



Neutral Citation: 2013-BCRMD-052

**RE: THE MOTOR DEALER ACT R.S.B.C. 1996 C. 316 and the  
BUSINESS PRACTICES AND CONSUMER PROTECTION ACT S.B.C. 2004 C. 2**

BETWEEN:

**JASON CROMBIE**

Complainant

AND:

**SANGAM AUTO GROUP LTD. dba AUTO EMPIRE  
(Dealer #30318)**

Motor Dealer

AND:

**AUTOSADESCANADA.COM ENTERPRISES INC.  
dba TRINITY AUTO CENTRE  
(Dealer # 30695)**

Motor Dealer

AND:

**ADIL RIZWAN  
(Salesperson # 114778)**

Salesperson

AND:

**BALDIP SINGH SACHDEVA  
(Salesperson# 111314)**

Salesperson

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Date and Place of Hearings:**

February 19, March 20, April 24, May 30 and  
June 6, 2014 at Surrey, British Columbia

**Appearances for:**

The Complainant

In person

Sangam Auto Group Ltd.

J. Klassen, legal counsel (except February  
19)

Trinity Auto Centre

Baldip Singh Sachdeva

Adil Rizwan

In person

Baldip (Romy) Singh Sachdeva

In person

The Vehicle Sales Authority

Daryl Dunn, Manager of Compliance and  
Investigations

Ross Cote, Compliance Officer

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**Introduction**

[1] This hearing was called due to various allegations enumerated in the Hearing Notice dated January 8, 2014, that Sangam Auto Group Ltd. dba Auto Empire ("Sangam"); AutosalesCanada.com Enterprises Inc. dba; Trinity Auto Centre ("Trinity"); Adil Rizwan and Baldip Singh Sachdeva aka Romy Singh Sachdeva (collectively the "Respondents") did:

- (a) Breach sections 4 and 5 of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 ("BPCPA") (deceptive acts or practices) by:
  - (i) failing to advise Jason Crombie (the "Complainant") that a 2008 Mercedes GL450 (the "Mercedes") and a 2007 Porsche Cayman (the "Porsche") (collectively the "Vehicles") had been purchased and financed in his name,
  - (ii) failing to deliver the Mercedes and Porsche to the Complainant,
  - (iii) using documents to purchase, finance and register the Mercedes and Porsche that were not signed by the Complainant,
  - (iv) failing to deliver a copy of the purchase agreement and finance documents at the time of transaction, and
  - (v) failing to disclose the description and condition of the Mercedes and Porsche prior to or after the transaction.
- (b) Breach sections 8 and 9 of the BPCPA (unconscionable acts or practices) in relation to the Mercedes for the reasons noted in paragraphs 1(a)(i) to (v) above and by obtaining financing knowing the Mercedes would be shipped out of Canada and would not qualify for financing.

[2] Overall, the allegations are that Sangam, Trinity, Mr. Rizwan and Mr. Sachdeva obtained financing for and registered ownership of the Mercedes and Porsche in the name

of the Complainant without the knowledge or consent of the Complainant and used forged documents to execute these transactions.

### **Adjournment of the February 19, 2014 Hearing**

[3] Mr. Amar Dhaliwal, an owner of Sangam, asked for an adjournment of the February 19, 2014, hearing as their legal counsel was unavailable on that day. I granted the adjournment.

### **Basic Facts**

[4] In most cases there are generally some facts that are not in dispute which can provide an overview of the case to be decided. This is not one of those cases as almost all the facts are in dispute. Instead, I will summarize each party's position.

### **Position of the Parties**

[5] In summarizing the position of the parties, I will not go into detail about the evidence.

#### **(a) The Complainant**

[6] The Complainant's position can be summarized as follows:

- He initially looked at buying a rental property with his friend Igor Bradaric. Igor Bradaric enlisted the assistance of his friend Eathan Skwira who is a mortgage broker. This venture fell through.
- Eathan Skwira suggested the Complainant consider buying and exporting vehicles to Australia. The Complainant says that opportunity also fell through. However, Eathan Skwira recommended an opportunity to buy, fix up and resell a boat. The Complainant and Igor Bradaric had prior experience with boats.
- The Complainant was put in touch with Adil Rizwan of Sangam by Eathan Skwira to finance the boat purchase. The boat purchase went through in or around early December, 2011, but the boat disappeared while in the hands of a repair shop that went out of business.
- In and around January 2012, the Complainant became aware of owning the two Vehicles that were financed. He says that Adil Rizwan, Sangam and Trinity forged documents to obtain financing on the Mercedes and the Porsche and had them registered in the Complainant's name. He was put in touch with Denis Vallee, who apparently was in possession of the Mercedes and Porsche and who coincidentally sold him the boat. Denis Vallee said everything was okay and Denis Vallee would ensure the payments were made.
- Denis Vallee eventually defaulted on the payments and the Complainant began making payments in order to protect his credit rating all the while Denis Vallee

reassured him that he would make good on the payments. Eventually the Complainant could not sustain the payments and surrendered the Mercedes and Porsche to the finance companies by leaving them with Trinity.

- The Complainant says he has suffered financially and his credit rating has been severely impacted because of the conduct of Adil Rizwan, Sangam and Trinity. He says they have forged his signature on the documents submitted to the finance companies.

(b) ***Sangam Auto dba Auto Empire***

[7] Sangam's position can be summarized as follows:

- At the time of the alleged contraventions in or about November and December of 2011, Sangam was not doing business as Auto Empire. At that time, Auto Empire was the business name used by Adil Rizwan. While Sangam and Adil Rizwan had considered amalgamating their operations, this was not completed until the spring of 2012.
- Sangam was in the process of moving its operations from Surrey, B.C. to its current Richmond, B.C. location during the time of the transactions, but it was not fully completed until the spring of 2012.
- All the documentary evidence shows either Auto Empire, as operated by Adil Rizwan, and/or Trinity as the selling dealer. No evidence was provided showing Sangam did or even may have forged any documents.
- Sangam first became aware of this issue when it received a Hearing Notice in January 2014, from the VSA.
- Sangam says, the evidence establishes that the transaction was to be a business transaction. As such, the transaction does not meet the definition of "consumer transaction" under the BPCPA and therefore the reverse onus provisions in that Act do not apply to this case.
- Sangam also states that the Complainant was inconsistent in his testimony, especially of when he became aware he owned the two Vehicles. Sangam essentially says the Complainant's version of events should not be believed.

(c) ***Adil Rizwan***

[8] Adil Rizwan's position can be summarized as follows:

- The Complainant knowingly entered into the transactions for the Mercedes and for the Porsche.
- The arrangement that the Complainant had with others regarding exporting the Mercedes or Porsche had nothing to do with Mr. Rizwan.

- The transaction was a business transaction and not a consumer transaction as defined in the BPCPA.
- Mr. Rizwan also agrees the Complainant's version of events should not be believed.

(d) **Trinity and Baldip Singh Sachdeva**

[9] Trinity and Mr. Sachdeva take the same position, which can be summarized as follows:

- Trinity was only used to obtain financing for the Complainant to purchase the Mercedes and the Porsche. It did not broker these deals. That was between Auto Empire, Mr. Rizwan and the Complainant.
- Auto Empire did, on paper, sell the Mercedes and Porsche to Trinity so that financing could occur. It was a paper transfer but the Vehicles were sold at Auto Empire in Richmond.
- Adil Rizwan was an employee of Trinity at this time and had authorization to fill out financing paperwork in the name of Trinity.
- At no time did Trinity or Mr. Sachdeva have prior discussions with the Complainant about purchasing the Mercedes and the Porsche.

(e) **The VSA**

[10] The VSA's position is as noted in the allegations set out in paragraph 1.

[11] At the conclusion of the hearing, Mr. Daryl Dunn also stated the VSA was concerned that Mr. Rizwan had produced what he says are doctored documents at the hearing. Mr. Dunn raised a concern about Mr. Rizwan's testimony and says he did not find anything untoward about the Complainant's evidence.

