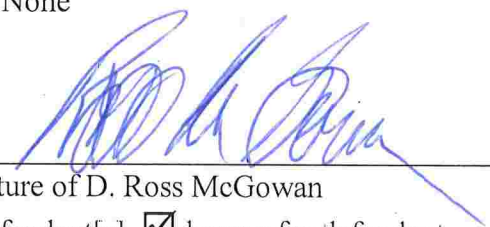
5. BMO pleads and relies on the Negligence Act, RSBC 1996, c333, s. 1.

Defendant's address for service: BORDEN LADNER GERVAIS LLP
 1200 Waterfront Centre, 200 Burrard Street
 P.O. Box 48600
 Vancouver, British Columbia V7X 1T2
 Attention: D. Ross McGowan

Fax number address for service (if any): None

E-mail address for service (if any): None

Date: 06/JULY/2020



 Signature of D. Ross McGowan
 defendant[s] lawyer for defendant,
 Canadian Imperial Bank of Commerce

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

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