

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sewell v Gardner Chevrolet Buick GMC Ltd.*,
2026 BCSC 1945

Date: 20261008
Docket: S41233
Registry: Chilliwack

Between:

Kirby Sewell

Appellant

And

Gardner Chevrolet Buick GMC Ltd.

Respondent

Before: The Honourable Justice Caldwell

On appeal from: An order of the Provincial Court of British Columbia, dated October 9, 2025 (*Gardner Chevrolet Buick GMC Ltd. v Sewell*, Chilliwack Docket C10832).

Reasons for Judgment

Counsel for the Appellant:

P.D. Loewen
C.A. Loewen

Counsel for the Respondent:

A.T. Briscoe

Place and Date of Hearing:

Chilliwack, B.C.
June 1, 2026

Place and Date of Judgment:

Chilliwack, B.C.
October 8, 2026

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[1] This is an appeal of a Small Claims Court judgment of \$17,182.23 granted in favour of the respondent Gardner at trial.

Background

[2] The respondent is a car dealership in Hope, BC.

[3] The appellant is a long-standing customer of the respondent.

[4] Both parties were self-represented at trial. Both parties had counsel at the hearing of the appeal.

[5] The appellant ordered a high-performance Corvette through the dealership. When it arrived, it was missing expected performance enhancements. The anticipated sale price of the car was \$121,000.

[6] The appellant took the car for a test drive on June 12, 2024.

[7] No comments or enquiries arose regarding insurance. No insurance documentation was sought or provided.

[8] The appellant determined that he would not buy the car during the test drive. This evidence was accepted by the Provincial Court judge.

[9] During the test drive the appellant pulled into the parking lot of a gas station/truck stop to inspect the car and to take pictures.

[10] Located in the parking lot was a stationary, concrete barrier or abutment with re-bar protruding from it in one or more surfaces. The barrier was visible and the Provincial Court judge commented that it was depicted in the pictures taken by the appellant and submitted as evidence.

[11] As the appellant went to move the car in the parking lot, the appellant drove it into the concrete barrier, causing significant damage to the passenger side of the car.

[12] The repairs cost approximately \$10,000. The repairs were disclosed to future purchasers. The car was subsequently sold, for \$115,000.

[13] Following a two-day trial that occurred in May and October 2025, the judge found that the appellant was negligent, caused the damage to the car that resulted in repairs, and the diminution of value of the car. The judge awarded judgment to the respondent inclusive of interest and costs.

The Appeal

[14] In his Notice of Appeal, the appellant raised the following grounds of appeal:

1. The judge made errors of law.
2. The judge made palpable and overriding errors of fact, including misapprehending, overlooking and or giving no or insufficient weight to key evidence.
3. The judge erred in mixed fact and law by applying the wrong legal principles to the facts as found.
4. The judge breached procedural fairness.

[15] By the time the appeal was heard, the appellant's Statement of Argument, narrowed the issues on the appeal:

The appellant agrees with the order appealed from except as follows:

1. The trial judge did not outline the legal test for negligence or apply the test to the facts.
2. The trial was procedurally unfair, and the trial judge overstepped their role as a neutral decision-maker.
3. The trial judge made various evidentiary errors.

[16] In addition to these stated issues, the appellant raised the issue of s 86 of the *Motor Vehicle Act*, RSBC 1996, c 318 [MVA]. The appellant's counsel submits that by operation of s 86 of the *MVA*, the appellant in essence became an employee of

the respondent company and therefore obtained insurance coverage for damage caused.

Analysis

[17] Appeals from Small Claims Court are governed by ss 12-13 of the *Small Claims Act*, RSBC 1996, c 430 [SCA]:

12 An appeal to the Supreme Court under this Act

(a) may be brought to review the order under appeal on questions of fact and on questions of law, and

(b) must not be heard as a new trial unless the Supreme Court orders that the appeal be heard in that court as a new trial.

...

13 (1) On an appeal, the Supreme Court may do one or more of the following:

(a) make any order that could be made by the Provincial Court;

(b) impose reasonable terms and conditions in an order;

(c) make any additional order that it considers just;

(d) by order award costs to any party to the appeal in accordance with the Supreme Court Rules.

(2) There is no appeal from an order made by the Supreme Court under this section.

[18] In *Absolute Bailiffs v Warbrick*, 2001 BCSC 362, Justice D. Smith reviewed various authorities and concluded that the standard of review in appeals from Small Claims court is “clearly wrong”:

[21] In summary, I am satisfied that in determining the issues on this appeal, the test to be applied on review is whether the decision was “clearly wrong”. This test is the same as the test of “palpable and overriding error” applied by the Court of Appeal for appellate review on questions of fact. Furthermore, if this court determines that the order appealed from is clearly wrong, it may make another order that in its view would be a more appropriate disposition of the claim. It may also make an order that has attached to it reasonable terms and conditions. It may not remit the action back to the Provincial Court for a new trial.