**Issues**

[12] During the course of the hearing, many evidentiary issues were presented. For instance, I have two sets of Notices of Assessments from Canada Revenue Agency for the Complainant for the same two year period. One set was produced at the hearing by Mr. Rizwan that is at odds with those produced by the Complainant in rebuttal. I will deal with the evidentiary issues as they arise in these reasons.

[13] I find the following are the key issues to decide this case:

- (a) Was there a "consumer transaction" as defined in the BPCPA or a "sale" or "other disposition" as defined in the *Motor Dealer Act* R.S.B.C. 1996 c. 316 ("MDA")?

- (b) If there was no "consumer transaction" or "sale" or "other disposition;" do I have authority to review this complaint?
- (c) Did the Complainant agree to purchase the Mercedes and Porsche?
- (d) Did Sangam, Trinity, Mr. Rizwan or Mr. Sachdeva falsify documents in order to complete these transactions?
- (e) Did Mr. Rizwan provide falsified documents at the hearing?

[14] By agreement of the parties, if any compliance action must be taken based on my findings here that will be determined at a separate hearing.

### **Statutory Interpretation**

[15] In interpreting the statutory sections that follow I must apply the following general rule on interpretation:

... the approach to statutory interpretation endorsed by the Supreme Court of Canada in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, adopted from Elmer Driedger, *Construction of Statutes* (2nd ed., 1983):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. [At 87]

The Court in *Rizzo* also emphasized the principle, encapsulated at section 8 of the *Interpretation Act*, RSBC 1996, c 238., that every act "must be construed as being remedial" and must receive "such fair, large and liberal construction and interpretation as best assures the attainment of its object."

*Yeung (Guardian ad litem of) v. Au*, 2006 BCCA 217 para. 32 (unanimous 5 panel Court of Appeal), affirmed by 2007 CanLII 44151 (S.C.C.)

[16] Both the BPCPA and the MDA are consumer protection legislation:

[37] As to statutory purpose, the BPCPA is all about consumer protection. As such, its terms should be interpreted generously in favour of consumers: *Smith v Co-operators General Insurance*, 2002 SCC 30, [2002] 2 SCR 129., and *ACS Public Sector Solutions Inc v Courthouse Technologies Ltd*, 2005 BCCA 605, 48 BCLR (4th) 328....

*Seidel v TELUS Communications Inc*, 2011 SCC 15, [2011] 1 SCR 531 (Supreme Court of Canada)

### **Discussion**

## A. Consumer transaction, sale or other disposition

### (a) **Legislation**

[17] Section 1 of The BPCPA defines the following:

**"consumer transaction"** means

(a) a **supply** of goods or services or real property by a **supplier** to a **consumer** for purposes that are **primarily personal, family or household**, or

(b) a solicitation, offer, advertisement or promotion by a supplier with respect to a transaction referred to in paragraph (a),

and, except in Parts 4 and 5, includes a solicitation of a consumer by a supplier for a contribution of money or other property by the consumer;

**"supply"** includes, in respect of the supply of goods or services or real property to a consumer, a sale, lease, assignment, award by chance or **other disposition**;

**"supplier"** means a person, whether in British Columbia or not, who in the course of business **participates** in a consumer transaction by

(a) supplying goods or services or real property to a consumer, or

(b) soliciting, offering, advertising or promoting with respect to a transaction referred to in paragraph (a) of the definition of "consumer transaction",

whether or not privity of contract exists between that person and the consumer, and includes the successor to, and assignee of, any rights or obligations of that person and, except in Parts 3 to 5 [*Rights of Assignees and Guarantors Respecting Consumer Credit; Consumer Contracts; Disclosure of the Cost of Consumer Credit*], includes a person who solicits a consumer for a contribution of money or other property by the consumer;

**"consumer"** means an **individual**, whether in British Columbia or not, who participates in a consumer transaction, but does not include a guarantor;

[18] Section 1 of the MDA defines sale as:

**"sale"** means a lease, exchange or other disposition or supply of a **motor vehicle** to an **individual** primarily for the individual's **personal or family use**;

[19] Sections 28(4) and 29 of the *Interpretation Act* define disposition as:

**"dispose"** means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things;

[20] There is no definition of "primarily personal, family or household" under the BPCPA or the MDA. This phrase is found in many pieces of legislation in B.C. such as the *Sale of Goods Act* and the *Personal Property Security Act*. Where that phrase has been considered under those statutes, it is accepted that if most of a vehicle's use is for business purposes, then it is not being used primarily for personal, family or household use. Those cases also suggest that the intended use is assessed at the time of purchase. After purchase conduct may be considered in order to assess the purchaser's intended use of the vehicle at the time of purchase.

[21] The word "individual" in the MDA is to be given a different meaning than "person" as defined in the *Interpretation Act*. Individual means a natural person: *Fireman's Fund Insurance Co of Canada v Shoreline Auto Sales Ltd*, [1986] BCJ No. 1745 (BC Supreme Court).

[22] From the foregoing, in order for there to be a consumer transaction or sale, the following must exist:

- (a) A supplier, which can be a business and/or individual and they need not have directly entered into a contract with the consumer,
- (b) A consumer, who is to be an individual,
- (c) A supply of goods or services (also as defined in the BPCPA), and
- (d) The primary purpose for the supply of the goods or services is for personal, family or household use.

(b) ***Deceptive act or practice and the reverse onus provision***

[23] Sangam, Adil Rizwan, Trinity and Baldip Sachdeva say the transfer of the Mercedes and the Porsche were not consumer transactions. If so, the reverse onus provisions of section 5(2) of the BPCPA would not apply in this situation.

[24] Section 5 of the BPCPA states:

**5** (1) A supplier must not commit or engage in a deceptive act or practice in respect of a consumer transaction.

(2) If it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

[25] Section 9(2) of the BPCPA says the same in relation to unconscionable acts.

[26] Deceptive act or practice is defined in section 4 and states:

**"deceptive act or practice"** means, in relation to a consumer transaction,

- (a) an oral, written, visual, descriptive or other representation by a supplier, or
- (b) any conduct by a supplier

that has the capability, tendency or effect of deceiving or misleading a consumer or guarantor;

**"representation"** includes any term or form of a contract, notice or other document used or relied on by a supplier in connection with a consumer transaction.

[27] Section 4(3) of the BPCPA contains types of conduct which is deemed to be deceptive acts or practices. In each case, it is clear that a representation by a supplier must occur. It is clear that the deceptive act provisions must be related to a consumer transaction. It is also clear that a deceptive act or practice is in relation to representations or "any conduct" by a supplier that has the "capability, tendency or effect of deceiving or misleading a consumer or guarantor". It has been held that these provisions protect a consumer from having a supplier make misrepresentations by words, deeds or conduct that mislead a consumer into entering into an agreement.

*Crown Auto Body and Auto Sales Ltd v Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894.

*Cummings v 565204 B.C. Ltd (Daewoo Richmond)*, 2009 BCSC 1009.

[28] There is one key deemed deceptive act or practice for consideration under these facts:

(3) Without limiting subsection (1), one or more of the following constitutes a deceptive act or practice:

(b) a representation by a supplier

(vi) that uses exaggeration, innuendo or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading,

[29] Mister Justice Willcock (as he was then) interpreted this section and stated that a deceptive act may occur where representations are made, but the dealer fails to state a material fact: *Applewood Motors Inc v Ratte & Registrar of Motor Dealers* (April 13, 2010: SCBC Action No. S094126, Vancouver Registry) (BC Supreme Court).

(c) ***Discussion on the evidence***

[30] Regardless of whether I believe the Complainant's version of events or that of the Respondents, the evidence does not support that the issue here involved a consumer transaction, sale or other disposition for "purposes that are primarily personal, family or household" as defined in the BPCPA and the MDA.

[31] Adil Rizwan asserts that the Complainant purchased the Vehicles with the intention of exporting them as a means to make extra money. The Complainant does not deny this was

to be the intention of buying the Vehicles and expressly admits to this in his evidence, and, specifically, in his written statement. So if I accept this version of events, this was not a consumer transaction as the intended use of the Mercedes and the Porsche was not primarily for purposes that are "personal, family or household." This was a business transaction.

