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COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Xu v. Ndax Canada,*
2026 BCCA 218

Date: 20260429
Docket: CA51135

Between:

Yan Li Xu

Appellant
(Plaintiff)

And

Ndax Canada

Respondent
(Defendant)

Before: The Honourable Justice Griffin
The Honourable Justice Winteringham
The Honourable Justice Riley

On appeal from: An order of the Supreme Court of British Columbia, dated October 20, 2025 (*Xu v. NDAX Canada*, 2025 BCSC 2048, Victoria Docket 246940)

Oral Reasons for Judgment

The Appellant, appearing in person:	Y.L. Xu
Counsel for the Respondent:	L. Hale R. Kelba
Place and Date of Hearing:	Victoria, British Columbia April 29, 2026
Place and Date of Judgment:	Victoria, British Columbia April 29, 2026

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Summary:

Ms. Xu appeals from the dismissal of her claim in negligence against Ndax. Ms. Xu was the victim of a cryptocurrency scam perpetrated by an unscrupulous third party who convinced her to open an account on Ndax's cryptocurrency trading platform and then transfer large amounts of cryptocurrency into a "wallet" controlled by the third party. The trial judge reasoned that even if Ndax owed Ms. Xu a duty of care to exercise diligence in the handling of the transactions, she failed to establish that Ndax breached the relevant standard of care, or that Ndax's conduct was the cause of her loss. Held: Appeal dismissed. Ms. Xu failed to establish: (i) that the trial was unfair due to language difficulties or a failure of the trial judge to facilitate Ms. Xu's understanding of the proceedings, or that the trial judge committed: (ii) palpable and overriding errors of fact, or (iii) errors in law in rejecting her negligence claim. Ms. Xu's application to adduce fresh evidence is also dismissed because much of the material does not pass the due diligence threshold, and because none of it could reasonably have been expected to have a material bearing on the trial judge's decision to dismiss her claim.

RILEY J.A.:

Introduction

[1] The appellant Ms. Xu appeals from the decision of a judge of the Supreme Court of British Columbia, dismissing her negligence claim against the respondent Ndax Canada. Ms. Xu was the victim of a cryptocurrency scam. She was convinced by a group of fraudsters, conducting business under the name Encrypt, to invest a large some of money in cryptocurrency and then transfer it to them, using Ndax's cryptocurrency trading platform.

[2] Ms. Xu later sued Ndax for negligence, claiming that they had knowledge of the scammers or otherwise failed to do enough to stop the transactions. The trial judge disagreed. She rejected Ms. Xu's claim that Ndax had foreknowledge of Encrypt or her dealings with them. She concluded that, assuming Ndax owed Ms. Xu a duty of care, the company's actions — including repeatedly warning Ms. Xu not to act on the instructions of third parties, and advising her that the transactions could not be reversed once processed — met the relevant standard of care. The judge also held that Ms. Xu failed to prove causation, effectively finding that, even if Ndax had made additional efforts to discourage Ms. Xu from proceeding with the transactions, she would not have acted any differently.

[3] On appeal, Ms. Xu argues that the trial was unfair, and that the trial judge committed palpable and overriding errors of fact, or errors in law in rejecting her negligence claim. She also applies to adduce fresh evidence. I would dismiss the application to adduce fresh evidence, and the appeal itself, for the following reasons.

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Facts

[4] On 14 April 2023, Ms. Xu opened an account on Ndax's cryptocurrency trading platform, then deposited a large sum of money into the account, and used those funds to purchase cryptocurrency. In three separate transactions over the following four weeks, Ms. Xu instructed Ndax to transfer the cryptocurrency into a particular cryptocurrency "wallet".

[5] Unbeknownst to Ndax, the wallet was controlled by a third party, who had convinced Ms. Xu that she could make a substantial profit if she followed his instructions to arrange for the cryptocurrency to be placed in the designated wallet.

[6] Ndax repeatedly warned Ms. Xu about the risks associated with cryptocurrency transactions, and the inability to reverse the transactions once they were processed. Ms. Xu disregarded these warnings, actively misled Ndax representatives by claiming that the wallet into which she was directing the funds was hers, pressured Ndax to process the transactions, and threatened action against them for losses if they failed to act on her instructions. Ndax ultimately processed all three of Ms. Xu's cryptocurrency withdrawals in accordance with her instructions.