[19] This was later referenced and clarified by Justice Gropper in *McIntosh v Papoutsis*, 2009 BCSC 174:

[4] The standard of review for Small Claims Court appeals was set out in **Perfect Auto Repairs Ltd. v. Westway Roofing Ltd.**, 2005 BCSC 1627 at ¶15, [2006] B.C.W.L.D. 582:

On an appeal from a judgment of the Provincial Court, I must approach the matter the same way the Court of Appeal would on an appeal from the judgment of this Court. That means that if the appeal is based on a question of law, I am free to consider whether the trial judge was correct. However, where the appeal is based on questions of fact, I cannot reverse the decision of the trial judge unless there is a "palpable and overriding error": **Legrady v. Custom House Currency Exchange Ltd.**, 2005 BCSC 802; **King v. Holker**, 2000 BCSC 64; **Serko v. Berg**, 2004 BCSC 1152.

[5] Further clarification was provided by **Absolute Bailiffs Inc. v. Warbrick**, 2001 BCSC 362 at ¶17: "... the 'palpable and overriding error' test is used interchangeably with the 'clearly wrong' test for appellate review on questions of fact."

[20] The Small Claims Court is a court which is designed and intended to deal with a very high volume of cases, often argued by self-represented individuals and others with little or no formal legal training. The rules of evidence and other legal authority requirements, while not abandoned, are significantly relaxed in that forum. It is in many ways, a People's Court, which can and does deal with cases effectively, efficiently and in a practical, pragmatic way.

[21] The judge in this case heard evidence over approximately a day-and-a-half and delivered her decision orally in the afternoon of the second day of hearing.

[22] I am satisfied that the judge's findings and decision are entitled to considerable deference.

[23] The appellant's main focus in the appeal was on the allegation that the trial court failed to strictly lay out the legal test for negligence—the duty of care owed, the standard of that care and whether the appellant's actions caused the damage to the car.

[24] While not cataloguing the particulars of negligence, the judge said:

[9] On the day in question, Mr. Sewell took the car for the test drive. I accept his evidence that he decided he was not going to buy it, or probably not going to buy it. He then drove into the Flying J truck stop and parked in the area that is usually where the trucks go as opposed to where passenger

cars go. I do not view that as automatically making him liable in any way. I accept that cars do go in there sometimes. The issue is he parked near a lamp standard, he got out of the car, he took pictures of the vehicle where in the back of the picture you clearly see the cement barriers. From the pictures in Exhibit 12, there certainly appeared to be sufficient lighting. In his own evidence, he points out that you can see in the first page of Exhibit 12, the rebar sticking out.

[10] A semi-truck driver was impatient because he felt – I assume he felt from his actions, he appears to have felt that Mr. Sewell should not be parked where he was. Mr. Sewell quickly got in the car to move it, and although he did not say this in his evidence, it is clear to me that he focused on just moving the car and completely forgot that the cement barrier was there. The car does ride low, but that does not lessen Mr. Sewell's obligation to drive the car safely and not drive into things. There was plenty of room shown in Exhibit 12 for him to get around the abutment.

[11] So, I have no hesitation in finding that Mr. Sewell was negligent when he drove the car and damaged it – when he drove the car into the cement abutment and rebar, and that his actions, caused the damage to the Corvette.

[25] The judge's reasons clearly established that she did not find Mr. Sewell negligent in entering the area or parking the car there.

[26] She clearly based her finding of negligence on his getting into the car and driving it into a visible and stationary concrete abutment. She referred to his "obligation to drive the car safely and not drive into things". It is a reasonable inference that she found that the appellant owed a duty of care to the respondent, the owner of the car.

[27] It is also a reasonable inference that she found Mr. Sewell breached his duty of care by driving the car into the abutment, which was the cause of the damage to the car.

[28] In my view, these findings are supportable by the evidence before the judge, are consistent with the assessment of negligence and causation, and provide the appellant with knowledge of the basis of the judge's findings in that regard. The judge's reasons are not clearly wrong with regard to the facts or the law.

[29] The appellant's allegations regarding the judge's "procedural unfairness" are equally unfounded. Both parties were self-represented—as already noted, a situation

often faced by Small Claims judges. As matters arose in the proceedings, she dealt with them with the flexibility that the Court commonly exercises in such situations. These issues included pleading inadequacy, document issues and the like.

[30] I agree with the appellant's submissions regarding the court's duty to assist self-represented parties and that this duty engages a delicate balance between assisting and remaining neutral.