- Written statement of the Complainant attached as Exhibit U (pages 108-118) of the Affidavit of Ross Cote. The Affidavit was entered as Exhibit 5 at the hearing.

[32] If I accept the Complainant's version of events, then no consumer transaction as defined in the BPCPA and within my jurisdiction occurred at all. The Complainant says that the purchase of the Mercedes and the Porsche for export did not occur. He says Mr. Rizwan, Auto Empire or others forged documents to obtain financing and place the Vehicles in his name. Under these facts, there were no representations made to the Complainant in relation to a consumer transaction. The allegation is one of fraud and forgery not of deception/misrepresentation within a consumer transaction as defined by the BPCPA. Even if I accept that the deceptive act or practice occurred "after" discussions between the Complainant and Mr. Rizwan to enter into a transaction, the intended transaction was for a purpose other than "personal, family or household use".

[33] I also consider whether there was evidence that Adil Rizwan's assistance in obtaining boat financing, a service, for the Complainant would be a consumer transaction. If there was evidence that the information provided by the Complainant for the boat financing was used after that transaction to forge documents to acquire the two Vehicles, that may be a deceptive act or practices, as under section 4(2) of the BPCPA:

(2) A deceptive act or practice by a supplier may occur before, during or after the consumer transaction.

It could be a misrepresentation by failing to state a material fact: section 4(3)(b)(vi) of the BPCPA. That missing material fact was advising that the information provided for the boat financing would also be used to purchase the two Vehicles without the Complainant's knowledge and consent.

[34] I have rejected this position for two reasons. First, there was nothing contained in the Hearing Notice that the boat transaction would constitute the consumer transaction relied on in this matter. The Respondent's did not have proper notice of the case they had to meet. Second, the Complainant's own evidence is that the purpose of buying the boat was to fix it up and "flip it". In such a case, the purpose for buying the boat was not for "personal, family or household use."

[35] The facts as presented by all parties, regardless of whom I believe, do not support that there was a "consumer transaction", "sale" or "other disposition" for purposes that were primarily personal, family or household as defined in the BPCPA and the MDA. I find the BPCPA, including the deceptive and unconscionable acts and the reverse onus provisions, do not apply to this case.

**B. Do I have authority to consider the allegations under the MDA- "conduct"?**

**(a) Legislation**

[36] A motor dealer must be registered pursuant to the MDA. Section 5 allows the registrar to review the past conduct of a motor dealer to see if it is in the public interest that they continue to be registered:

5 If the financial responsibility or past conduct of an applicant or person registered, or its officers or directors if the applicant or person registered is a corporation, is, in the opinion of the registrar, such that it would not be in the public interest for the applicant or person to be registered or continue to be registered, the registrar may,

- (a) if the application is made under section 4, refuse to register, or refuse to renew registration, or
- (b) if a person is registered,
  - (i) cancel the registration, or
  - (ii) suspend the registration for a period of time and subject to conditions the registrar considers necessary.

[37] A salesperson must be licensed pursuant to the *Salesperson Licensing Regulation*, BC Reg /2004:

6 If the conduct of an applicant or licensee is, in the opinion of the authority, such that it would not be in the public interest for the applicant or licensee to be licensed or continue to be licensed, the authority may

- (a) refuse to issue the licence, or
- (b) if a person is licensed,
  - (i) cancel the licence, or
  - (ii) suspend the licence for a period of time and subject to conditions the authority considers necessary.

[38] Reviewing these two provisions emerges the following principles:

- (a) A review of conduct has not been limited temporarily, geographically or by subject type. It simply needs to be conduct that is of concern to the public interest in order for the registrar to be able to review it: *Re: Stephen Albert Ironside* (BC Registrar, #11-026) and *Re: Bruce Ironside* (BC Registrar of Motor Dealers, File 11-025, May 27, 2011).
- (b) What is conduct that is of concern to the public interest must be assessed contextually with the purpose of the MDA and the Regulation in mind. The categories of conduct that may be of concern are not limited, but the following have been recognized in past registrar decisions:
  - ...encompasses any act or omission or course of behaviour that affords reasonable grounds to believe that the business [or person] will not be carried on in accordance with law, honesty and integrity: *Re: Badshah* (Registrar's

Decision, File 09-71010, September 24, 2010) at paragraph 20 citing *Prestige Toys Ltd v Ontario (Registrar, Motor Vehicle Dealers Act)*, 2009 CanLII 43657 (Ont. Superior Court of Justice).

- behaviour indicating a lack of transparency or candour on the part of the salesperson in their interaction with the VSA: *Re: Badshah and Dirani*;
  - behaviour indicating the salesperson is or will be ungovernable, meaning they will not abide by lawful orders of the Registrar or the VSA: *Registrar v Peter Fryer* (December 13, 2013, File 13-11-005) at paragraph 11, citing *Evans v Society of Notaries Public (British Columbia)* 2010 BCSC 1232 (Supreme Court);
  - behaviour of concern to consumers' personal, financial and otherwise confidential information: *Registrar v Peter Fryer* at paragraph 10; and *Re: Basset* (Registrar of Motor Dealers, December 2, 2009, File 09-108822) at paragraph 22; and
  - behaviour of concern indicating an inability to trust the salesperson: *Re: Basset* at paragraph 22.
- (c) Where a motor dealer that is a corporate entity is being reviewed, the registrar may look past the corporate veil and review the conduct of the corporation's directing minds (officers and directors). It is recognized that from a licensing standpoint, corporations act through people and it's the peoples' conduct that is to be assessed: *Registrar v Key Track Auto Sales & Detailing Ltd* (June 8, 2010, File 10-013).

[39] It must also be remembered that the purpose of licensing is to assess persons to see if they pose a future risk to the public if allowed to operate within the licensed industry: *Registrar v Peter Fryer* at paragraph 9; and *Re: Bruce Ironside* (BC Registrar of Motor Dealers, File 11-025, May 27, 2011) at paragraph 8.

[40] The goal of licensing is to prevent future harm from occurring and those who are licensed are deemed to have accepted certain terms and conditions regarding their conduct: *R v Fitzpatrick*, [1995] 4 SCR 154 (Supreme Court of Canada) at paragraph 40.

[41] In *R v Wholesale Travel Group*, [1991] 3 SCR 154, Mr. Justice Cory stated:

The objective of regulatory legislation is to protect the public or broad segments of the public (such as employees, consumers and motorists, to name but a few) from the potentially adverse effects of otherwise lawful activity. Regulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests....

... In short, regulation is absolutely essential for our protection and well being as individuals, and for the effective functioning of society. It is properly present

throughout our lives. The more complex the activity, the greater the need for and the greater our reliance upon regulation and its enforcement.

**(b) Discussion**

[42] The allegations against the Respondents are ones of deceit. It involves allegations that the Respondents have used the name and financial credit of the Complainant for their own purposes and to the Complainant's detriment. These allegations engage the public interest administered by the Registrar. Consumer's interacting with registered dealers and licensed salespersons expect to do so free from concern that their personal information will be used in the way that is alleged here, and causing the harm alleged to have occurred.

[43] I find the alleged conduct of the Respondents engages my authority to review each of them to see if they committed the conduct alleged and if so, what compliance action should be taken.

**C. Did the Complainant agree to the purchase, financing and insuring of the Mercedes and the Porsche?**

[44] The greatest contention in the evidence is on this point. The issue of witness credibility and reliability is very much alive. In assessing the evidence of the witnesses I keep in mind the principles noted by Dillon J. in *Bradshaw v Stenner*, 2010 BCSC 1398:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v Bosanquet (Township)* (1919), 59 SCR 452, 50 DLR 560 (SCC)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v Davis*, [1926] 31 OWN 202 (Ont HC); *Farnya v Chorny*, [1952] 2 DLR. 152 (BCCA) [*Farnya*]; *R. v S (RD)*, [1997] 3 SCR 484 at para.128 (SCC)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

Applied in *Crest Realty Westside Ltd (Re/Max Crest Realty Westside) v W & W Parker Enterprises Ltd*, 2014 BCSC 1328 and also observing:

[44] One aspect of assessing credibility mentioned by Dillon J. is particularly applicable in this case. That is the witness' testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence (see para. 187). In this case the important documentary evidence consists of the signed listing agreements, the signed cancellation agreement and numerous printed emails. The emails provide the most accurate history of what has transpired between the

three individuals and are much more reliable than the memories of the individuals of events that occurred about two years prior to this trial.