[7] Ms. Xu later learned that the person instructing her was one of a number of scammers carrying on business under the name Encrypt. Ms. Xu made a report to the police. The police, in turn, reported Ms. Xu's complaint about a "scam" involving "Encrypt" to Ndax, but not until 23 May 2023, after Ndax had processed all three of the impugned cryptocurrency transactions.

[8] Following unsuccessful efforts to resolve her dissatisfaction through Ndax's internal review process, Ms. Xu sued Ndax for negligence. She claimed that Ndax

owed her a duty of care to handle her transactions with reasonable diligence, and that the company breached the relevant standard of care by processing the transactions, despite alleged knowledge that she was being scammed, and the presence of "red flags" that should have caused Ndax to override her instructions.

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Trial Judge's Decision

[9] Despite a lack of expert or direct evidence on the existence of a duty of care, the trial judge was prepared to accept for the purposes of her legal analysis that Ndax owed Ms. Xu a duty to:

i. Exercise reasonable skill and diligence in servicing her account, in a manner consistent with the obligations of a financial institution (relying on *Groves-Raffin Construction Ltd. v. Bank of Nova Scotia* (1976), 64 D.L.R. (3d) 78 at 83 (B.C.C.A.)); and,

ii. If and when presented with suspicious circumstances, inquire and appropriately caution her before acting on her instructions (relying on *Zheng v. Bank of China (Canada) Vancouver Richmond Branch*, 2023 BCCA 43 at para. 42).

(Reasons at paras. 26–31, 34.)

[10] Earlier in the reasons, the judge rejected Ms. Xu's assertions that Ndax had foreknowledge of the nefarious nature of Encrypt, or her dealings with that entity or the individuals associated with it. The judge did not accept Ms. Xu's testimony that Ndax had intentionally altered evidence, including an audio recording of the initial conversation between Ms. Xu and an Ndax employee, Mr. Khangsar, who warned her about the risks involved in acting on third party instructions (reasons at para. 13).

[11] The judge ultimately held that Ndax met the relevant standard of care (reasons at paras. 34–40). Earlier in the reasons, the judge had reviewed Ndax's actions, which included: requiring Ms. Xu to acknowledge two sets of automated warnings about the relevant risks before each transaction (reasons at paras. 9–12);

twice conversing with Ms. Xu by phone prior to the first transaction (reasons at paras. 13, 15); and evaluating all three transactions using an independent risk assessment tool called BitRank (reasons at para. 18).

[12] The trial judge also found that Ms. Xu failed to prove causation, effectively concluding that, even if Ndax had made additional efforts to discourage her from proceeding with the transactions, Ms. Xu would not have acted any differently (reasons at paras. 39, 41).

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On Appeal

[13] Ms. Xu advances argauments falling into four categories. First, she says the trial was unfair because she did not understand the process. Second, she seeks to admit fresh evidence said to bear on various aspects of her negligence claim. Third, she says the trial judge made palpable and overriding errors of fact bearing on Ndax's conduct in the handling of her cryptocurrency transactions. Fourth, she says the trial judge committed reviewable errors in analyzing the negligence claim.

The Trial was Not Unfair

[14] Ms. Xu says she did not understand the trial proceedings because she was self-represented, and English is not her first language. She points to extracts from the trial transcript where she says she and the judge were talking at cross-purposes. In oral argument, Ms. Xu also cited a passage in the transcript, at the very outset of the trial, referencing her efforts to secure an interpreter. Ms. Xu relies on this passage to say that her right to an interpreter was infringed.

[15] I will deal with the interpreter point first. The transcript indicates that at the very outset of the trial, Ms. Xu said this, in English:

> Okay, Your Honour, my name is Yan Li Xu. I am the plaintiff in this case. I am representing myself. I do not have a lawyer. English is not my first language. I was not able to find a court interpret. I have contact Victoria and Vancouver only received two email back from them, they are not available during the day.
>
> So I also live with bad depression and anxiety and other health challenge, which make me very difficult for me to go through this legal process. I respectfully ask the court's patience as I do my best to present my case.

