

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gafarli v. Kononenko*,
2026 BCSC 1161

Date: 20260622
Docket: S229807
Registry: Vancouver

Between:

Azar Gafarli and Can-Az Auto Sales Corp.

Plaintiffs

And

Daniel Kononenko

Defendant

And

Sujaat Gafarzada

Third Party

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for Plaintiffs and Third Party:

S. Grewal
D. Solimano
S. Drinovz
A. Abji, Articled Student

Counsel for Defendant:

Y. Gertsoyg

Place and Date of Hearing:

Vancouver, B.C.
March 12, 2026

Place and Date of Judgment:

Vancouver, B.C.
June 22, 2026

Introduction

[1] The plaintiffs bring a summary trial application seeking judgment from the defendant, Daniel Kononenko, in the amount of \$126,331.40 (the amount they say they paid him for the purchase of a Cadillac), together with \$690 in insurance costs for the car, and \$6,000 for deposits made on various cars. The third party, Sujaat Gafarzada, applies for dismissal of the claim against him. In Mr. Kononenko's summary trial application, he seeks dismissal of the claims against him. The plaintiffs also brought an application for a preservation order and Mr. Kononenko brought an application for security for costs.

[2] At the beginning of the hearing, I heard submissions on which applications should be heard, and in what order. I am satisfied that the two summary trial applications should be heard and determined before dealing with the additional applications.

Issues on the summary trials

[3] The summary trial applications give rise to the following issues:

- a) Is this matter suitable for summary trial?
- b) Did the plaintiffs have an agreement with Mr. Kononenko whereby Mr. Kononenko would purchase cars on the plaintiffs' behalf, with funds provided by the plaintiffs?
- c) Did Mr. Kononenko breach the agreement?
- d) Are the plaintiffs entitled to damages?
- e) Should the third party claim against Sujaat Gafarzada be dismissed?

Is this matter suitable for summary trial?

[4] I am satisfied that these applications can be determined under Rule 9-7. I must decide whether I can find the necessary facts to determine the issues raised,

and whether it is just to make such findings on this application: *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) at paras. 54-55.

[5] This matter has been outstanding for three years, the plaintiffs' notice of application for summary judgment was filed on September 3, 2025, and the defendant's application for summary judgment was filed on October 21, 2025. Discoveries have been completed, and the parties have had ample time to bring before me their evidence in relation to the issues raised in the applications.

[6] I am satisfied that the affidavits before me are sufficient to allow me to resolve any contradictions in the evidence. Key transactions are generally supported by documents, which are exhibited to the affidavits. I am not persuaded that the parties have been prevented in any way from bringing their cases forward.

[7] I find that the quantum of the claims is not large, and proceeding by way of summary trial is proportional to the interests at stake.

[8] I find these applications are suitable for determination by way of summary trial.

Did the plaintiffs have an agreement with Mr. Kononenko whereby Mr. Kononenko would purchase cars on the plaintiffs' behalf, with funds provided by the plaintiffs?

[9] The plaintiffs are in the business of sourcing luxury vehicles for resale to overseas buyers. The plaintiff Can-Az uses agents to contract with associates who purchase vehicles for resale to Can-Az's clients. The agents transfer funds on behalf of Can-Az to the associates, who then purchase and store the vehicles until they are transferred to Can-Az's clients. The agents retain joint beneficial ownership of the vehicle until the vehicle is transferred to the ultimate client of Can-Az. For their services, the agents receive a commission on the resale to Can-Az's clients.

[10] The business model for Can-Az was described by the plaintiff Azar Gafarli as follows:

- a) A third party buyer will place an order for one or more vehicles with Can-Az and its agents, providing Can-Az with a security deposit in the amount of 20-30% of the purchase price of the order.
- b) Can-Az will instruct the associate to place themselves on a waitlist with the dealership to purchase the ordered vehicle, and Can-Az provides the associate with the deposit required by the dealership.
- c) When the dealership notifies the associate that the waitlisted vehicle is ready for purchase and pickup, the associate advises Can-Az which then obtains the balance of the purchase price from the third party buyer.
- d) Can-Az and its agent provides the associate with the funds required to purchase the vehicle from the dealership, and the associate acquires legal ownership of the vehicle.
- e) Immediately after the purchase of the vehicle, the associate will deliver the vehicle into the possession and custody of the agent. The vehicle will be stored at a secured location within the control of Can-Az and its agent.
- f) On instruction by Can-Az, the associate will transfer legal ownership of the vehicle as directed by Can-Az, and Can-Az will export the vehicle to the third party purchaser. Associates are paid a fee for their services.