[45] The Complainant denies he signed the documents which were ultimately submitted to Ally and TD Bank to obtain financing. The exception to this is that he did sign the TD Canada Trust New Direct Deposit/Pre-Authorized Transaction document date stamped by TD on November 29, 2011, and which forms part of the financing and sale documents submitted to the finance companies: page 22 (Mercedes) and page 47 (Porsche) of the Affidavit exhibits, being Exhibit 5. The Complainant states this Pre-Authorization form was provided to Adil Rizwan to obtain financing on the boat purchase. This is corroborated by his email to Adil Rizwan dated November 29, 2011, with an attachment "PAP form for Boat.pdf": pages 112-113 of the Affidavit exhibits, being Exhibit 5.

[46] Derek Irving from RBC, which has taken over Ally accounts since the transaction, produced the application for financing of the Porsche. The Direct Deposit/Pre-Authorization form is also contained in this package of documents: Exhibit 19 at the hearing. Dan Weaver, Regional Security Manager for the TD Bank produced documents that were submitted to TD Bank to finance the Mercedes. They are less extensive than produced by RBC and do not contain the Direct Deposit/Pre-Authorization form: Exhibit 20 at the hearing.

[47] I am satisfied on a balance of probabilities that the signatures on the Porsche and Mercedes purchase agreements and their respective finance documents that were submitted to TD and Ally are not those of the Complainant. The signatures are starkly different than all other samples of the Complainant's signature found on the writing sample he provided (page 13 of Affidavit Exhibits); on the Direct Deposit/Pre-Authorization form; on copies of his driver's licence (pages 24 and 66 of the Affidavit Exhibits) and on the purchase agreement and documents to purchase the boat (Exhibit 22 at the hearing).

[48] The Complainant was questioned about the arthritis he has and how that affects his signature. The Complainant said he had just been diagnosed with a special type of arthritis before November of 2011, but that it does not affect his hands or his signature. I would note that the signature on the Direct Deposit/Pre-Authorization form, which was date stamped November 29, 2011, by the TD Bank is consistent with the Complainant's other accepted signatures. The signatures on the Porsche purchase agreement, also dated November 29, 2011, are starkly different. Given the consistency of the Complainant's signature on other documents, I do not find his arthritis affected his signatures during the times in question here.

[49] I am bolstered in my view that the signatures are not those of the Complainant from a review of the purchase and finance documents for the Mercedes and Porsche, the insurance and registration documents for the Mercedes and Porsche, along with the testimony of the Complainant, Adil Rizwan and Peter Hung (Autoplan Agent):

- (a) The signed purchase agreement for the Mercedes is dated November 28, 2011;
- (b) The signed purchase agreement for the Porsche is dated November 29, 2011;
- (c) The I.C.B.C. insurance documents show the Porsche was insured on November 29, 2011: page 7 of the Affidavit Exhibits;

- (d) The I.C.B.C. insurance documents show the Mercedes was insured on November 30, 2011: page 5 of the Affidavit Exhibits;
- (e) The credit application allowing TD to run a credit check on the Complainant for the Mercedes is dated November, 28, 2011. TD Auto Finance performed a credit check on the Complainant on November 28, 2011: (Equifax report, page 123 of the Affidavit Exhibits);
- (f) Mr. Rizwan gave evidence that the Complainant attended his dealership to sign the finance documents on different dates. One set for the Mercedes on November 28, 2011, and one set for the Porsche on November 29, 2011: Transcript of Proceedings, May 30, 2014, pages 109-111.
- (g) Under cross examination, Mr. Rizwan then gave evidence indicating the Complainant signed the finance documents for both Vehicles on the same day and that the Mercedes was picked up near the end of the day on November 28, 2011, and that the Porsche was gone when he went to work the next morning, which would be November 29, 2011: Transcript of Proceedings, May 30, 2014, pages 109-111.
- (h) While questioned by Adil Rizwan, Peter Hung, the Autoplan agent, testified he did the transfers and insurances for the Mercedes and Porsche. Mr. Peter Hung agreed with Mr. Rizwan that he attended the dealership on Cambie Road in Richmond on November 29, 2011, to deal with the Porsche and then on November 30, 2011, to deal with the Mercedes, and at each instance the Complainant was in attendance: Transcript of Proceedings, March 20, 2014 pp. 185-186.
- (i) Mr. Peter Hung stated Adil Rizwan signed the ICBC Transfer/Tax Form (APV9T), for the Porsche on behalf of Trinity as the selling dealer which is date stamped November 29, 2011: page 8 of the Affidavit Exhibits.
- (j) Peter Hung provided evidence of what the DCID number on the top of the insurance documents means. His testimony was a bit confusing, but what is clear is that the number indicates when he first opens the computer system to start an enquiry or application process – when he presses 'enter'. Based on the DCID number for the Porsche, the insurance process started at 2:57 p.m. on November 29, 2011: Transcript of Proceedings, p. 163 and 182.
- (k) The TD New Direct Deposit/Pre-Authorized Transaction document that formed part of the finance documents submitted to Ally for the Porsche was date stamped November 29, 2011, and emailed to Adil Rizwan around 2:32 p.m. on that day: pages 112-113 of the Affidavit Exhibits. On November 29, 2011, at 2:52 p.m. the Complainant sent an email to an employee at the City of Burnaby with information on a proposed sign for a customer along with attachments: page 126 of the Affidavit Exhibits, and Transcript of Proceedings, May 30, 2014, page 170. This later email is five minutes before Autoplan Agent, Peter Hung, says he started processing the paper work to insure the Porsche.

- (l) Mr. Rizwan said the bank will not allow the finance documents to be printed off the system unless they are approved and have been green lighted in the dealer portal: Transcript of Proceedings, May 30, 2014, pages 109-111. The Porsche finance documents submitted to Ally show a date of November 28, 2011, which are printed on the forms, not hand written, throughout. I note that the Approved status for the Ally financing has a last modified date and time of November 29, 2011, at 13:49:37. Also on that page is \*\*\*\*Standard Conditions\*\*\*\*\* with a date and time of 29/11/2011 6:47:07 a.m. Mr. Rizwan's evidence was the Porsche was gone from the dealership before he arrived for work on November 29, 2011, as noted in paragraph (g).
- (m) The Complainant denies he signed the ICBC Transfer/Tax Form (page 8 of the Affidavit Exhibits) or the ICBC Owner's Certificate of Insurance (page 7 of the Affidavit Exhibits) for the Porsche. While the signatures on those documents look similar to the Complainant's signature, they are still not the same. Also, the two signatures purporting to be that of the Complainant on the Owner's Certificate (page 7) are noticeably different from each other (especially the 'J' and the end of the signature). I find this type of discrepancy is not usual when the signature belongs to its owner and signed at the same time on the same document. Both those signatures are also dissimilar to the APV9T (ICBC Transfer/Tax form) signature (page 8) (especially the 'on' in Jason and the formation of the 'o' in Crombie).
- (n) The Complainant denies he signed the ICBC Transfer/Tax Form (page 6 of the Affidavit Exhibits) or the ICBC Owner's Certificate of Insurance (page 5 of the Affidavit Exhibits) for the Mercedes. While the signatures on those documents look similar to the Complainant's signature, they are still not the same. Like the signatures on the Porsche's Owner's Certificate, the signatures on the Mercedes' Owner's Certificate are themselves dissimilar from each other (especially the 'J' in Jason; how the 'J' connects to the 'a' in Jason; the 'ro' in Crombie, how the 'i' is dotted in Crombie, and the ending of the signature). Again, I find this is too much of a discrepancy to be the signature of its owner who signed twice on the same document. These signatures are themselves not the same as the one on the APV9T (ICBC Transfer/Tax form) (page 6) (especially how the 'rom' in Crombie is formed and the ending of the signature on Crombie).
- (o) Peter Hung gave evidence that he recalled this transaction. He found it remarkable that a person would buy a Porsche one day and a Mercedes the next day thinking to himself "did this guy win the 6/49". He said it was the same person each day: Transcript of Proceedings, March 20, 2014, page 180. The description Mr. Hung gave of the person he dealt with did not fit the description of the Complainant: Transcript of Proceedings, March 20, 2014, pages 161-162. Mr. Hung could not identify the person in the hearing room who was the Complainant, even after Mr. Adil Rizwan suggested the person could have lost weight, cut his hair, now wear glasses and told Mr. Hung to look to his right (the Complainant was sitting directly to the right of Mr. Hung at the hearing) and see if that changed anything: Transcript of Proceedings, March 20, 2014, pages 185-188. Peter Hung did say he would have checked the driver's licence. Under cross examination by the Complainant, Mr. Hung said he does not think the