[16] Although it is true that Ms. Xu told the judge she had made unsuccessful attempts to retain an interpreter to assist her in the proceedings, she did not seek an adjournment or ask for any other relief to facilitate her doing so. She simply asked, quite reasonably, for the court's patience as she did her best to present the case. Thus, there is no merit to the submission that she was denied the right to an interpreter.

[17] For the sake of completeness, I will add that, while a litigant who is unable to follow proceedings in the court's official language has the right to the assistance of an interpreter, the law is quite clear that, in a conventional civil proceeding, it is generally the responsibility of the litigant who requires that assistance to make the necessary arrangements, and, if necessary, to pay for those services. I stress that the scope and contours of the right to an interpreter are not in issue in this case, in which Ms. Xu chose to proceed without an interpreter, and simply alerted the judge to the fact that English was not her first language.

[18] I will move on to address trial fairness more generally, which was the focus of the argument set forth in Ms. Xu's factum. Trial judges have the responsibility to facilitate access to justice, and the duty to oversee the fairness of trial proceedings. A judge also has a duty to ao that the litigant can effectively advance their own interests. At the same time, trial judges must "remain neutral both in appearance and in reality": *Baring v. Grewal*, 2022 BCCA 42 at para. 106; *Mountainstar Gold Inc. v. British Columbia Securities Commission*, 2022 BCCA 406 at paras. 103–105. Further, a self-represented litigant should not be "denied relief on the basis of a minor or easily rectified deficiency in their case": *Baring* at para. 107, citing the Canadian Judicial Council's *Statement of Principles on Self-represented Litigants and Accused Persons* (2006).

[19] In this case, the judge explained various steps in the process to Ms. Xu as the trial progressed. This included the difference between presenting evidence and arguing her case once the evidence was concluded. It is apparent from the manner in which the trial unfolded, and Ms. Xu's participation in the proceedings, that she

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was able to articulate and advance her position. She presented her case through testimony and documentary evidence, and she was given an opportunity to thoroughly test the opposing party's case through cross-examination, during which she directly challenged those witnesses on disputed facts. Ms. Xu forcefully argued her case in closing submissions. Acknowledging Ms. Xu's assertion that English is not her first language and that she found the trial process stressful, looking at the matter objectively this did not seem to be an impediment to her comprehension of the proceedings or the effective communication of her position.

[20] Ms. Xu's claim did not fail because of stringent application of technical rules of evidence or procedure that prevented her from advancing her case. It failed because the trial judge, after weighing the evidence, preferred the testimony and documentary evidence presented by Ndax on certain key points of fact, and because the judge was ultimately not satisfied that Ndax ought to or even could have done more to warn Ms. Xu about proceeding with the transactions that Ms. Xu insisted on executing. The fact that the trial judge disagreed with many of Ms. Xu's positions was not a result of any impediments arising from Ms. Xu's status as a self-represented litigant.

Fresh Evidence Not Admissible

[21] Ms. Xu's fresh evidence falls into three broad categories.

[22] The first is evidence with respect to the identity of the scammers. To explain, at trial, when asked who the scammers were, Ms. Xu refused to name them, asserting that there was an ongoing police investigation. Her fresh evidence includes details with respect to the names of the individual with whom Ms. Xu was dealing and other allegedly associated individuals investigated by the police. This evidence consists of correspondence between Ms. Xu and the RCMP regarding the status of their investigation against the scammers, and various steps the RCMP have taken in that regard.

[23] The second category of fresh evidence consists of cellular phone records. Ms. Xu relies on these records in support of her contention that Ndax "fabricated" or

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falsified audio-recorded telephone conversations and voicemail messages, by deleting certain details, and by "copying" Ms. Xu's voice, and even changing its intonation. To be clear, the records set out the date, time, and duration of incoming and outgoing calls, but they do not provide any information about the content of the calls.

[24] The third category of fresh evidence is medical information about Ms. Xu's post-traumatic stress disorder, following upon the events in issue in these proceedings.

[25] On a consideration of the well-known criteria set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, I would not admit any of the fresh evidence.

