IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bodnar v. Community Savings Credit Union,* 2023 BCSC 934

Date: 20230413
Docket: S047104
Registry: Vancouver

Between:

Andrew Bodnar and John Humphrey

Plaintiffs

And

Community Savings Credit Union, North Shore Credit Union, Chemainus Credit Union, Comox Valley Credit Union, Kootenay Savings Credit Union, VantageOne Credit Union, Village Credit Union, Greater Vancouver Community Credit Union, Coastal Community Credit Union, and Vancouver City Savings Credit Union

Defendants

Before: The Honourable Mr. Justice Brundrett
(appearing via videoconference)

Oral Reasons for Judgment

(In Chambers)

Counsel for the Plaintiffs, appearing via videoconference:	P.R. Bennett M.W. Mounteer
Counsel for the Defendants, appearing via videoconference:	A. Mitretodis
Place and Date of Hearing:	Vancouver, B.C. April 13, 2023
Place and Date of Judgment:	Vancouver, B.C. April 13, 2023

THE COURT: These reasons were given orally. They have been edited for publication.

[1] The parties seek orders related to the approval of a settlement agreement made February 1, 2023 in this matter, as well as approval of class counsel fees and disbursements.

[2] The class proceeding concerns the collection of overdraft fees exceeding five dollars by the first eight named defendants, Community Savings Credit Union ("Community"), North Shore Credit Union ("North Shore"), Chemainus Credit Union ("Chemainus"), Comox Valley Credit Union ("Comox"), Kootenay Savings Credit Union ("Kootenay"), VantageOne Credit Union ("Vantage"), Village Credit Union ("Village"), and Greater Vancouver Community Credit Union ("GVCCU"), which resulted in the receipt by the credit unions of an interest at a criminal rate on the credit advanced through the overdraft, contrary to s. 347(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, as amended.

[3] The two other defendants, Coastal Community Credit Union ("Coastal") and Vancouver City Savings Credit Union ("Vancity"), are defendants in their status as successor credit unions through amalgamation, in the case of Coastal to Chemainus and Comox, and in the case of Vancity to Village.

[4] This action was commenced in December 2004 and has a long history. The action has its genesis in a previous action commenced on February 5, 2003 under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [*CPA*] against Vancity for the collection of overdraft fees in excess of five dollars resulting in a criminal interest rate in which plaintiffs' counsel also acted, which was *MacKinnon v. Vancouver City Savings Credit Union*, 2004 BCSC 1604 (the "MacKinnon Action"). Shortly thereafter, an application was filed to join some other credit unions as defendants to the MacKinnon Action. These credit unions included Coast Capital Savings Credit Union and six of the credit unions who are defendants in this action.

[5] The evidence related to the overdraft fees in this action is that all of the credit unions reduced their overdraft charge to five dollars between February 2003 and July 1, 2003. As a result, this action concerns overdraft fees in excess of five dollars collected by the credit unions prior to July 1, 2003, charges that are now almost 20 years old or older.

[6] The application to certify this action as a class proceeding was heard in March of 2019. An initial judgment on the application was pronounced on November 4, 2019 in *Bodnar v. Community Savings Credit Union*, 2019 BCSC 1885. The certification was substantially upheld on appeal in *Bodnar v. Community Savings Credit Union*, 2022 BCCA 263, thus settling the issue of liability in this action.

[7] The parties undertook mediation before a mediator and ultimately agreed on the following principal amounts to be paid by the credit unions in settlement of their liability:

Credit Union	**Overcharges**
GVCCU	$19,681
Village	$800,000
North Shore	$240,241
Kootenay	$2,225,000
Comox	$120,292
Chemainus	$139,361
Vantage	$116,846
Community	$575,000
	$4,236,421

[8] The agreed upon amounts include a modest discount of ten percent to reflect the efficiency involved in settling the credit unions' liability rather than determining that liability through litigation. The parties also (i) negotiated the amount of prejudgment interest to be paid at the bankers’ prime rate on the principal amounts of overdraft charges collected in 2003 and the years before and (ii) agreed on the following amounts of prejudgment interest:

