

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cheng v Scotia Capital Inc.*,  
2026 BCSC 1799

Date: 20260922  
Docket: S248335  
Registry: Vancouver

Between:

**Pearl Cheng**

Plaintiff

And

**Scotia Capital Inc. / Scotia Capitaux Inc.**

Defendant

Before: The Honourable Justice Loo

## **Reasons for Judgment**

Appearing on her own behalf:

P. Cheng

Counsel for the Defendant:

S.E. Howe

Place and Dates of Hearing:

Vancouver, B.C.  
August 17-18, 2026

Place and Date of Judgment:

Vancouver, B.C.  
September 22, 2026

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**Introduction**

[1] The plaintiff Pearl Cheng is a former client of Scotia iTRADE, a self-directed online trading platform owned by the defendant Scotia Capital Inc. (“Scotia Capital”).

[2] Scotia Capital seeks an order dismissing the plaintiff’s claims, either by way of summary judgment or summary trial. As will be seen below, I have chosen to determine the issues in this case under the summary trial rule.

**Procedural background and chronology**

[3] In March 2022, Ms. Cheng opened an account on the iTRADE platform (the “Account”). Between April and September 2022, there were more than 500 trades on the Account, including purchases and sales on margin. She now alleges that there were unauthorized trades on the Account, and that she suffered losses as a result.

[4] On March 11, 2024, Ms. Cheng filed a Notice of Claim in Small Claims Court. Her Notice of Claim attached a schedule, which resembled a Notice of Civil Claim in this Court.

[5] On November 26, 2024, Ms. Cheng’s claim was transferred from the Small Claims Court to Supreme Court because the amount claimed exceeded the monetary jurisdiction of the Small Claims Court. Ms. Cheng did not file new pleadings in the Supreme Court. In these reasons, I will refer to her Notice of Claim and the attached schedule as the “Original Claim”.

[6] On April 27, 2026, Ms. Cheng filed an Amended Notice of Civil Claim, which I will refer to herein as the “AN OCC”. On April 30, 2026, she filed a Notice of Application seeking to add The Bank of Nova Scotia as a defendant.

**The two claims**

[7] The Original Claim alleges that between April 7, 2022, and September 1, 2022, Ms. Cheng “deposited or transferred or withdrew funds in the net amount of \$47,988 USD into Scotia iTRADE Margin USD account” and on or around

September 1, 2022, the “aggregate balance of the USD funds in the accounts experienced unilateral losses, decreasing from \$47,988 USD to zero.”

[8] Although the Original Claim refers to a Canadian dollar amount said to be lost from the Account, as well as login issues and discrepancies in the account statements, the plaintiff seeks no relief in her Original Claim in relation to those issues. In the Original Claim, she seeks only judgment in the amount of US\$47,998.10. Further, in the Legal Basis section of the Original Claim, Ms. Cheng pleads only a contractual breach: she alleges that “Scotia iTRADE’s failure to perform its duties under the Agreement is an actionable breach of contract”.

[9] The ANOCC recites some of the facts set out in the Original Claim, but the prayers for relief are different. The ANOCC seeks judgment in favour of Ms. Cheng in relation to the sum of \$49,801 CAD and 300 shares of NVIDIA corporation, both alleged to be missing from the Account. Ms. Cheng asserts that as of May 26, 2022, the 300 shares of NVIDIA corporation were valued at US\$50,925.

[10] The ANOCC contains no reference to the US\$47,988 sought in the Original Claim. As well as pleading breach of contract, the ANOCC pleads negligence, breach of fiduciary duty, fraud, misrepresentation, and conversion.

[11] It is unclear whether or to what extent Ms. Cheng intended to abandon the prayers for relief in the Original Claim that do not appear again in the ANOCC. Given this ambiguity, and to give her, as a self-represented plaintiff, the benefit of the doubt, I will regard her contractual claim in the Original Claim for judgment in the amount of US\$47,998.10 as being still extant, and I will address both the Original Claim and the ANOCC on their merits.