Complainant was at the dealership when Mr. Hung was at the dealership, but later said he was: Transcript of Proceedings, March 20, 2014, pages 193 and 207. Mr. Hung also testified that he has signed the Transfer/Tax Form (APV9T) on behalf of dealerships if he cannot find someone to sign the forms: Transcript of Proceedings, March 20, 2014, page 214.

- (p) The Complainant cross-examined Mr. Rizwan about why the Porsche was insured first instead of the Mercedes which, according to Mr. Rizwan, was purchased first. Mr. Adil Rizwan became evasive during this cross-examination and said that was between ICBC and the Complainant: Transcript of Proceedings, May 30, 2014, page 165.
- (q) When both the Porsche and Mercedes were insured, the Complainant was named as the owner but the principal operator of both the Vehicles was Pascal Beauregard. This detail, along with Mr. Beauregard's driver's licence number, are noted on the Owner's Certificate for the Mercedes (page 5 of the Affidavit exhibits) and the Porsche (page 7 of the Affidavit exhibits). Peter Hung said he obtained the principal operator's name and his driver's licence number from the Complainant. Peter Hung said he is not required to look at the principal operator's driver's licence: Transcript of Proceedings, March 20, 2014, pages 167-169. This statement does not make any sense. If someone is to be the principal operator of the motor vehicle, they would require to be licensed and confirmation of that fact important as this would affect insurance coverage – unlicensed driver. Within the documents retrieved from Sangam by Compliance Officer Ross Cote, was a copy of a driver's licence for Pascal Beauregard: page 48 of the Affidavit Exhibits. The Complainant denied even knowing Pascal Beauregard at that time. I find Mr. Hung obtained the driver's information from this photocopy.

[50] The Complainant stated his intended purpose for looking into buying vehicles was to export them to Australia to make money. This evidence was corroborated by Igor Bradaric in oral testimony and his written statement (page 122 of the Affidavit Exhibits) and in the written statement of Eathan Skwira (page 121 of the Affidavit Exhibits). It does not make sense that the Complainant would allow Pascal Beauregard to become the principal operator of both the Porsche and the Mercedes and allow those Vehicles to be driven for almost a year, if the proposed venture was to ship vehicles out of country.

[51] From the forgoing I find the evidence of the Complainant to be preferable to that of Adil Rizwan. The Complainant's evidence on these points is consistent with the documentary evidence. His evidence did not change under questioning. There is internal consistency in the Complainant's evidence. The Complainant's evidence makes common sense and meets the *Fornya* test that the preponderance of possibilities is that the Complainant did not sign the applications submitted to Ally and TD for financing, the purchase agreements, or the insurance documents regarding the Porsche and the Mercedes.

[52] I found Mr. Adil Rizwan's evidence on the above issues did not have internal consistency and did not align with all the documentary evidence. Mr. Rizwan's evidence changed when he was challenged on the above discrepancies in the dates. I will comment further on Mr. Rizwan's credibility as I now turn to a discussion on other evidence tendered at the hearing.

## **D. Comments on the other evidence**

### ***Exhibit 8 – Credit Application Auto Empire***

[53] Mr. Rizwan tendered Exhibit 8 at the hearing. This is a credit application dated November 21, 2011, in the name of Auto Empire. The Complainant's name and a signature appear on the document. It allows Auto Empire to run a credit check. Mr. Rizwan says the Complainant signed this document. The Complainant denies this is the case: Transcript of Proceedings, March 20, 2014, pages 77-80. Under questioning, Mr. Rizwan admitted the signature does not look like the signature of the Complainant that is on the boat application: Transcript of Proceedings, May 30, 2014, p. 160. I note the signature and writing on this document is the same as found on the finance documents submitted to the finance companies that I have found were falsified. I note Auto Empire never ran a credit check on or near this date: Equifax Report, page 123 of the Affidavit Exhibits. I also note the authorizations to run credit checks regarding the Porsche and Mercedes were signed after November 21, 2011.

[54] The Bank of Montreal, who financed the boat, did their own credit checks on November 30 and December 5, 2011 and would require their own authorizations: Exhibit 22. There appears to be no reason for the Complainant to have signed a credit application authorizing Auto Empire to do a credit check on November 21. Also, this document was only produced at the hearing and not when the dealer's file was asked to be produced by Mr. Cote on August 12, 2013, which was five days after Mr. Rizwan, Mr. Sachdeva, the Complainant and Mr. Cote met to discuss the allegations. By August 12, 2013, Mr. Rizwan knew the importance of producing all documents which would support his case and this document only came to light at the hearing.

[55] I find on a balance of probabilities that this document was not signed by the Complainant.

### ***Exhibit 9 – Income Tax documents submitted by Adil Rizwan***

### ***Exhibit 17 – Income Tax documents submitted by the Complainant***

### ***Exhibit 22 – Boat financing documents***

[56] The Complainant's evidence was that he had provided Notices of Assessment to Eathan Skwira when he was looking to buy rental property.

[57] Mr. Rizwan says the Complainant provided him with T4's for 2009 and 2010 along with Notices of Assessment for those years: Exhibit 9. The Complainant denies these are even his T4's because they have the name of Pax Designs as employer. In 2009 and 2010 the Complainant was a sole proprietor (self-employed) operating as Pax Designs. There would be no reason to issue a T4 from a non-existent company. In essence, Mr. Rizwan would have me believe that the Complainant, as Pax Designs, issued a T4 to himself. This makes no logical sense whatsoever. Also, looking at the 2009 T4, box 54, on Exhibit 9, the payroll account number is blank. On the 2010 T4, box 54, on Exhibit 9, the payroll account number is blacked out.

[58] I also note there are no T4's in the dealer's file, or submitted to the finance companies as proof of income: Exhibits 19 and 20. They were first produced at the hearing

even though Mr. Rizwan was asked for the dealer file on August 12, 2013. During questioning, Mr. Rizwan said these T4's were internal dealer records and he kept them separate from the dealer file. He later, in questioning, admitted that they would be part of the dealer file for these transactions: Transcript of Proceedings, May 30, 2014, pages 103-105. I note Mr. Rizwan was a bit disjointed and appeared to struggle when providing this evidence. He initially said he was given these documents for the financing of the Vehicles. When asked why he did not give these documents to Mr. Cote, Mr. Rizwan stated Mr. Cote asked for documents for purchasing/financing and when Mr. Dunn asked why these were not related to financing, Mr. Rizwan attempted to avoid answering the question, but finally admitted these tax documents would form a part of the dealer file on these transactions.

[59] In contrast, the Complainant's evidence that these were not his T4's was clear, he did not waiver and his evidence made common sense.

[60] I find on a balance of probabilities that these are not the Complainant's T4's.