[26] Much of Ms. Xu's additional evidence fails the due diligence threshold. In particular, the evidence about the identity of the scammers and Ms. Xu's correspondence with the police was all available to her at the time of the trial. It also appears that Ms. Xu's concerns about post-traumatic stress emerged prior to the trial such that medical documentation of it could have been obtained with reasonable diligence, although the fresh evidence does refer to at least one post-trial medical appointment.

[27] Perhaps more importantly, none of the fresh evidence is relevant to any material issue, nor could it have been expected to affect the outcome of the trial proceedings.

[28] The focal point of Ms. Xu's fresh evidence application appears to be additional information concerning the identity of the scammers. Ms. Xu says this evidence is relevant because, in her submission, the business name used by the scammers, Encrypt, was known to Ndax from the outset, such that Ndax ought to have given her sharper warnings about the risks of acting on their instructions. There are two answers to this submission.

[29] The first is that Ms. Xu's theory, that Ndax knew from the outset that Encrypt was a scammer or was involved in some kind of scam, was a key plank of her claim

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which was thoroughly litigated at trial. The trial judge simply did not accept Ms. Xu's recollection of the initial phone conversation with the Ndax employee, Mr. Khangsar, in which Ms. Xu started to spell out the name Encrypt, but then refused to repeat it, maintaining that she was not acting on anyone's instructions and the intended cryptocurrency wallet was hers. At the time of the cryptocurrency transactions, the only party who had any knowledge whatsoever that Ms. Xu was dealing with a third party, or the identity of that third party, was Ms. Xu. More detailed evidence about the identities of the scammers would not have altered the facts as they existed at the time of the key dealings between Ms. Xu and Ndax.

[30] The second, somewhat related point, is that the information Ms. Xu later obtained from the police about the identity of the scammers only became known to her after Ndax completed all three cryptocurrency transactions, acting on Ms. Xu's instructions. In these circumstances, additional, after-the-fact evidence about the identity of the scammers would not have had any bearing on the issues the trial judge had to decide in the assessment of Ms. Xu's negligence claim.

[31] I turn next to the phone records. In Ms. Xu's submission, these records establish that Ndax's two key witnesses, Mr. Khangsar and Ms. Baranovskaya, gave false testimony about their respective telephone conversations with her, prior to the first of the three cryptocurrency transactions. Ms. Xu says the dates and times of the incoming calls in her cell phone records do not marry up with the testimony of the Ndax witnesses, demonstrating that they gave false evidence at trial, and that the key audio recording of her call with Mr. Khangsar was intentionally altered.

[32] This argument fails on the materiality branch of the fresh evidence analysis. The phone records show that Ms. Xu in fact received incoming phone calls over the key time frame, between 17 April 2023 and 18 April 2023. When assessed against the backdrop of Ms. Xu's own trial testimony, the phone records do not materially advance her contention that the Ndax witnesses lied or that the audio recording of the key phone call with Mr. Khangsar was altered. It is noteworthy that, in her trial testimony, Ms. Xu admitted that she spoke on the phone with Mr. Khangsar, and that

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the phone call unfolded in a manner that accords both with Mr. Khangsar's trial testimony, and the audio recording itself. The phone records do not add anything to Ms. Xu's position at trial regarding the actual content of the phone call, which appeared to be based on her own recollection of the discussion.

[33] The final category of proposed fresh evidence — information relating to Ms. Xu's post-traumatic stress syndrome — is also not relevant to and would not have had any impact on any of the decisive issues in the case. Ms. Xu's claim failed due to the trial judge's finding that Ndax did not breach the relevant standard of care arising out of any duty owed to Ms. Xu, and because Ms. Xu failed to prove that Ndax's conduct was the cause of her financial loss. Evidence that Ms. Xu later suffered post-traumatic stress as a result of this unfortunate experience has no bearing on either of those issues.

No Palpable and Overriding Error of Fact

[34] I turn next to Ms. Xu's argument that the trial judge's findings are tainted by palpable and overriding error. I cannot agree with this submission. The trial judge's findings regarding the manner in which Ndax handled and processed Ms. Xu's cryptocurrency transactions are fully supported by the evidence.