Credit Union	Interest Start Date	Interest
GVCCU	January 1, 2002	$14,304
Village	January 1, 1997	$667,844
North Shore	January 1, 1996	$217,671
Kootenay	July 1, 1995	$2,049,113
Comox	July 1, 2000	$92,204
Chemainus	January 1, 2000	$105,883
Vantage	July 1, 1994	$110,892
Community	July 1, 1997	$484,220
		$3,742,130

[9] The total amount of the proposed settlement is just under eight million.

[10] The *CPA* does not provide a specific test for settlement approval. Rather, the test has been developed by the courts. The guiding principle is that a settlement must be fair and reasonable and in the best interests of the class as a whole: *Wilson v. Depuy International Ltd.*, 2018 BCSC 1192 at para. 58, aff'd 2019 BCCA 440, leave to appeal to SCC ref'd, 39044 (27 August 2020); *Denluck v. The Board of Trustees for the Boilermakers' Lodge 359 Pension Plan*, 2021 BCSC 242 at paras. 11–15.

[11] While each class member is likely to have their own individual views of any settlement, the court is required to consider the collective interest when reviewing a settlement.

[12] The standard for approval of a settlement is whether,

> in all of the circumstances, the settlement is fair, reasonable and in the best interest of the class as a whole. The court need not dissect the proposed settlement with an eye to perfection. Rather, the settlement must fall within a range or a zone of reasonableness to be approved…

See *Bodnar v. The Cash Store*, 2010 BCSC 145 at para. 17.

[13] I have taken into account numerous factors in assessing the reasonableness of the settlement, as set out in *Fakhri et. al. v. Alfalfa's Canada, Inc. cba Capers*,

2005 BCSC 1123 at para. 8 and *Coburn and Watson's Metropolitan Home v. BMO Financial Group*, 2018 BCSC 1183 at para. 33, aff'd 2019 BCCA 308, leave to appeal to SCC ref'd, 38873 (26 March 2020).

[14] Class counsel consider the settlement to be fair and reasonable and in the best interests of the class for two basic reasons. First, if this action proceeds to trial to determine the amount of the credit unions' liability, it is submitted and I accept that the only overdraft fees which could likely be the subject of an aggregate damages award would be the overdraft fees collected by the credit unions within the six-year limitation period running back from the date this action was commenced on December 21, 2004.

[15] Second, I accept the submission that the amount of the proposed settlement, including prejudgment interest, will be more than sufficient to pay each claiming class member the full amount of their claim for unlawful overdraft fees collected from them with interest and without any deductions for class counsels' legal expenses approved by the court. This is so because the claims in this action are at least 20 years old, which means that the level of class participation in the settlement (known as the "take up rate") is likely to be low. In the result, the class will recover more in aggregate unlawful fees through the settlement than would be recovered from the credit unions if the amount of their aggregate liability for unlawful overdraft fees was determined at trial, and the amount recovered by the class will be more than sufficient to pay all the claiming class members' claims in full.

[16] All counsel are in agreement with the settlement. I note that the representative plaintiff, Andrew Bodnar, agrees with the settlement, and that the wife of the other representative plaintiff, John Humphrey, who assumed his responsibilities when he passed away in 2019, also approves of the settlement. I further note that the settlement preserves the right of a class member to opt out of the action in accordance with the settlement administration plan.

[17] In all the circumstances, having reviewed the details of the settlement, I find that the settlement is fair, reasonable and in the best interests of the class as a whole. The settlement is approved on the terms sought.

[18] I have reviewed the retainer agreement, the disbursements and the fees charged, which legal fees amount to 35 percent of the total amount recovered by the class under any judgment or settlement. There are honorariums of $5,000 to each class member, which I view as appropriate. All the fees and disbursements are approved as fair, reasonable and in the best interests of the class under the *CPA*.

"Brundrett J."