[11] Mr. Kononenko had acted as an associate for Can-Az for a number of transactions.

[12] In the transaction involving the Cadillac which is before me, Azar Gafarli acted as agent for Can-Az. His father, Sujaat Gafarzada, is the sole director of Can-Az.

[13] In July 2021, Can-Az and Azar Gafarli say they entered into an agreement with Mr. Kononenko for the purchase of 2022 Cadillac Escalade from a dealership in Langley. Mr. Kononenko was an associate of Can-Az in this transaction, and was entitled to be paid 1/3 of the profits made from the resale of the Cadillac to the third party buyer.

[14] On August 17, 2021, Can-Az transferred \$6,000 to Mr. Kononenko, \$1,000 of which was intended to pay the deposit on the Cadillac, with remainder to be used for other vehicles. On August 18, 2021, Mr. Kononenko paid the \$1,000 deposit to the dealership and entered into a deposit agreement for the purchase of the Cadillac. The transfer of \$6,000 to Mr. Kononenko, and the payment of the deposit by Mr. Kononenko for the purchase of the Cadillac were confirmed in documents attached to the affidavit of Azar Gafarli.

[15] On May 22, 2022, Mr. Kononenko advised Can-Az that the Cadillac was ready for purchase at the Langley dealership, and the balance of the purchase price of \$126,331.14 was to be paid by bank draft payable to the dealership. This was confirmed in a document from the dealership attached to Azar Gafarli's affidavit.

[16] On June 2, 2022 Sujaat Gafarzada instructed Azar Gafarli to transfer the funds to Mr. Kononenko to facilitate the purchase of the Cadillac. The third party purchaser, Mr. Najafov Oruj, transferred funds to Can-Az for the purchase price. Can-Az then sent a wire transfer to Azar Gafarli in the amount of USD\$100,600 (approximately CAD\$126,000) to be transferred to Mr. Kononenko for the purchase of the Cadillac. On June 6, 2022 Azar Gafarli provided Mr. Kononenko with a personal bank draft in the amount of \$126,331.40 made payable to the dealership. Copies of wire transfer from Mr. Oruj, the bank statement of Azar Gafarli showing the receipt of funds on June 6, 2022, and the bank draft from Azar Gafarli to the dealership were attached to the affidavits of Azar Gafarli. The bank statement from Sujaat Gafarzada's account showing the transfer of the funds from Sujaat

Gafarzada's Can-Az business account (consistent with the receipt of funds into Azar Gafarli's account) was attached to an affidavit of Sujaat Gafarzada.

[17] On June 7, 2022, Azar Gafarli went with Mr. Kononenko to the dealership, where Mr. Kononenko purchased the Cadillac with the bank draft Azar Gafarli had prepared, and the Cadillac was registered in the name of Mr. Kononenko. After the purchase was complete, Azar Gafarli drove the Cadillac to a garage in Burnaby until he could move it to his house in Vancouver for storage.

[18] On June 7, 2022, Mr. Kononenko paid the insurance fees for the Cadillac in the amount of \$693. On June 21, Can-Az transferred \$690 to Mr. Kononenko in reimbursement of the insurance fees he paid. Both these payments were confirmed by receipts attached to the affidavits of Mr. Gafarli and Mr. Gafarzada.

[19] On June 9, 2022, Azar Gafarli moved the Cadillac from the Burnaby storage facility to his own residence, where it was to remain until it was transferred to Mr. Oruj.

[20] On June 22, 2022, Mr. Kononenko came to Azar Gafarli's home and asked for the keys to the Cadillac. Azar Gafarli's brother gave him the keys, and Mr. Kononenko drove the car away.

[21] Azar Gafarli stated in his affidavit that he attempted to contact Mr. Kononenko to resolve the issue, and was told by Mr. Kononenko that he took the car because he felt he was owed money by Sujaat Gafarzada on an unrelated matter. Mr. Kononenko refused to return the car or repay the money transferred to the dealership for the purchase of the car.

[22] Sujaat Gafarzada did not consent to the transfer of possession of the Cadillac to Mr. Kononenko to set off any alleged debt.

[23] Azar Gafarli further states that after September 2022, Mr. Kononenko cancelled waitlist deposits at a number of other dealerships, which deposits had been paid by Can-Az to secure future purchases for third party buyers.

[24] Mr. Kononenko produced in this litigation a purchase agreement whereby he sold the Cadillac to 715 Motor Haus Ltd. on January 9, 2023. As such, the Cadillac is no longer available to be transferred to Mr. Oruj.

