

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: 640353 B.C. Ltd. v. Van Rooyen,
2026 BCSC 1367

Date: 20260722
Docket: S138645
Registry: Kelowna

Between:

640353 B.C. Ltd. doing business as Chilliwack Mitsubishi

Plaintiff

And:

Jurrianus Van Rooyen

Defendant

And:

Fatmir Shabani

Third Party

Before: The Honourable Justice Young

Reasons for Judgment

Counsel for the Plaintiff:

J. Langelier

Counsel for the Defendant:

M. Goyal

Counsel for the Third Party:

V. Mehra

Place and Date of Hearing:

Kelowna, B.C.
July 6, 2026

Place and Date of Judgment:

Kelowna, B.C.
July 22, 2026

Introduction

[1] The plaintiff 640353 B.C. Ltd. doing business as Chilliwack Mitsubishi (“640”) commenced an action against the defendant Jurrianus Van Rooyen (“JVR”) seeking a judgment in the amount of \$94,500 for converting its funds through the receipt of a cheque fraudulently issued to him by a rogue employee, the third party Fatmir Shabani (“Shabani”).

[2] JVR filed a response confirming he had received the funds from Shabani as a payment of a prior debt. He was unaware that the funds were issued without 640’s approval. JVR’s position is that he is under no obligation to return the funds and points to Shabani as the party responsible for repayment.

[3] JVR filed a third party notice against Shabani.

[4] Shabani then filed a response to the third party notice denying both 640’s claim and JVR’s claim for contribution and indemnity. Shabani also asserted in its response to the third party notice a counterclaim and set off against 640.

[5] 640 applies to strike Shabani’s counterclaim and set off contained in Shabani’s response to the third party notice at paras. 7–33 of Part 1, Division 2; para. 1 of Part 1, Division 3; and paras. 1–3 of Part 3.

[6] In addition, 640 applies for summary judgment against JVR for the amount of \$94,500 plus interest and costs.

[7] 640 submits and Shabani acknowledges that there is no provision in the *Supreme Court Civil Rules* for advancing a counterclaim against the plaintiff through a response to a third party notice. That is correct.

[8] Shabani relies on the *Bai v. Wang*, 2019 BCSC 1594 which decided that third party could file a stand-alone counterclaim against the defendant.

[9] I agree with 640 that the *Bai* decision does not provide authority for a third party to advance a claim against the plaintiff. To advance a counterclaim and claim

of set off it must be against the party whose claim is being countered and set off against. The third party notice here is against the defendant.

[10] Shabani could have issued a third party notice of his own claiming contribution and indemnity from the plaintiff. Alternatively, Shabani could start a separate action against 640 and apply to later join the two proceedings.

[11] After receiving this notice of application Shabani disclosed that he has in fact commenced an action against 640 and John Kalogaras who is the operating mind of 640. He did so on January 31, 2025 in the Chilliwack Registry to preserve a limitation period but did not serve it (the Chilliwack Action). He has subsequently obtained an order to renew the notice of civil claim in the Chilliwack Action.

[12] In the Chilliwack Action Shabani alleges that he was engaged in several ventures with Kalogaras and was employed by him. He further alleges that he entered into an employment agreement with Kalogaras to run and manage Chilliwack Mitsubishi car dealership for a salary of \$10,000 per month plus 15% of the total net profits and that Kalogaras did not pay him.

[13] In and around March 2022, Shabani told Kalogaras that he owed money to JVR. Shabani alleges that Kalogaras authorized him to write a cheque on the account of 640 to pay off JVR. In return this would be partial payment of the debt that 640 owed to Shabani.

[14] This allegation is contested. 640 takes the position that Shabani wrote that cheque without authorization. This is a triable issue. There is insufficient evidence on this application to make a determination that the \$94,500 cheque drawn on the 640 account, signed by Shabani and paid to JVR was unauthorized. I do note a typographical error in Affidavit #1 of Kalogaras who deposes at para. 7:

At no point did 640 approve the alleged loan and at all material times, 640 has taken the position that issuing the Cheque was, and is, **an authorized** use of company funds.

[my emphasis]

Counsel for 640 submitted at the hearing that the words “an authorized” should read “an unauthorized”. If this were an immaterial fact the court could accept a correction by submission from counsel but this is the material fact in the case. A new affidavit should have been sworn by Mr. Kalogeras indicating that para. 7 of his first affidavit was incorrect.

[15] Shabani alleges further facts in support of his claim which are not relevant to my decision.

[16] JVR’s position is that it received payment of the debt owed to him by Shabani. If there is any dispute about whether Shabani had the authority to write the cheque on the 640 account that issue lies between the plaintiff and the third party. JVR did nothing wrong and did not wrongfully convert property.

[17] Shabani says that the filing of a counterclaim in his response to third party notice is an irregularity and the court must not set aside a proceeding based on an irregularity. He seeks an order pursuant to Rule 22-7(3) that the court deem his counterclaim in his response to the third party notice to be third party notice against the plaintiffs.

Analysis

[18] Rule 3-4 deals with counterclaims and says:

- (1) A defendant in an action who wishes to pursue a claim within that action against the plaintiff must, within the time set out for the filing of a response to civil claim under Rule 3-3(3), file a counterclaim in Form 3 that accords with Rule 3-7.
- (2) If the counterclaim referred to in subrule (1) raises questions between the defendant bringing the counterclaim and a person **other than the plaintiff**, the defendant may join that other person as a party against whom the counterclaim is brought.

[my emphasis]

[19] Rule 3-5 deals with third party actions and says:

- (1) A party against whom relief is sought in an action may, **if that party is not a plaintiff in the action**, pursue a third party claim against any person if the party alleges that

- (a) the party is entitled to contribution or indemnity from the person in relation to any relief that is being sought against the party in the action,
- (b) the party is entitled to relief against the person and that relief relates to or is connected with the subject matter of the action, or
- (c) a question or issue between the party and the person
 - (i) is substantially the same as a question or issue that relates to or is connected with
 - (A) relief claimed in the action, or
 - (B) the subject matter of the action, and
 - (ii) should properly be determined in the action.

[my emphasis]

Plaintiff as defendant to counterclaim

- (1.1) Subrule (1) does not preclude a plaintiff from pursuing a third party claim in the plaintiff's capacity as a defendant to a counterclaim.

[20] Since there is no provision in the Rules for a third party to file a counterclaim against a plaintiff in response to a third party notice, I strike paras. 7–33 of Part 1, Division 2; para. 1 of Part 1, Division 3; and paras. 1–3 of Part 3 of Shabani's third party notice. It is more than an irregularity. It is a nullity. Shabani has commenced a separate action against the plaintiff and Kalogeras within the limitation period so will not be inordinately prejudiced. He could apply to have this action and the Chilliwack Action tried together.

[21] This is not a proper case for summary judgment against JVR who has a defence.

[22] The real issue is between 640, Kalogaras and Shabani. JVR is an innocent party who received money owed to him and who did not have any obligation to confirm that Shabani was authorized to draw this cheque on the account of 640. He was entitled to rely on Shabani's word. Whether or not Shabani had authority to write the cheque is a triable issue between Shabani and Kalogeras and rests heavily on the credibility of the two.

[23] I dismiss the summary trial application for judgment against JVR.

[24] There has been divided success between the plaintiff and the third party but the defendant JVR is entitled to his costs of this application. The plaintiff and the third party are jointly and severally liable to pay party and party costs on Scale B to JVR.

"B. M. Young, J."
The Honourable Justice Young