### **Issues**

[12] The following issues arise for determination:

- a) Is the matter suitable for summary determination or should it be adjourned to a full trial or to permit further discovery?

- b) If the matter is suitable and ought not to be adjourned:
  - i. Should the plaintiff's claims set out in the Original Claim be dismissed on their merits?
  - ii. Should the plaintiff's claims in the ANOCC be dismissed either on their merits or because they are statute barred?

### **Analysis and discussion**

#### **Is the matter suitable for summary determination or should it be adjourned to a full trial or to permit further discovery?**

[13] In *C.K.M. v H.R.M.*, 2021 BCSC 1297 at para 13, this Court cited the well-known decision in *Inspiration Mgmt. Ltd. v McDermid St. Lawrence Ltd.*, 1989 CanLII 229 at p 215, 36 BCLR (2d) 202 (BCCA), in which the Court of Appeal set out some of the factors relevant in determining whether it would be unjust to grant a judgment in a summary trial. These factors include:

- a) the amount of money involved;
- b) the complexity of the matter;
- c) the urgency of the case;
- d) the prejudice likely to arise by reason of delay in taking the case to trial;
- e) the cost of taking the case forward in relation to the amount involved; and
- f) the course of the proceedings.

[14] In this case, in relation to the first and fifth of these factors, the amount of money involved is modest and the issues are not particularly complex. While the Original Claim was for US\$47,988, it appears that Ms. Cheng was prepared, at least initially, to restrict her claim to \$35,000 so that her claim could be heard in Small Claims Court.

[15] In my view, the cost of a full trial or of awaiting further discovery procedures would be disproportionate to the amounts at issue, and the delay would be prejudicial to the parties.

[16] Ms. Cheng's primary argument regarding suitability is that further discovery is required before the facts may be fairly determined. She argues:

The Court needs to find the facts before determining the Defendant's application. The account-opening evidence is internally inconsistent. The disclosure is not complete, and I need discovery of the underlying records before these issues can fairly be determined.

[17] However, more than five months have passed since the filing of the defendant's application for summary trial or judgment, and more than two years have passed since Ms. Cheng's claim was originally filed. Almost two years have passed since the proceeding was transferred to this Court. No application or demand has been advanced for the production of further documents.

[18] Ms. Cheng's present position, in essence, is that more evidence in her favour may be uncovered if she were allowed to seek further documents and discovery. However, it is clear on the authorities that an argument that further resort to discovery processes might turn up something useful is "insufficient to defeat a summary trial application": *Tassone v Cardinal*, 2014 BCCA 149 at para 38.

[19] Ms. Cheng also raises credibility issues in relation to factual issues such as how the Account was opened. It appears that Ms. Cheng completed or provided information to Scotia Capital for the purpose of completing new client application forms and "Know Your Client" forms. The documents state that Ms. Cheng had a medium level of investment knowledge and a net worth of more than \$4.3 million. Ms. Cheng denies that she filled out these forms personally and suggests that a representative of Scotia Capital filled them out incorrectly on her behalf.

[20] Further, she denies understanding what a margin account is and asserts that she told the Scotia Capital investment advisor that she did not want to borrow money.

[21] The plaintiff asserts that in order to determine the issues in this case, the Court will have to determine these issues of credibility, along with “disputed questions concerning such matters as authorization, account access, transaction instructions, the reliability and completeness of the defendant's records, the circumstances surrounding the transactions; and the disposition of the securities”.

[22] Further, she argues that “the incomplete technical records, the 300 missing NVIDIA shares, my June 22 access problem, the discrepancies in Scotia’s records, and the disputed authorization all demonstrate why this matter should not be summarily dismissed.”

[23] However, I do not agree with the plaintiff’s arguments on these issues. The primary question in this case is whether the account agreement which governed the relationship between the parties determines the plaintiff’s claims. In my view, it does, and the credibility issues identified by Ms. Cheng are tangential to those claims.

[24] For these reasons and for the further reasons set out below, I have concluded that I am able to find the facts necessary to decide the issues of fact and law, and that it is just to decide the issues on this application.