[35] A key plank of Ms. Xu's argument on this ground of appeal is her contention that, from the very outset, Ndax had foreknowledge that Encrypt was a nefarious entity. This position appeared to rest heavily on her recollection of the initial phone conversation with an Ndax operations associate, Mr. Khangsar, before the first of the three cryptocurrency transactions. Throughout her trial testimony, Ms. Xu asserted that Ndax had edited the audio recording of this call, and that, in fact, Mr. Khangsar said near the beginning of the call, "Encrypt are scammers" or "Encrypt is a scam", or words to that effect.

[36] Mr. Khangsar testified at trial and identified an audio recording of the call, which reflects that, near the beginning of the call, when Mr. Khangsar asked Ms. Xu the intended recipient of her cryptocurrency transfer, Ms. Xu spelled out the name, "E-N-C-R-Y-P-T". When asked to repeat the spelling, Ms. Xu started to do so, but

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then put the call on hold to take “a very important message from [her] boss”. When she returned to the call, Ms. Xu would not repeat the name she had given earlier. She denied that she was taking instructions from a third party, claiming that she was acting on her own, and that the cryptocurrency wallet was hers.

[37] Ms. Xu gave her own testimony as to her recollection of this call, and cross-examined Mr. Khangsar about it. She claimed that Mr. Khangsar in fact told her near the beginning of the call that Encrypt was a scammer, and that this part of the call had been deleted from the audio recording.

[38] In the end the trial judge accepted Mr. Khangsar’s evidence, which was entirely consistent with the audio recording and all of the other records relied upon by Ndax with respect to the processing of the cryptocurrency transactions. There was ample evidence to support the judge’s finding on this key issue. The fact that Ms. Xu had a different recollection of the call did not convince the judge that Mr. Khangsar’s testimony was wrong and that the recording had been intentionally altered.

[39] On appeal, Ms. Xu insists that the judge was wrong and that the audio was falsified to remove key exchanges, and to change the tone of her voice. I would not give effect to this submission. It was within the purview and responsibility of the trial judge to assess the evidence and make findings on disputed facts. Deference is owed to her analysis. Ms. Xu has not shown any palpable and overriding error on the judge’s part.

[40] Ms. Xu also submits that, although she was warned by Mr. Khangsar about the possibility she was being scammed, the problem was that she was being brainwashed by the scammers, so Ndax should have warned her again and it did not do this. She says the judge was wrong to find that she was warned about the possibility of cryptocurrency fraud by another Ndax representative, Julia Baranovskaya, as held by the judge at para. 15. However, there was evidence from Ms. Baranovskaya to support this finding, and it was within the judge’s purview to reject Ms. Xu’s challenge to that evidence.

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[41] Another plank of Ms. Xu's argument on appeal is that the trial judge erred in relying upon outdated versions of Ndax's User Agreement and the Ndax Risk Disclosure, both of which an Ndax client must confirm they have read as part of the account-opening process. Both of these documents contain express warnings about the risks associated with cryptocurrency trading, and the finality of cryptocurrency transactions. The evidence at trial revealed that these are standard form Ndax documents, that they are revised from time to time, and that the versions marked in evidence in Ms. Xu's case were in fact dated after the transactions that are the subject of her claim. Against this backdrop, Ms. Xu says the trial judge erred in placing any reliance upon them.

[42] I do not find this argument convincing, for two reasons.

[43] First and foremost, Ms. Xu cross-examined the Ndax witness through whom these documents were admitted, in the course of which she pointed out that the documents were printed, and in one case revised after the date of the impugned transactions. The judge was aware of this and no doubt would have factored it into her assessment of the evidence. It was for the trial judge to decide what weight, if any, to give to these documents. The fact that the printed versions of these documents marked in evidence post-dated the events in issue was relevant, but it did not mean the trial judge was compelled to reject them or give them no weight.

[44] Second, and in any event, the precise content of these documents was by no means critical to the trial judge's negligence analysis and conclusions. The judge declined to place any reliance on the User Agreement, which was tendered by the respondent in support of an argument about contractual limitations on Ndax's liability, an argument which the trial judge ultimately declined to consider (reasons at para. 42). The judge did consider the content of the Risk Disclosure (reasons at para. 10), but this was only one of four "warnings" Ndax provided to Ms. Xu before the first of the three transactions. The other "warnings" included personal phone conversations, in which Ndax representatives cautioned Ms. Xu about the risks of being manipulated by third party scammers, and warned her that cryptocurrency

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transactions once processed cannot be reversed. It follows that, even if the trial judge was shown to have made some palpable error in her consideration of the Risk Disclosure, the error would not be overriding so as to alter the result.