[25] Mr. Oruj has not waived, forgiven or agreed to compromise his right to recover the monies he spent on the failed purchase of the Cadillac. He maintains his right and expectation to receive repayment of the purchase monies from Can-Az.

[26] In opposition to the plaintiffs' application for judgment, Mr. Kononenko submitted numerous affidavits from various people who have reviewed the claim and make conclusory statements, or repeat things they were told by Mr. Kononenko. For example, the affidavit of Mr. Kianovski states that he has known the parties for a number of years and he states:

I can verify with certainty, having know the circumstances that Azar Gafarli never entered into any oral agreement with Daniel Kononenko including agreement whereby Azar Gafarli and Can-Az Auto Sale Corp. would supply \$126,331.40 to Daniel Kononenko to finance the purchase of a 2022 Cadillac Escalade. I can verify with certainty, having known the circumstances that Daniel Kononenko and Cadillac served as payment for the debt.

[27] Mr. Kianovski also states in his affidavit, with reference to a pleadings amendment by the plaintiffs, "I believe, having known the circumstances, that amendment presents a substantive change to the factual basis of this action and raises questions regarding the validity and truthfulness of the claims made by Azar Gafarli".

[28] These kinds of statements are not helpful and should not be put before the court in affidavits. They are conclusory statements, or arguments presented as fact, without reference to any actual evidence. I place no weight on such paragraphs. Similarly, the paragraphs in the affidavits submitted by Mr. Kononenko that set out

what people thought after reading the notice of civil claim, or that set out things told to the affiant by Mr. Kononenko, are not admissible for their truth and I place no weight on them.

[29] Mr. Kononenko admits that he had a historical relationship with Sujaat Gafarzada including the resale of vehicles to third party buyers, but denies he had a business relationship with Can-Az. Mr. Kononenko denies he entered into an agreement to place a deposit on and purchase the Cadillac, as alleged by the plaintiffs.

[30] Mr. Kononenko submits that he placed the \$1,000 deposit on the Cadillac on his own, intending to purchase the vehicle on his own. He says that when he was told by the dealership that the car was ready, he had a week to come up with the funds and, "Sujaat Gafarzada who had multiple prior joint business ventures with me was supposed to come up with the Bank Draft of \$126,331.40 to purchase the Cadillac". He then states in his affidavit that Sujaat Gafarzada instructed Azar Gafarli to arrange for the bank draft to the dealership.

[31] Mr. Kononenko alleges that Sujaat Gafarzada agreed to make this payment because he owed Mr. Kononenko over \$130,000. This is denied by Sujaat Gafarzada. I cannot accept the evidence of Mr. Kononenko, which I will discuss in more detail below. I find his position to be implausible, and not supported by evidence other than bald statements. The evidence of the plaintiffs and Sujaat Gafarzada, on the other hand, is plausible and is fully backed up with documentary evidence. Where there is a conflict in the evidence, I prefer the evidence of the plaintiffs and Sujaat Gafarzada.

[32] Mr. Kononenko submits that Can-Az and Azar Gafarli are not the proper parties for a number of reasons. Mr. Kononenko refers to discovery evidence of Azar Gafarli, where Azar Gafarli agrees that the funds for the purchase of the vehicle belonged to Mr. Oruj. Mr. Kononenko also submits that it was Sujaat Gafarzada, not Can-Az, who owned the bank account from which the funds were transferred to Azar

Gafarli for the purchase of the Cadillac. Mr. Kononenko submits that this evidence establishes that it is Mr. Oruj who should be the plaintiff, and not Can-Az or Azar Gafarli. In the alternative, it is Sujaat Gafarzada who received and transferred the funds, and not Can-Az, and therefore Can-Az is not a proper plaintiff.

[33] I reject the submissions of Mr. Kononenko. I am satisfied, based on the affidavit evidence of Sujaat Gafarzada, that the account in Sujaat Gafarzada's name is an operating account for Can-Az, and the deposit of funds into that account is consistent with the wire transfer from Mr. Oruj to Can-Az. I find the funds paid to Azar Gafarli for the purchase of the Cadillac were funds held by Can-Az which it received from Mr. Oruj. Further, I find the evidence overall is consistent with the agency arrangement Can-Az has with its third party buyers, and its agents such as Azar Gafarli.