**Should the plaintiff’s Original Claim be dismissed on its merits?**

[25] As stated, the Original Claim sounds in breach of contract. Ms. Cheng alleges that between April 7 and September 1, 2022, she “deposited or transferred or withdrew funds in the net amount of \$47,988 USD into Scotia iTRADE Margin USD account”, and that “on or around September 1, 2022, the aggregate balance of the USD funds in the accounts experienced unilateral losses, decreasing from \$47,988 USD to zero.”

[26] It appears from the account statements that on April 1, 2022, the Account had a zero balance. In April, there were more than 130 trades on the Account, including purchases and sales on margin. At the end of April, the Account had a cash balance of US\$45,663 but a stock position of -US\$32,692, resulting in total account holdings of US\$12,971.

[27] At the end of May 2022, the Account had a Canadian cash balance of \$49,801 and a U.S. dollar portfolio balance of US\$44,475. At the end of July 2022, the Account had a Canadian cash balance of \$41,443 and a U.S. dollar portfolio balance of US\$5,530.

[28] In August 2022, it appears that there were several trades made in the U.S. dollar portfolio which resulted in significant losses. Cash was transferred from the Canadian dollar balance to cover those losses. By the end of August, the value of the Account was close to zero. By the end of September, the value was below zero.

[29] The account statements show that hundreds of trades were made on the Account between May and August. During oral argument, I asked Ms. Cheng whether she contends that all of these trades were unauthorized. She asserted that she did not authorize “many of those trades” but could not say which ones she acknowledges as authorized and which she contests, or how she might distinguish the authorized trades from the unauthorized ones.

[30] At the time that the Account was opened, Ms. Cheng agreed to the terms of an account opening form, a “Know Your Client” form and a customer agreement. Together, these documents (referred to herein as the “Account Agreement”) formed the contractual agreement between Ms. Cheng and Scotia Capital.

[31] The Account Agreement contained the following provisions, among others:

7. ELIMINATION OR REDUCTION OF INDEBTEDNESS If the Client at any time fails to pay any indebtedness in the Account when due ... Scotia Capital Inc. may at any time and from time to time without notice or demand to the Client: (a) apply monies held to the credit of the Client in any other account with Scotia iTRADE to eliminate or reduce Indebtedness; (b) sell, contract to sell or otherwise dispose of any or all of the Securities held by Scotia iTRADE for the Client and apply the net proceeds therefrom to eliminate or reduce Indebtedness; (c) purchase or borrow any Securities necessary to cover short sales or any other sales made on the Client's behalf in respect of which delivery of certificates in an acceptable delivery form has not been made.

...

13. ACCOUNT STATEMENTS The Client shall immediately notify Scotia iTRADE if there is any omission, inaccuracy or incorrect information in any confirmation, statement or other communication set to the Client by Scotia

iTRADE. The Client will be liable to Scotia Capital Inc. for any damages or debts in the Account arising from the Client's failure to so notify Scotia iTRADE. Where any omission, inaccuracy or incorrect information operates in favour of Scotia iTRADE, the Client agrees that every confirmation, statement or other communication sent by Scotia iTRADE to the Client shall be deemed to have been acknowledged as correct, approved and consented to by the Client unless Scotia iTRADE shall have received written notice to the contrary within thirty days after it is sent to the Client.

[32] These provisions have been specifically upheld by this Court in *D2 Contracting Ltd. v The Bank of Nova Scotia*, 2015 BCSC 1634 [*D2 Contracting*]. In that case, Justice Dardi held:

[114] In reviewing the entirety of the Agreement and on a plain and literal reading of Clause 13, and having regard to Clause 7, it is clear that the only circumstances in which Scotiabank would be liable for errors on the Account relating to forged, unauthorized, or fraudulent instructions, including cheques, are if the customer informs Scotiabank of the error within the prescribed 30-day period: *Manor Windsor* at para. 46.