[61] The Complainant also said the 2009 and 2010 Notices of Assessments (Exhibit 9) are not his, especially as the reported numbers are inflated. The Complainant provided his 2009 and 2010 Notices of Assessments: Exhibit 17. In 2009, the Complainant's Notice of Assessment (Exhibit 17) shows a net loss for the year compared to the six figure net income shown on the Notice of Assessment provided by Mr. Rizwan (Exhibit 9). For 2010, the Complainant's Notice of Assessment (Exhibit 17) shows a net income under \$10,000 while the Notice of Assessment submitted by Mr. Rizwan (Exhibit 9) shows a six figure net income. A comparison of the two sets of Notices of Assessments shows that Exhibit 9 provided by Mr. Rizwan has been altered:

- (a) Notice of Assessment 2009 Year: The top area, date, name, SIN and tax year are identical, including the different font size for the Complainant's name. However, Exhibit 17 (Complainant) shows the RRSP deduction limit for the year, where Exhibit 9 (Rizwan) does not. Also, the name of the Commissioner of Revenue is printed at the bottom of the page in Exhibit 9 (Rizwan) while it is above the RRSP deduction limit in Exhibit 17 (Complainant). Finally, there are line-bars on the lower right side of the documents. Exhibit 17 (Complainant) has two lines, a space, one line, a space, and two lines. Exhibit 9 (Rizwan) has two lines a space and three lines.
- (b) Notice of Assessment 2010 Year: Again the top area looks identical on Exhibit 9 (Rizwan) and Exhibit 17 (Complainant). Exhibit 17 (Complainant) has an explanation box for RRSP on the bottom of the page. Exhibit 9 (Rizwan) is blank. Exhibit 9 (Rizwan) has line-bars on the bottom right of two lines, a space, one line, a space, and two lines, which is the same as the Complainant's 2009 Notice of Assessment (Exhibit 17). The Complainant's Notice of Assessment for 2010 also has a watermark feature that has background wording when photocopied. This is not present on Mr. Rizwan's 2010 Notice of Assessment (Exhibit 9).

[62] Exhibit 22 is the boat finance documents submitted by Mr. Rizwan. Mr. Rizwan pointed out that the Complainant falsified his income on this document, showing monthly gross income of \$12,500. Mr. Rizwan says comparing this to the Notices of Assessment that the Complainant provided shows he falsified Exhibit 22. I would point out that for me to

accept Mr. Rizwan's contention requires I accept that the Notices of Assessments in Exhibit 17, submitted by the Complainant, are to be considered true and not the ones Mr. Rizwan submitted (Exhibit 9). This is another highlight of how Mr. Rizwan's testimony changes in order to make out his point.

[63] Exhibit 22 shows the Complainant is declaring \$12,500 per month of gross income – before taxes and deductions. The application does not ask if this was his past income and this could be his current or 2011 income. If it is the Complainant's 2011 declared gross monthly income, then the 2009 and 2010 Notices of Assessments, which only show total and net income, have no bearing on this 2011 gross monthly income declaration. As the Complainant noted while being questioned, as a sole proprietor, he had many business expenses that could bring his gross income down to near nothing. This does not mean he did not have a gross income of six figures. I find there is insufficient evidence to say the Complainant falsified his boat application by over-exaggerating his income.

[64] I would also highlight the connection of the \$12,500 monthly gross income on the boat application and the declared total income on the 2009 and 2010 Notices of Assessments submitted by Mr. Rizwan (Exhibit 9).  $\$12,500 \times 12 \text{ months} = \$150,000$  per year. On the 2009 Notice of Assessment Mr. Rizwan submitted (Exhibit 9), the total income is declared as \$151,277 and the 2010 Notice of Assessment (Exhibit 9) shows \$153,927 a difference of \$2,650 in net earnings year over year for a sole proprietor. I find this alignment of total or net income and the declared gross monthly income highly coincidental, especially as there is a \$16,000 difference, year over year, in the Notices of Assessments provided by the Complainant (Exhibit 17). This assists further in my finding that the Notices of Assessment submitted by Mr. Adil Rizwan are falsified as they closely align with the gross income declaration the Complainant made on the boat finance documents in Exhibit 22.

[65] Based on the above, I find on a balance of probabilities that Exhibit 9 contains false tax records provided at the hearing by Mr. Adil Rizwan.

[66] The Complainant admitted that the boat financing documents (Exhibit 22) appear to be correct and have his signature: Transcript of Proceedings, May 30, 2014, pages 101 to 102.

***Exhibits 10 and 11 – Porsche and Mercedes Purchase and Finance Agreements, signed a second time?***

[67] Mr. Rizwan says the Complainant was asked to come back and sign purchase and finance documents for the Porsche and Mercedes a second time. Mr. Rizwan says the Complainant did this around the first week of December, 2011. Mr. Rizwan says he asked the Complainant to sign these documents a second time because he found it odd that the Complainant said he had arthritis which made signing documents difficult. Mr. Rizwan had never come across this before and wanted to get a second signed set just in case. Exhibit 10 relates to the Mercedes and Exhibit 11 relates to the Porsche.

[68] Again, these documents were submitted for the first time at the hearing. Mr. Rizwan said he kept them separate from the dealer file. I find it odd Mr. Rizwan would not keep

signed copies of the purchase and finance agreements for vehicle sales in the dealer file. This especially, as by August 7, 2013, he knew the allegations from the Complainant that the records were falsified and the dealer file was retrieved by Mr. Cote on August 12, 2013. I would expect someone trying to show the transaction went as he described it would produce all the supporting records at the investigation stage and not wait until the hearing.

[69] The Complainant reviewed Exhibits 10 and 11 and said the signatures more closely resemble his, but they are not his. He admits that in the first week of December, 2011, he did sign credit application documents to see if he would qualify for financing as part of the exporting of vehicles to Australia venture. This admission is corroborated in his statement to the RCMP which he provided to this hearing: page 108-118 of the Affidavit Exhibits. It is also corroborated by the written statement of Eathan Skwira: page 121 of the Affidavit Exhibits. The Complainant also emailed the RCMP statement to TD on August 1, 2013, when he was going to default: Exhibit 19. I note this is a statement against the Complainant's interest as he admits to signing loan documents for two vehicles on or about December 9, 2011. This assists in my overall assessment of the Complainant's credibility as it tends to show he is not inclined to hide information that may otherwise be harmful to his case.

[70] I have reviewed Exhibits 10 and 11 and on a balance of probabilities, I find they do not have the signature of the Complainant upon them. The signatures throughout Exhibit 10 are slightly inconsistent with each other and are inconsistent with known samples of the Complainant's signature, such as his driver's licence. I also note the pre-authorized payment portion of Exhibit 10, showing TD account information (page 3 of 5), is not filled out when compared to the documents submitted to the TD Bank, Exhibit 20. The purchase agreement submitted to the TD Bank has the statutory declarations required by the MDA completed and initialed on Exhibit 20. There are no initials on the purchase agreement's declarations on Exhibit 10. I expect if Mr. Rizwan was concerned about the Complainant's signature on the purchase agreement and finance documents, as he said he was, he would also be equally concerned that the statutory declarations were also initialed on Exhibit 10, and they were not.

[71] Exhibit 11 suffers the same problems as Exhibit 10. There are no initials by the statutory declarations as one would expect and as are present on the purchase agreement in Exhibit 19 and submitted to Ally. Exhibit 11 also has signatures in the wrong place and is inconsistent with the placement of signatures in Exhibit 19. Exhibit 11 has a document with a signature wrongly placed called "Authorized Signing Person Identification and Disclosure Form," and Exhibit 19 does not have this document. Exhibit 19 has a document called "Third Party Information and Disclosure Form" which is signed and Exhibit 11 does not have this document. If, as Mr. Rizwan says, it was important to get the Complainant's signature again on the documents out of concern that something may be wrong, I expect Mr. Rizwan would ensure the exact same documents would be signed in the exact same place. That did not happen with Exhibit 11.

[72] Finally, and most importantly, Exhibits 10 and 11 were not the documents that were submitted to Ally and TD Finance, those were Exhibits 19 and 20.