[34] Mr. Kononenko relies on *Meditrust Healthcare Inc. v Shoppers Drug Mart*, 2002 CanLII 41710 (ONCA) for the proposition that because Can-Az received the purchase funds from Mr. Oruj and never owned the Cadillac itself, it somehow suffered no losses and cannot bring the claim forward. *Meditrust* has no application to the case before me. *Meditrust* was a parent company that tried to assert a claim for losses suffered by its subsidiaries. The court applied the rule in *Foss v. Harbottle*, (1843), 2 Hare 461, 67 E.R. 189 which holds that a shareholder does not have a cause of action for wrong done to a corporation.

[35] I am not dealing with a shareholder trying to sue for losses to a corporation. Here, Can-Az suffered real losses because under its agreement with Mr. Oruj it undertook to receive funds and use those funds for the purchase of the Cadillac on Mr. Oruj's behalf. Mr. Oruj has not released Can-Az from the obligation to repay the funds. Can-Az is liable to Mr. Oruj for the loss of the funds advanced and can advance its claim against Mr. Kononenko to recover for that liability. Similarly, Azar Gafarli has a real liability to Can-Az for the funds he received for the purchase of the

Cadillac. I am satisfied that Can-Az and Azar Gafarli are the proper plaintiffs in this action.

[36] Mr. Kononenko argues that the bill of sale shows the sale of the vehicle to Mr. Oruj, which he submits is a fraudulent transaction because Can-Az did not own the vehicle at the time the bill of sale was made. I disagree with the submissions of Mr. Kononenko. The bill of sale is simply evidence of the agreement between Mr. Oruj and Can-Az, that Can-Az agreed to purchase and transfer the Cadillac on behalf of Mr. Oruj.

[37] Mr. Kononenko relies on an indemnity between the dealership and himself that was part of his agreement to purchase the vehicle. In this agreement, Mr. Kononenko agrees to indemnify the dealership for any losses or damages the dealership may suffer if the vehicle was registered outside Canada within six months and 12,000 km from the date of delivery. This indemnity agreement is not relevant to the dispute before me. It is an agreement between the dealership and Mr. Kononenko, which governs losses or damages incurred by the dealership. There is no evidence of any losses or damages incurred by the dealership. This indemnity agreement is not relevant to the issue before me, namely did Mr. Kononenko agree to purchase the Cadillac with funds provided by Can-Az.

[38] On the balance of probabilities, I find that the plaintiffs have proven that they had an agreement with Mr. Kononenko whereby Mr. Kononenko agreed to use funds provided by Can-Az to place deposits on luxury vehicles at dealerships, which vehicles would ultimately be sold to third party buyers under agreements with Can-Az, and Mr. Kononenko agreed to the registration in his own name of a 2022 Cadillac Escalade, purchased with funds provided by Can-Az and Azar Gafarli, and to later transfer the Cadillac to a new owner as instructed by Can-Az.

Did Mr. Kononenko breach the agreement?

[39] I find that Mr. Kononenko fundamentally breached this agreement in three ways. First, Mr. Kononenko breached the agreement by withdrawing \$5,000 of

deposit funds he had been provided by Can-Az, and converting those funds to his own use. Second, he breached the agreement by refusing to transfer the Cadillac as directed by Can-Az. Third, he breached the agreement by converting the Cadillac to his own use, selling it, and refusing to return the original purchase funds to Can-Az or Azar Gafarli.

Are the plaintiffs entitled to damages?

[40] I award the plaintiffs damages in the amount of CAD\$6,000 in relation to misappropriated deposit funds (the \$1,000 in relation to the Cadillac and \$5,000 in relation to other deposits), CAD\$126,331.40 in relation to the funds transferred from Azar Gafarli for the purchase of the Cadillac, and CAD\$690 in relation to the repayment by Can-Az of insurance paid on the Cadillac. The total damages payable by Mr. Kononenko to the plaintiffs are \$133,021.40.

[41] Mr. Kononenko submits that he was entitled to keep the Cadillac and other funds he received from Can-Az because Sujaat Gafarzada owed him funds in excess of the funds received. I find that the claim Mr. Kononenko asserts against Sujaat Gafarzada is not available to offset his obligations to Can-Az and Azar Gafarli, as Mr. Kononenko does not assert such claims against these parties. In any event, for the reasons below I reject these claims by Mr. Kononenko in their entirety.

Should the third party claim against Sujaat Gafarzada be dismissed?

[42] Mr. Kononenko brought a third party claim against Sujaat Gafarzada, alleging that Sujaat Gafarzada owed him over \$130,000 for various things such payments for salvage vehicles, spare parts, towing costs, and other expenses. Mr. Kononenko alleged in response to the plaintiffs' claim that he was entitled to retain the funds he received from Can-Az and Azar Gafarli as repayment of Sujaat Gafarzada's obligations to him.