[33] The Account Agreement also contained the following term:

16. Scotia iTRADE ...

(g) The Client shall immediately notify Scotia iTRADE if (i) an order has been placed through the Scotia iTRADE Service and the Client has not received back an order number and an accurate written confirmation of the order or its execution; (ii) the Client has received an inaccurate confirmation of an order which Client did not place or, any similar conflicting or inaccurate communication; or (iii) the Client becomes aware of any unauthorized use of Client's Passwords. If Client fails to promptly notify Scotia iTRADE when any of the above conditions occur, neither Scotia Capital Inc. nor any of its affiliates can or will have any responsibility or liability to Client or to any other person whose claim may arise through the Client, for any claims arising out of such conditions, and the Client will be liable to Scotia iTRADE for any damages or debts in the Account arising from the Client's failure to so notify Scotia iTRADE.

[34] Ms. Cheng argues that the Court should not assume that her signature on the documents shows that she understood the terms of the Account Agreement, but her argument on this issue is not supported by the case law. Absent exceptional circumstances such as unconscionability which are not argued here, she signed the Account Agreement and therefore is bound by its terms.

[35] In this regard, Justice Dardi held in *D2 Contracting*:

[80] ... I observe that failure to read a contract before signing it is not determinative of whether a businessman is bound by its terms. It is well-settled that in the absence of fraud or misrepresentation, a businessman is bound by an agreement to which he has put his signature, whether or not he has read its contents or has chosen to leave them unread.

[36] Andrea Arakelien, a credit manager with an affiliate of Scotia Capital, deposes that on April 29 and August 23, 2022, Scotia Capital initiated two transactions on the Account.

[37] Ms. Arakelien deposes that the first of these transactions was carried out because the Account was short 100 Twitter shares in one part of the Account and long 100 Twitter shares in another part of the Account. Scotia Capital notified Ms. Cheng that the Twitter shares could cancel each other out, and that the long position could be transferred so that the total balance would be zero. Ms. Arakelien deposes that Ms. Cheng approved the transaction and Scotia Capital proceeded accordingly.

[38] With respect to the second transaction, Ms. Arakelien deposes that Scotia Capital moved funds from one portion of the Account to cover debt in another part of the Account as it was entitled to do under para 7 of the Account Agreement.

[39] Ms. Arakelien deposes that all of the other transactions on the Account were initiated by Ms. Cheng or someone else using the Account's login credentials. Scotia Capital's computer system records login information each time a user logs into their online iTRADE account. Ms. Cheng, or someone using her private username and password, logged in for each trade made in the Account.

[40] Ms. Cheng states repeatedly in her written submissions that "the central issue is authorization". She states that "Scotia relies heavily on login credentials, but login credentials alone do not resolve who actually accessed the account or entered the disputed transactions".

[41] However, it does not matter, legally, who actually accessed the Account or entered the disputed transactions. The terms of the Account Agreement set out above place the responsibility upon Ms. Cheng to bring any unauthorized trades to Scotia Capital's attention.

[42] There was correspondence between Ms. Cheng and Scotia Capital during the period between April and August 2022 in which Ms. Cheng complained about not being able to log on to the Scotia Capital system. Representatives of Scotia Capital attempted to assist her.

[43] In any event, Ms. Arakelian deposes that Scotia Capital sent Ms. Cheng monthly statements of the Account to her email address. She also deposes that Ms. Cheng, or someone using her credentials, logged into the Account multiple times per month between March and November 2022.

[44] During the hearing, I asked Ms. Cheng how she obtained the information that gave rise to the allegations in her Original Claim, and she said that the information was derived from the account statements that she had received from the branch office. I asked her how she made the trades that were authorized and she said that had she had signed onto the Scotia Capital computer system and made the trades.

[45] I conclude from the foregoing that Ms. Cheng ultimately received account statements, and that she was ultimately able to sign on to her Account despite some initial or intermittent problems in that regard.

[46] I have been shown no evidence that Ms. Cheng complained specifically about the U.S. dollar loss on the Account until her Original Claim was filed in March 2024.

[47] In my view, in light of the foregoing, para 16(g) of the Account Agreement precludes any claim by Ms. Cheng that the alleged loss of US\$47,988 from her Account between April and September 2022 was caused by unauthorized trades. The Original Claim must therefore be dismissed.