No Reviewable Error in Trial Judge's Negligence Analysis

[45] Ndax relies on the following passage from *Leung v. Shamtanis*, 2024 BCCA 12, leave to appeal refused 2024 CanLII 80705 (S.C.C.), for its discussion of the standard of review in relation to an appeal from a trial judge's conclusion on a negligence claim:

> [21] In a negligence action, the question of whether or not the standard of care was met by a defendant involves the application of a legal standard to a set of facts, which is a question of mixed fact and law. The question is subject to a standard of review of palpable and overriding error unless it is clear that the judge made an extricable error in principle: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 37. This standard of review applies equally to appellate review of the factual inferences drawn by a trial judge, and to findings of credibility. It is not the role of an appellate court to retry the case, or to substitute its views of the evidence for the views of the trial judge: *Housen* at para. 3.

[46] Ms. Xu argues that the trial judge erred in failing to conclude that Ndax's policy, management systems, and conduct fell below the requisite standard of care. She says that Ndax ignored the "red flags" apparent from her phone conversation with Mr. Khangsar prior to the first of the three cryptocurrency transactions, and that the company's failure to safeguard against fraudulent practices breached the standard of care expected of it.

[47] This was the central issue at trial, and the crux of the trial judge's analysis. She instructed herself on the essential elements of a negligence claim as set out in *1688782 Ontario Inc. v. Maple Leafe Foods Inc.*, 2020 SCC 35 at para. 30. She went on to consider the potential existence of a duty of care, drawing on the duties owed by financial institutions to their clients as discussed in cases such as *Groves-Raffin* and *Zheng*. The trial judge ultimately concluded, on a consideration of all the evidence, that Ndax did not breach any standard of care it owed to Ms. Xu.

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[48] In deciding whether Ndax breached the standard of care that could be expected of it, the judge considered the company's policies, practices, and conduct. The evidence revealed that, before the first transaction, Ndax required Ms. Xu to acknowledge two automated warnings, and then manually reviewed the transaction, in the course of which Ndax representatives spoke twice on the phone with Ms. Xu. In the second transaction, Ndax required Ms. Xu to acknowledge two automated warnings, and subjected the transaction to a manual review involving another personal phone call with Ms. Xu. In the third transaction, Ndax again required Ms. Xu to acknowledge the two automated warnings. Ndax also subjected all three transactions to an independent risk analysis through BitRank, under which it was determined that all three transactions were within acceptable risk parameters. The judge concluded, based on a multifactorial assessment of Ndax's policies, practices, and conduct, that the company did not breach any standard of care it owed to Ms. Xu. Although Ms. Xu is unsatisfied with the judge's conclusion, she has not shown it to be tainted by any extricable error of law, or any palpable or overriding error of mixed fact and law.

[49] In a separate argument, Ms. Xu argues that the trial judge erred by allowing Ndax to rely on her "contributory negligence" as a defence against its own negligent conduct. She says a victim's carelessness cannot be a defence when intentional fraud has occurred. I do not profess to fully understand Ms. Xu's argument, and I do not propose to review the law of contributory negligence beyond merely observing that the trial judge did not excuse Ndax from liability due any contributory negligence on Ms. Xu's part. Rather, the trial judge was satisfied, based on Ndax's own policies, procedures and conduct, that the company met any standard of care owed to Ms. Xu. The fact that Ms. Xu was not forthcoming with Ndax during the review of her transactions unquestionably made it more difficult to prevent her from being victimized. However, this does not mean the trial judge's finding that Ndax did not breach the standard of care rested any finding of contributory negligence on the part of Ms. Xu.

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Conclusion

[50] I would dismiss the fresh evidence application and the appeal.

[51] **GRIFFIN J.A.**: I agree.

[52] **WINTERINGHAM J.A.**: I agree.

[53] **GRIFFIN J.A.**: The application to adduce fresh evidence and the appeal are dismissed.

"The Honourable Justice Riley"

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