[43] I find that Mr. Kononenko has not established his claim against Sujaat Gafarzada. The only documentary "evidence" of his claim is a self created schedule

attached to his affidavit. Mr. Kononenko produced no independent third party documents in support of this alleged debt.

[44] Not only are Mr. Kononenko's claims unsupported by independent records, Sujaat Gafarzada produced banking records that directly contradicted many of the alleged claims contained in Mr. Kononenko's self created schedule of debt. For example, Mr. Kononenko claims that he has not been reimbursed for his purchase of various salvaged vehicles, but Sujaat Gafarzada has produced documentary evidence that establishes Can-Az was the purchaser of such vehicles, not Mr. Kononenko. I prefer the evidence of Sujaat Gafarzada over the evidence of Mr. Kononenko.

[45] Mr. Kononenko alleges that Sujaat Gafarzada told him he could take the Cadillac in payment of the debt. This allegation is completely denied by Sujaat Gafarzada. There is no document produced that supports Mr. Kononenko's allegation. I find Mr. Kononenko's evidence is unreliable, and I reject it.

[46] I find Mr. Kononenko has not produced sufficient evidence to prove his third party claim against Sujaat Gafarzada. Mr. Kononenko's third party claim is dismissed.

Plaintiffs' application for a preservation order

[47] The plaintiffs obtained a preservation order against Mr. Kononenko on April 27, 2023, and brought an application seeking to modify the language of that order. The original order provided that it would expire on the earlier of 30 months after April 27, 2023, or on the expiry of 90 days following final judgment. At the conclusion of the hearing before me, the parties agreed the order would be remain in force until the date of my reasons.

[48] I order the preservation order will remain in force until such time as the parties agree to its release, or a decision is made on the continuation of the order. I am not seized of this matter. However, if the parties cannot reach agreement, they have

leave to either bring an application with respect to the continuation of the preservation order in ordinary chambers, or by way of a written application directed to me through the registry.

Defendant's application for security for costs

[49] On August 17, 2023, Mr. Kononenko obtained an order for security for costs against the plaintiffs that included the followings terms:

- a) Can-Az would place \$10,000 in its counsel's trust account pending judgment,
- b) Mr. Kononenko was entitled to a charge against a RAV-4 owned by Can-Az, which would be registered under the PPSA, and
- c) The parties could apply to substitute funds against the RAV-4.

[50] On November 4, 2024, the August 17, 2023 order was varied to permit Can-Az to place into court \$10,000. Unfortunately, the November 4, 2024 order did not specify which term of the August 17, 2023 order was being varied. The November 4, 2024 order was made at a time when the plaintiffs' original counsel was getting off the record.

[51] Sometime after November 4, 2024 Can-Az sold the RAV-4. On February 20, 2026 Mr. Kononenko conducted a vehicle search and learned that Can-Az no longer owned the RAV-4.

[52] On March 4, 2026, Mr. Kononenko brought an application for a stay of the action and special costs against Can-Az.

[53] On March 8, 2026 counsel for the plaintiffs wrote to counsel for Mr. Kononenko explaining that Can-Az misunderstood the effect of the November 4, 2023 order, and offered substituted security in the form of a BMW X5 with a value of \$40,000, and an Audi A6 with a value of \$10,000. Counsel indicated that the

proposed security was of a higher value than the RAV-4, which had a value of \$35,000.

[54] Mr. Kononenko did not accept the new security, and maintained his application at the hearing of the summary trial.

[55] I find that while Can-Az did breach the August 17, 2023 order, it did so at a time when its lawyer had withdrawn, and it did not fully appreciate that the August 17, 2023 order terms relating to the RAV-4 continued unaffected after the November 4, 2024 variation. As soon as Can-Az was advised that the RAV-4 was additional security to the \$10,000 security and the terms relating to the RAV-4 remained in effect, Can-Az offered new security of a higher value than was originally ordered. Mr. Kononenko was not prejudiced by Can-Az's breach of the August 17, 2023 order. I find that Can-Az in good faith attempted to rectify the breach, Mr. Kononenko suffered no harm, and I decline to make a costs or other order against Can-Az as a result of the breach.

[56] As I have dismissed Mr. Kononenko's third party notice and allowed the plaintiffs' claim against Mr. Kononenko, I now vacate both the August 17, 2023 order, and order #3 of the November 4, 2024 order.

Costs

[57] The parties have leave to make submissions on costs, in writing directed to me through the registry, if they are of the view that the ordinary rule of costs in favour of the plaintiffs and third party is not appropriate.

"W.A. Baker J."