[73] Overall, I find on a balance of probabilities that the Complainant did not sign Exhibits 10 and 11. These documents were submitted by Mr. Rizwan at the hearing and his story of why he had the Complainant sign them again is simply unbelievable and does not align with the documents themselves. If they were that important to be resigned, they would be identical documents, signed in the same place and located in the dealer file. I find on a balance of probabilities that Mr. Rizwan knowingly submitted these falsified documents at the hearing.

***Exhibit 12 Email of January 4, 2012 from the Complainant to Adil Rizwan.***

[74] At the hearing, Mr. Rizwan provided an email dated January 4, 2012, with the Complainant asking "Hey Adil, Just a quick reminder to send copies of the paperwork for the two cars!" Mr. Rizwan notes that the Complainant's evidence was he was unaware of the two Vehicles being in his name until late January, 2011. This email, Mr. Rizwan says, is proof that the Complainant was aware of these Vehicles being in his name sooner and, by extension, Mr. Rizwan asks me to infer the Complainant knew about the transaction involving the Porsche and Mercedes from the beginning.

[75] The Complainant did give evidence that he became aware that he was the owner of the Porsche sometime "in the later part of January" when he received a parking ticket in the mail from the City of Vancouver. The Complainant gave this same evidence in the statement to the RCMP which he also forwarded to TD Bank: pages 108 -118 of the Affidavit Exhibits and Exhibit 19.

[76] The Complainant submitted a bundle of documents including the parking tickets he received: Exhibit 18. The first City of Vancouver Parking ticket shows an infraction date of January 2, 2012, for the Porsche and a statement date of January 18, 2012. The statement shows the ticket was not paid within the 14 days of the offence date, indicating a 14 day wait period is in place before the statement is issued. The Complainant would have received this first notice from the City of Vancouver after January 18, 2012, or "the later part of January." As to the request for the paperwork for the two Vehicles, the Complainant had a difficult time recollecting sending this email, but noted that he may simply have been inquiring about the application for financing and credit approval he admits to signing around the first week of December, 2011. The written statement of Eathan Skwira corroborates the Complainant attending the dealership at this time for this exact purpose (page 121 of the Affidavit Exhibits). He said he thought things quieted down on this business venture during the holidays and he was simply following-up on the applications. I note the Complainant's evidence at the hearing was consistent with his past statements to the police and with the evidence of the City of Vancouver parking tickets. His reasons for asking for paper work makes sense and Mr. Rizwan confirms the Complainant came to the dealership in the first week of December to sign paperwork on the Porsche and Mercedes, albeit for different reasons according to Mr. Rizwan, which I rejected above.

[77] I also find it odd that this email, which Mr. Rizwan finds important to his case, only came to light during the course of the hearing. If this was important evidence to show the Complainant was not being truthful, I would have expected it to have come forward when Mr. Cote asked for the dealer's file, which was also after Mr. Rizwan knew the Complainant's allegations of falsified documents.

[78] On a balance of probabilities, I do not find this email proves what Mr. Rizwan says it proves. It is an email requesting paperwork on the "two cars", and the Complainant said he signed paperwork to see if he would qualify for financing on the "two cars" in the first week of December, as corroborated by the statement of Eathan Skwira and somewhat by Mr. Rizwan. This email could simply be a request for that paperwork. As to knowing when he was an owner of a Porsche, his evidence was "in the later part of January", when he got the Vancouver City parking ticket in the mail. That evidence is supported by the parking ticket and the Complainant has been consistent on that evidence in past written statements and under cross examination. I also keep in mind that I have found Mr. Rizwan to have provided false evidence in the form of documents at this hearing. I find on a balance of probabilities that the Complainant first knew he owned the Porsche in the later part of January, 2012, as he claims.

[79] I would note that the email which is Exhibit 12 does not alter my view that the documents submitted to Ally and TD showing the Complainant to have purchased and financed the Porsche and Mercedes were not signed by the Complainant. They remain, in my opinion, falsified documents.

#### ***Exhibits 13 to 16 and 18 - Damages***

[80] Exhibits 13 to 16 at the hearing relate to the Complainant's damages resulting from trying to deal with these matters and the subsequent relinquishment of the Vehicles to the finance companies. As I have determined I have no jurisdiction to provide a remedy to the Complainant in this matter, I will not comment further on these documents. Exhibit 18 is a bundle of documents which support the damage claims in Exhibits 13 to 16. Apart from the few above comments about the City of Vancouver parking ticket, I will make no further comments on these documents.

#### ***Exhibit 21 - Andco Construction Cheque***

[81] Mr. Rizwan tendered as evidence a company cheque no. 0075 from ANDCO Construction Innovations ("ANDCO") dated November 25, 2011. The amount on the cheque is \$5,000 payable to the Complainant with a notation of "financing cars". It is a copy with no indication it was ever cashed as the back of the cheque was not copied. The company cheque is the same Vancity account that was submitted to Peter Hung and used to make the insurance installment payments: pages 93 to 96. ANDCO is a company with Denis Vallee listed as its Director and no other officers are listed: page 103 of the Affidavit Exhibits.

[82] Mr. Rizwan says he found the cheque when he went through the Vehicles when they were left at his dealership just before the banks took possession. Mr. Rizwan says they were not even on the dealer's property but outside the property. He said he expected the keys were left with the reception desk. The Complainant said that as this issue unfolded in 2012, he did receive some cheques from Mr. Vallee to cover costs, but the cheques started bouncing and he could not continue to cover the costs, trying to save his credit rating, and he ultimately allowed the banks to seize the Porsche and Mercedes.

[83] During the Complainant's questioning of Mr. Rizwan, Mr. Rizwan initially indicated he did not know Denis Vallee. Mr. Rizwan says the first time he met Denis Vallee was with the

Complainant: Transcript of Proceedings, May 30, 2014, page 152. Later Mr. Rizwan stated Mr. Vallee never bought a vehicle from Mr. Rizwan and the only involvement Mr. Vallee had in a purchase of a vehicle from Mr. Rizwan was the Porsche and Mercedes with the Complainant. In further questioning, Mr. Rizwan finally admitted Mr. Vallee was part of the purchase of a white Mercedes for his girlfriend in the summer of 2012: Transcript of Proceedings, May 30, 2014, page 152. The questioning continued and Mr. Rizwan admitted Mr. Vallee owed Mr. Rizwan some money and that Mr. Vallee had left Mr. Rizwan with a blank cheque from ANDCO: Transcript of Proceedings, May 30, 2014, page 157.

[84] I find on a balance of probabilities that the copy of the ANDCO cheque dated November 25, 2011, is another falsified document. It is a copy and does not show if it was cashed. It was apparently the only copy of a cheque found in the vehicle and conveniently is dated before the November 28, 2011, date these transactions took place. Mr. Rizwan said he went through the Vehicles even though there was no need to do so when they were dropped off at his dealership and eventually went to the Trinity dealership so the banks could retrieve them. Mr. Rizwan admits to being in possession of at least one blank ANDCO cheque. Mr. Rizwan initially distanced himself from knowing Mr. Vallee, then admitted he knew him well enough to lend him money. In contrast, the Complainant's evidence was straight forward on this issue and did not waiver like that of Mr. Rizwan. The Complainant also admitted he did receive cheques from Mr. Vallee after he became aware in 2012 that he owned the Porsche and Mercedes. This is a statement against interest and assists in my view that the Complainant is providing truthful statements even if they may hurt his position. For these reasons, I accept the Complainant's evidence over that of Mr. Rizwan.

**E. The roles played by Sangam dba Auto Empire, Trinity, Mr. Rizwan and Mr. Sachdeva**

**(a) Adil Rizwan**

[85] From the forgoing, I find on a balance of probabilities that Mr. Rizwan orchestrated the Porsche and the Mercedes transactions to be in the name of the Complainant, without the Complainant's knowledge and permission. I further find on a balance of probabilities that Mr. Rizwan provided falsified applications to Ally and TD Bank to finance the Porsche and Mercedes purchases (Exhibits 19 and 20). Also from the forgoing, I find on a balance of probabilities that Mr. Rizwan provided falsified evidence at this hearing including the:

- (1) Second set of signed purchase agreements for the Porsche and Mercedes (Exhibits 10 and 11),
- (2) 2009 and 2010 T4's and Notices of Assessment purporting to be from the Complainant (Exhibit 9),
- (3) Auto Empire Credit Application dated November 21, 2011 (Exhibit 8), and
- (4) ANDCO Company cheque (Exhibit 21).