[31] Such a balancing exercise is not a precise, "one-for-one" activity. Trials, particularly Small Claims trials with self-represented individuals, do not fit neatly into a model of some type of balancing audit. In the present case, I see nothing in the trial process or record which would constitute unfairness in the judge's conduct of the trial or her treatment of the parties.

[32] The final aspect of this appeal dealt with the interpretation and application of s 86 of the MVA which reads as follows:

86 (1) In the case of a motor vehicle that is in the possession of its owner, in an action to recover for loss or damage to persons or property arising out of the use or operation of the motor vehicle on a highway, a person driving or operating the motor vehicle who

(a) is living with, and as a member of the family of, the owner, or

(b) acquired possession of the motor vehicle with the consent, express or implied, of the owner,

is deemed to be the agent or servant of, and employed as such by, that owner and to be driving or operating the motor vehicle in the course of the person's employment with that owner.

(1.1) In the case of a motor vehicle that is in the possession of its borrower, in an action to recover for loss or damage to persons or property arising out of the use or operation of the motor vehicle on a highway, a person driving or operating the motor vehicle who

(a) is living with, and as a member of the family of, the borrower, or

(b) acquired possession of the motor vehicle with the consent, express or implied, of the borrower,

is deemed to be the agent or servant of, and employed as such by, that borrower and to be driving or operating the motor vehicle in the course of the person's employment with that borrower.

(1.2) In the case of a motor vehicle that is in the possession of its borrower, in an action to recover for loss or damage to persons or property arising out of

the use or operation of the motor vehicle on a highway, a person driving or operating the motor vehicle who acquired possession of the motor vehicle with the consent, express or implied, of its lender is deemed to be the agent or servant of, and employed as such by, that lender and to be driving or operating the motor vehicle in the course of the person's employment with that lender.

(1.3) The liability under subsection (1.2) of a lender is subject to the applicable limit established under section 82.1 of the *Insurance (Vehicle) Act*.

(2) Nothing in this section relieves a person deemed to be the agent or servant of the owner or borrower and to be driving or operating the motor vehicle in the course of the person's employment from the liability for such loss or damage.

(3) In this section:

... **["borrower"]** means a person who leases or rents a motor vehicle from a lender for any period of time;

... **["lender"]** means the following:

(a) subject to paragraph (b), a person who, under an agreement in writing and in the ordinary course of the person's business, leases or rents a motor vehicle to another person for any period of time;

(b) if the lender referred to in paragraph (a) has assigned the agreement, the assignee;

"owner"

(a) includes a purchaser of a motor vehicle who is in possession of the motor vehicle under a conditional sales contract by which title to the motor vehicle remains in the seller, or the seller's assignee, until the purchaser takes title on full compliance with the contract,

(b) if a purchaser of a motor vehicle is in possession of the motor vehicle, does not include the seller of that motor vehicle under a conditional sales contract described in paragraph (a) or the assignee of that seller, and

(c) does not include a borrower of a motor vehicle who is in possession of the motor vehicle under an agreement in writing with the owner, whether or not the borrower may become its owner in compliance with the agreement.

(4) This section, as amended by section 43 of the *Miscellaneous Statutes Amendment Act (No. 2), 2007*, applies only in relation to loss or damage sustained on or after the date that section comes into force.

[33] The appellant submits that because he was in possession of the car with the consent of the respondent, he is deemed to have been an employee of the respondent and to have been driving in the course of his employment.

[34] In my respectful view, that interpretation misses the mark and intent of the legislation. This was also clear from the judge's decision at paras 18-19, where she considered the submissions and said:

The case of *Harris Victoria Chrysler Dodge Jeep Ram Ltd. v Ward*, 2023 BCCA 478, refers to that section. As I indicated during Mr. Sewell's submissions, it is clear from that case that ... this provision and similar provisions across the country were enacted by governments from a public policy point of protecting innocent third-parties who were damaged, including serious injury, and where the actual driver may not have insurance or have inadequate insurance or assets to cover the loss and the owner of the vehicle, if they have consented outright or by implied consent, become responsible for it.

This section, in my view, does not make Mr. Sewell an employee of Gardner Chevrolet Buick GMC Ltd. For all purposes, it defies common sense that that would be the law. It would require the claimant to comply with all the laws relating to employees. In my view, it is a far-fetched and spurious submission – and I am not being critical of it, it is quite frankly worth giving it a try, but it has no basis in law.

[35] I agree with the judge's conclusion. The intent of the legislation is to protect innocent third parties in necessary situations. It is not intended to protect a negligent driver from their own negligence. Counsel for the appellant was unable to provide any case authority for his suggested interpretation of this section of the *MVA*.

Conclusion

[36] I dismiss the appeal. The respondent is entitled to its costs, but I view this as a matter of little or less than ordinary difficulty and award such costs at Scale A.

“Caldwell J.”