



No. *Court File No.* **VLC-S-M-230337**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MIRIAM HAVA YANIV

PLAINTIFF

AND:

LISA MICHELLE JAYWANT and JOSHUA TONY JAYWANT

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed Notice of Civil Claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Notice of Civil Claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Notice of Civil Claim was served on you, or

(d) if the time for Response to Civil Claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

1. The Plaintiff, Miriam Hava Yaniv, is a nursing unit clerk and has an address in care of 114-5455 152 Street, Surrey, British Columbia.
2. The Defendant, Lisa Michelle Jaywant (the Defendant, "Lisa"), whose occupation is unknown to the Plaintiff, resides at 4876 196 Street, Langley, British Columbia and was at all material times the registered owner of a 2018 Mazda 3 bearing British Columbia license plate number KS535W (the "Mazda").
3. The Defendant, Joshua Tony Jaywant (the Defendant, "Joshua"), whose occupation is unknown to the Plaintiff, resides at 4876 196 Street, Langley, British Columbia and was at all material times the operator of the Mazda having acquired possession of the vehicle with the consent, express or implied, of the Defendant, Lisa.

The Collision

4. On or about February 18, 2021, at or near the intersection of 201 Street and 64 Avenue, Langley, British Columbia, a motor vehicle owned by the Defendant, Lisa, and negligently operated by the Defendant, Joshua, collided with the motor vehicle operated by the Plaintiff (the "Collision").

The Plaintiff's Injuries

5. As a result of the Collision, the Plaintiff has suffered and continues to suffer personal injuries consisting of, *inter alia*:
 - a. Concussion;
 - b. Injury to the head;
 - c. Injury to the neck;
 - d. Injury to the shoulders;

- e. Injury to the back;
- f. Sleep disturbance;
- g. Headaches;
- h. Fatigue;
- i. Anxiety;
- j. Driving Anxiety; and
- k. Such further injuries as will be proven at trial.

Damages

- 6. The injuries, loss and damage have caused and continue to cause the Plaintiff pain, suffering, loss of enjoyment of life, loss or impairment of opportunity to form a permanent interdependency relationship which may be expected to produce financial benefit, permanent physical disability, loss of earnings, past and prospective, loss of income earning capacity, loss of opportunity to earn income and loss of housekeeping capacity, past and prospective.
- 7. As a further result of the injuries sustained in the said Collision, the Plaintiff will be more susceptible to future injury and degenerative changes.
- 8. As a result of the Collision, the Plaintiff has sustained certain special damages, loss and expense, including medical treatment. The Plaintiff continues to undergo such medical care and treatment and to sustain loss and expense thereby.
- 9. As a further result of the Collision, the Plaintiff has sustained a loss by reason of the accelerated depreciation in the value of her motor vehicle.

PART 2: RELIEF SOUGHT

- 1. The Plaintiff claims against the Defendants and each of them for:
 - a. General Damages;
 - b. Special Damages;
 - c. Costs;
 - d. Interest pursuant to the provisions of the *Court Order Interest Act*; and
 - e. Such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

1. This is a claim in negligence and the Plaintiff relies upon the common law of negligence, and/or breach of statutory duty as against the Defendants and each of them.
2. Particulars of the negligence against the Defendant, Joshua, are as follows:
 - a. Failing to keep or maintain any or an adequate lookout;
 - b. Driving the motor vehicle at a rate of speed that was excessive in the circumstances;
 - c. Driving the motor vehicle without any brakes or with defective brakes, or failing to apply the brakes of the motor vehicle in time to avoid the Collision;
 - d. Failing to keep the motor vehicle under proper, or any control;
 - e. Failing to take reasonable or proper steps or any precaution to avoid the Collision;
 - f. Failing to stop, slow down, turn or in any other way to manage or control the motor vehicle to avoid the Collision;
 - g. Failing to see the other motor vehicles at a reasonable time, or at all;
 - h. Failing to ensure that the motor vehicle was mechanically sound;
 - i. Operating the motor vehicle while the Defendant, Joshua's ability to do so was impaired by alcohol, prescription or non-prescription drugs, supplements, fatigue or any combination of the foregoing;
 - j. Failing to give warning by sounding the horn;
 - k. Driving the motor vehicle with faulty or inadequate equipment;
 - l. Driving the motor vehicle without due care and attention, or without reasonable consideration for other persons using the highway, contrary to s. 144 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, and amendments thereto (the "*Act*");
 - m. Causing the motor vehicle to move when it was unsafe to do so, contrary to s. 169 of the *Act*;
 - n. Failing to yield the right of way to the vehicle operated by the Plaintiff contrary to s. 173 of the *Act*;
 - o. Failing to yield the right of way to the vehicle operated by the Plaintiff contrary to

- s. 174 of the *Act*;
 - p. Using an electronic device while driving or operating a motor vehicle on a highway, contrary to s. 214.2(1) of the *Act*; and
 - q. Such further particulars as they become known to counsel.
3. Particulars of the negligence against the Defendant, Lisa, are as follows:
- a. Consenting to the use of a motor vehicle by the Defendant, Joshua while knowing or having the means of knowing that Defendant, Joshua was not adequately informed of the peculiar capacities and maneuvering abilities of the stopping and braking features of the motor vehicle;
 - b. Consenting to the use of the motor vehicle by the Defendant, Joshua, while knowing or having the means of knowing that the vehicle was mechanically defective;
 - c. Failing to ensure that the motor vehicle which the Defendant, Joshua, operated was mechanically sound;
 - d. Knowing or having means of knowing that the vehicle was mechanically defective;
 - e. Failing to have the motor vehicle properly serviced;
 - f. Failing to provide reasonable or any instructions in the safe operation of the motor vehicle operated by the Defendant, Joshua;
 - g. Failing to ensure the Defendant, Joshua, was physically and mentally capable of safely operating the motor vehicle; and
 - h. Such further particulars as they become known to counsel.
4. The Plaintiff relies on the common law of damages.
5. The Plaintiff relies on the *Motor Vehicle Act*, R.S.B.C, 1996, c. 318, and amendments thereto.
6. The Plaintiff relies on the *Court Order Interest Act*.
7. The Plaintiff relies on the *Negligence Act*, R.S.B.C. 1996, c. 333 and amendments thereto.

The Plaintiff's address for service:

Murphy Battista LLP
114-5455 152 Street
Surrey, BC V3S 5A5

Fax number address for service (*if any*):

(778) 547-0505

Place of trial:

Vancouver, British Columbia

The address of the registry is:

Vancouver Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: February 13, 2023



Signature of

☐ Plaintiff ☒ lawyer for Plaintiff
Veronica Medved

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a List of Documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the List on all parties of record.

APPENDIX

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff claims in negligence against the Defendants and each of them for general and special damages, costs and interest arising out of a motor vehicle collision which occurred on or about February 18, 2021, at or near the intersection of 201 Street and 64 Avenue, Langley, British Columbia. The Plaintiff has suffered, and continues to suffer, damage, loss and expense due to the negligence of the Defendants and each of them.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

☒ a motor vehicle accident

A dispute concerning:

☒ a matter not listed here

PART 3: THIS CLAIM INVOLVES:

☒ none of the above

PART 4:

- a. *Motor Vehicle Act*, R.S.B.C. 1996, c. 318;
- b. *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- c. *Negligence Act*, R.S.B.C. 1996, c. 333.