



No. S207685  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

LI ZHENG

PLAINTIFF

AND

TD CANADA TRUST BRANCH 0216

DEFENDANT

**RESPONSE TO CIVIL CLAIM**

**Filed by: TD Canada Trust Branch 0216 (the "Defendant")**

**PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendant’s Response to Facts**

1. The facts alleged in none of the paragraphs of Part 1 (Appendix A) of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 8 and 9-12 of Part 1 (Appendix A) of Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1-7 of Part 1 (Appendix A) of the Notice of Civil Claim are outside the knowledge of the Defendant.

**Division 2 – Defendant’s Version of Facts**

1. The named defendant "TD Canada Trust Branch 0216" is not a legal entity.
2. The Toronto-Dominion Bank ("**TD Bank**") is a schedule 1 bank pursuant to the *Bank Act*, RSC 1985, c. B-2.

3. On or about May 30, 2018, the plaintiff attended a TD Bank branch at 1055 Dunsmuir Street, Vancouver, BC and instructed TD Bank to send a wire transfer for \$177,828.19 to an account in Hong Kong (the “**Wire Transfer**”).
4. On or about May 30, 2018, the plaintiff represented to TD Bank that the Wire Transfer was for a business loan. TD Bank advised the plaintiff that once a wire is released it cannot be retrieved. The plaintiff confirmed that she understood and instructed TD Bank to proceed with the Wire Transfer.
5. TD Bank reasonably relied on the plaintiff’s representations with respect to the Wire Transfer.
6. Before initiating the Wire Transfer, the plaintiff signed a written wire agreement (the “**Wire Agreement**”). Pursuant to the Wire Agreement, the plaintiff agreed (among other things) that TD Bank shall not be liable for any loss or damage that the plaintiff suffers as a result of sending the Wire Transfer.
7. On June 4, 2018, the plaintiff attended at a different TD Bank branch advised TD Bank that she had sent the Wire Transfer because she believed she had been implicated in a money laundering scheme. TD Bank confirmed to the plaintiff that the Wire Transfer could not be returned because it had already been received by the financial institution in Hong Kong.

### **Division 3 – Additional Facts**

8. TD Bank at all times acted in accordance with the plaintiff’s instructions, and in accordance with the standard of care required in the circumstances.
9. TD Bank denies that it knew or reasonably should have known that the purpose of the Wire Transfer was otherwise than what the plaintiff indicated, which was that the Wire Transfer was for a business loan.
10. TD Bank denies that it had actual or constructive knowledge of the alleged fraud.
11. TD Bank did not have any duty to warn the plaintiff.
12. TD Bank denies that the plaintiff has suffered damage or loss as pleaded, or at all.

13. In the alternative, if the plaintiff was defrauded by a third party, and if the plaintiff suffered damage or loss as a result, such damage or loss was not caused by the conduct of TD Bank, but rather was caused by the conduct of the third party who perpetrated the fraud, or alternatively, by the plaintiff's own conduct, including instructing TD Bank to initiate the Wire Transfer and misrepresenting the purpose of the Wire Transfer.

**PART 2: RESPONSE TO RELIEF SOUGHT**

14. The Defendant consents to none of the relief sought in Part 2 of the Notice of Civil Claim.
15. The Defendant opposes the granting of all of the relief sought in Part 2 of the Notice of Civil Claim.
16. The Defendant takes no position on the granting of the relief in none of the paragraphs of 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 material facts in support of a recognized cause of action.
2. The Notice of Civil Claim is brought against a party that is not a legal entity.
3. Many of the claims purportedly advanced by the plaintiff cannot be advanced by a litigant in a civil action. These include claims for administrative penalties (Part 2, paragraphs 2 and 4) and claims for criminal sanctions (Part 2, paragraph 3).
3. TD Bank is not liable to the plaintiff in negligence nor for breach of any duty or obligation, statutory, or otherwise, as alleged or at all.

**No Breach of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2. (“*BPCPA*”)**

4. TD Bank denies any breaches of the *BPCPA*, as alleged or at all.
5. TD Bank denies that it engaged in any unconscionable practices under the *BPCPA* or at all.

### **No Conversion**

6. To the extent there is an allegation of conversion, which is denied, TD Bank denies that it is liable for conversion.

### **No Negligence by TD Bank**

7. TD Bank is not liable to the plaintiff in negligence.
8. TD Bank denies that it owes a duty of care to the plaintiff, as alleged or at all. In particular, TD Bank did not owe a duty to warn the plaintiff about the allegedly fraudulent conduct perpetrated by a third party.
9. Alternatively, if TD Bank did owe a duty of care, which is not admitted but expressly denied, TD Bank has not breached any duty of care owed to the plaintiff.
10. TD Bank's conduct at all times met the requisite standard of care.
11. In the further alternative, if TD Bank breached any duty of care owed to the plaintiff, which is not admitted but expressly denied, the plaintiff did not suffer damages as a result of such breach, as alleged or at all.

### **Contributory Negligence of the Plaintiff**

12. In the alternative, if it is found that TD Bank breached a duty of care toward the plaintiff or that the conduct of TD Bank fell below the standard of care and that the plaintiff suffered damages as a result, all of which is not admitted but expressly denied, any breaches or failures were caused by or contributed to by the plaintiff's own negligence.
13. In particular, if the plaintiff sustained any loss or damage as alleged or at all, which is not admitted but expressly denied, then such loss or damage was caused partly by the actions of the plaintiff and TD Bank pleads and relies on the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333 and amendments thereto.

### **Limitation of Liability**

14. If the plaintiff suffered damages, which is denied, TD Bank's liability for loss or damage suffered by the plaintiff in relation to the Wire Transfer is expressly limited or excluded, including by the terms of the Wire Agreement.

**No Damages and a Failure to Mitigate**

15. In answer to the whole of the Notice of Civil Claim, TD Bank denies that the plaintiff suffered loss or damage, as alleged or at all.
16. In the further alternative, if the plaintiff suffered loss or damage as alleged in the Notice of Civil Claim or at all, which is not admitted but expressly denied, the plaintiff failed to mitigate her damages.
17. In the further alternative, if the plaintiff suffered loss or damage as alleged in the Notice of Civil Claim or at all, which is not admitted but expressly denied, those losses are too remote and not recoverable at law.

**Limitation Period**

18. The plaintiff commenced this action more than two years after she discovered the claims advanced in the Notice of Civil Claim. The plaintiff's claims are statute barred. TD Bank pleads and relies on the provisions of the *Limitation Act*, SBC 2012, c 13.
19. The claims against TD Bank should be dismissed with costs to TD Bank.

**Defendant's address for service:**

Address for service:

McCarthy Tétrault LLP  
Barristers & Solicitors  
Suite 2400, 745 Thurlow Street  
Vancouver BC V6E 0C5

**Attention: Alexandra Cocks/  
Kevan Hanowski**

Fax number for service (if any):

Nil

Email address for service (if any):

[acocks@mccarthy.ca](mailto:acocks@mccarthy.ca) &  
[khanowski@mccarthy.ca](mailto:khanowski@mccarthy.ca)

DATED: August 31, 2020



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ALEXANDRA COCKS/  
KEVAN HANOWSKI  
Counsel for the Defendant

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.