**Should the plaintiff's claims in the ANOCC be dismissed either on their merits or because they are statute barred?**

[48] Some of the allegations in the ANOCC are similar to those in the Original Claim in that they allege that unauthorized trades occurred on the Accounts. However, the particulars of the new claims are different. As stated, the ANOCC seeks damages of \$49,801 and 300 shares of NVIDIA corporation, whereas the Original Claim sought damages of US\$47,998.10.

[49] In my view, the contractual claims in the ANOCC regarding lack of authorization must be dismissed for the same reasons as the contractual claims in the Original Claim—they are precluded by the Account Agreement and Ms. Cheng's failure to raise concerns in relation to unauthorized trades within 30 days.

[50] The ANOCC also advances claims in negligence, fiduciary duty, conversion and fraud. In this regard, Ms. Cheng refers to interactions that she allegedly had with Brianna Wu, an employee of Scotia Capital, in 2022. Ms. Cheng pleads that Scotia Capital breached duties owed to her by permitting "unauthorized access to the Plaintiff's account without proper verification" and by failing "to explain the risks, ensure suitability, or obtain the Plaintiff's informed consent" to the opening of the Account. Ms. Cheng also alleges "irregular and unreliable record-keeping" by Scotia Capital.

[51] In my view, the pleas in negligence relating to unauthorized access and irregular and unreliable record-keeping are precluded by the terms of the Account Agreement addressed above with respect to the Original Claim.

[52] Regarding the pleas that Scotia Capital failed to explain the risks, ensure suitability or obtain the plaintiff's informed consent, Scotia iTRADE is, as stated, a self-directed, online discount brokerage service. In the Account Agreement, Ms. Cheng acknowledged that "Scotia iTRADE does not provide personal, client-specific or tailored investment advice or recommendations", "make any determination of [the client's] investment needs and objectives or suitability of any of

[his or her] investment decisions and transactions, and does not accept any responsibility to advise ... on any of the foregoing”.

[53] In my view, Ms. Cheng’s claims in negligence and fiduciary duty cannot succeed in the face of these contractual provisions. The duties owed to the plaintiff by Scotia Capital are defined and limited by the Account Agreement. Scotia Capital owed no duty to Ms. Cheng to explain the risks of her online trading, to ensure that her trades were suitable for her, or to obtain her informed consent to transactions on her Account.

[54] Turning next to the plea of conversion, that tort involves the wrongful interference with the goods of another: *Lepage v Bowen Island Municipality*, 2021 BCSC 1077 at para 4. In my view, what is wrongful is defined in the circumstances of this case by the terms of the Account Agreement, and the plaintiff has not demonstrated any conduct by Scotia Capital which is wrongful given those terms.

[55] Finally, there are no facts pled which could ground a claim in fraud against Scotia Capital.

[56] As a result of the foregoing, the claims set out in the ANOCC are dismissed.

#### **The application to add The Bank of Nova Scotia as a defendant**

[57] There are no facts pled which ground a valid claim against The Bank of Nova Scotia. Accordingly, the application to add the bank as a defendant is dismissed.

#### **Limitations defence**

[58] Scotia Capital raises a limitations defence. That defence gives rise to such issues as discoverability and whether some of the claims in the ANOCC are in fact new, or simply particulars of the Original Claim which was filed within two years of the subject transactions.

[59] Although some time in submissions was spent on the limitations issue, it is not necessary for me to address it given the conclusions that I have reached above, and I decline to do so.

**Conclusions and costs**

[60] For the reasons stated, the Original Claim and the ANOCC are dismissed.

[61] Scotia Capital's application materials seek special costs on the basis that the ANOCC pleads fraud, but this prayer for relief was not pressed in oral submissions. In any event, an unsuccessful attempt to prove fraud or dishonesty does not inexorably lead to an award of special costs: *Hamilton v Open Window Bakery Ltd.*, 2004 SCC 9 at para 26.

[62] Costs of the action shall be payable by Ms. Cheng to Scotia Capital at scale B.

"Loo J."