**(b) Sangam Auto Group Ltd. dba Auto Empire**

[86] Mr. Amar Dhaliwal, President and an owner of Sangam gave evidence that these transactions were not related to Sangam. He noted that at the time of the transaction, Sangam was not as yet operating with the trade name of Auto Empire. That only occurred on March 23, 2012, as the VSA initially refused to accept Auto Empire as a trade name on

the Sangam licence: Transcript of Proceedings, May 30, 2014, pages 188-193. Mr. Dhaliwal provided a letter from ICBC showing the Porsche and Mercedes were never owned by Sangam: Exhibit 24. Mr. Dhaliwal did admit that Mr. Rizwan looked after the dealership's operations and signage but complaints were to be brought to Mr. Dhaliwal's attention: Transcript of Proceedings, May 30, 2014, page 196. Mr. Dhaliwal said the first he was aware of this situation was when he was served the notice of hearing materials about mid-January, 2014: Transcript of Proceedings, May 30, 2014, page 186.

[87] Mr. Dhaliwal also admitted that Sangam initially applied to have the Auto Empire trade name added to the Sangam motor dealer licence in October of 2011, but the VSA denied this request: Transcript of Proceedings, May 30, 2014, page 191-192. The October 17, 2011, application to add Auto Empire as a trade name to Sangam Auto Group motor dealer licence was entered as Exhibit 23. Mr. Rizwan and Mr. Dhaliwal agreed that their signatures are on that application: Transcript of Proceedings, May 30, 2014, page 197-198. On Exhibit 23 is a notation that the Auto Empire trade name was added to Sangam Auto Group Ltd. at the corporate registry on October 3, 2011, Registry Number NR6147901. So, as of October 3, 2011, as far as the corporate registry is concerned, Auto Empire and Sangam Auto Group Ltd. were the same legal entity. I would note that the VSA's refusal to add the Auto Empire trade name to the motor dealer registration of Sangam Auto Group Ltd., is not evidence that it was not operating as Sangam Auto Group Ltd. *dba* Auto Empire.

[88] I have considered other evidence submitted by Mr. Dhaliwal, including they were still trying to open the new Richmond location and had not become fully operational when these transactions took place: Transcript of Proceedings, May 30, 2014, page 194-196. There is no evidence in contradiction. I also note that the Complainant's evidence was he believed he was dealing with Mr. Rizwan and Auto Empire. I also note the invoice for the Porsche and Mercedes sales between the dealers was between Auto Empire and Trinity and Sangam's name does not appear on the invoices: pages 25-26 of the Affidavit Exhibits.

[89] Based on the evidence, I am satisfied on a balance of probabilities that Mr. Dhaliwal was unaware of these transactions until January, 2014. I am also satisfied on a balance of probabilities that the Porsche and the Mercedes were not vehicles in the inventory of Sangam. I find that the evidence falls short in showing that Sangam was a party to these transactions.

(c) ***AutoSalesCanada.com Enterprises dba Trinity Auto Centre***

[90] As noted earlier, the Porsche and Mercedes were sold by Auto Empire to Trinity: Exhibits 25 and 26. Trinity is noted as the selling dealer on the purchase agreements and financing documents submitted to Ally and TD Bank: Exhibits 19 and 20. Trinity is also the selling dealer on the ICBC Transfer/Tax Forms: pages 6 and 8 of the Affidavit Exhibits. Mr. Sachdeva gave evidence that Mr. Rizwan did handle the full transaction of these Vehicles, on paper, on behalf of Trinity and Mr. Rizwan had the full trust of Trinity to do so: Transcript of Proceedings, May 30, 2014, pages 182-183. It was Trinity that received the financing from the TD Bank and Ally.

[91] I would note that the evidence is clear that these transactions took place at the Cambie Street address in Richmond based on the evidence of Mr. Rizwan, the Complainant

who said he met Mr. Rizwan at the Cambie, Richmond address, the testimony of Peter Hung and the Auto Empire invoices: pages 25 and 26 of the Affidavit Exhibits. I note that Trinity's registered business premise during the time of the transactions was on Clarke Road in Coquitlam: page 2 of the Affidavit Exhibits. A motor dealer may not conduct a sale of a motor vehicle except from their registered business premise, and it is an offence to do otherwise: sections 3(1)(b) and 35(2) of the MDA. The testimony of Mr. Rizwan and of Mr. Sachdeva effectively admits to committing this offence.

[92] I find on a balance of probabilities that Mr. Rizwan was acting as a representative for Trinity, and was expressly authorized to do so. I find as a matter of law, the conduct of Mr. Rizwan in this matter is also the conduct of Trinity.

(d) **Baldip (Romy) Singh Sachdeva**

[93] There is no evidence that Mr. Sachdeva, personally, was aware these transactions were based on falsified documents. Mr. Sachdeva's name and signature appear on the purchase agreements that were submitted to Ally and TD Bank: Exhibits 19 and 20. He did not provide evidence to the contrary. It is also clear Mr. Sachdeva signed them even though he never dealt directly with the Complainant: Transcript of Proceedings, March 20, 2014, page 116.

[94] I find the evidence does not show Mr. Sachdeva had any direct knowledge or interaction with these transactions. The above noted evidence shows Mr. Sachdeva did knowingly participate in an offsite sale contrary to the MDA.

**F. Summary of Findings**

[95] In summary, based on the forgoing evidence, I find on a balance of probabilities that:

- (a) the Complainant, Jason Crombie, did not agree to or sign documents for, the purchase of the Porsche and the Mercedes on November 28 and 29, 2011;
- (b) the Complainant, Jason Crombie, did not agree to or sign documents to insure the Porsche and the Mercedes on November 29 and 30, 2011;
- (c) Mr. Adil Rizwan falsified documents submitted to Ally and TD Bank to finance the sale of the Porsche and Mercedes;
- (d) Mr. Adil Rizwan knowingly produced falsified documents at the hearing;
- (e) Sangam Auto Group Ltd. was not the selling dealer in these transactions;
- (f) Autosalescanada.com Enterprises inc. dba Trinity Auto Centre was the selling dealer in these transactions; and
- (g) Mr. Baldip Singh Sachdeva was unaware of Mr. Adil Rizwan's falsifying documents for these transactions and was not personally a party to that deception.

[96] Based on the admissions of Mr. Baldip Singh Sachdeva and Mr. Adil Rizwan, and the above noted evidence, I find on a balance of probabilities that Mr. Baldip Singh Sachdeva, Mr. Adil Rizwan and Autosalescanada.com Enterprises inc. dba Trinity Auto Centre, conducted an offsite sale contrary to the MDA.

### **G. Next Hearing**

[97] By agreement, the compliance phase of this hearing was to follow my findings here. The VSA will work with the parties to set a date for a hearing to determine what, if any, compliance action should occur. My above findings should inform the parties who should participate in that hearing. While I have found Sangam did not participate in these transactions, Sangam is now operating as Auto Empire with Mr. Adil Rizwan, a part of its operations.

### **H. Interim Order**

[98] My findings regarding the conduct of Mr. Adil Rizwan are serious. I find it is necessary to immediately take steps to protect the public who may interact with Mr. Adil Rizwan. I am suspending the salesperson licence of Adil Rizwan effective immediately until a decision has been made after the compliance phase hearing. Mr. Adil Rizwan may not exercise oversight of Sangam's dealer operations until a decision on the compliance phase of this hearing is made. If Mr. Rizwan does have such oversight, then I must also consider the suspension of Sangam's registration as a dealer until such a compliance decision is made.

"Original signed"

Dated: August 18, 2014



Ian Christman J.D.  
Registrar of Motor Dealers