

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gesner v. Coast Capital Federal Savings*,
2024 BCSC 490

Date: 20240325
Docket: S231434
Registry: Vancouver

Between:

Ashley Gesner

Plaintiff

And

Coast Capital Federal Savings

Defendant

Before: The Honourable Justice E. McDonald

Reasons for Judgment

The Plaintiff, appearing in person:

A. Gesner

Counsel for the Defendant:

A. Peck

Place and Date of Trial/Hearing:

Vancouver, B.C.
September 26, 2023

Place and Date of Judgment:

Vancouver, B.C.
March 25, 2024

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Introduction

[1] This matter arises from a dispute between a customer and a credit union. Ms. Gesner makes various claims against Coast Capital Savings Federal Credit Union (“Coast Capital”) related to her concern that Coast Capital failed to provide her with services and supports that she expected.

[2] Ms. Gesner claims that Coast Capital damaged her business and career prospects. She brings various claims for, among other things, breach of contract and negligence and she seeks damages and restoration of her credit rating.

[3] Coast Capital denies all aspects of the claim. In its own application, Coast Capital also seeks dismissal of Ms. Gesner’s claim.

Background

[4] Ms. Gesner is an entrepreneur with education and experience as an architecture technologist and environmental designer, among other things. Ms. Gesner intends to grow her business. In her application record and in her submissions, Ms. Gesner provided many examples of her creativity, work experience and business plans.

[5] Coast Capital is named in the style of cause as, “Coast Capital Federal Savings”. However, it is actually named, “Coast Capital Savings Federal Credit Union”, pursuant to the *Bank Act*, S.C. 1991, c. 46. I order that the style of cause is corrected to reflect the defendant’s actual name of “Coast Capital Savings Federal Credit Union”.

[6] On March 1, 2023, Ms. Gesner filed a notice of civil claim (the “Claim”) against Coast Capital, pleading the following statement of facts:

1. Breach of Contract in providing Professional Financial Services and caused Plaintiff unintentional harm, caused damages due to Negligence and Failure of Duty of Care.
2. Defendant Breach of Trust by misuse of Plaintiff’s finances withdrawing \$5253.00 btw [sic] July 2021 – October 2021 without consent by Plaintiff.

3. Breach of Duty of care to provide adequate Professional service. Taking several months to set up necessary business accounts for Plaintiff to operate business needs. The Defendant failed to communicate and resolve matter in a timely manner. Causing Plaintiff to lose Primary live/work residence valued in 2021 by BC Assessment Value \$715K.

[7] The Claim seeks damages, interest, and the return of “finances” and “credit score” to “excellent” condition.

[8] In its response to the Claim, Coast Capital states, among other things, that Ms. Gesner has failed to plead material facts to support any cause of action against it. Coast Capital also denies breaching any contractual or other duty owed to Ms. Gesner.

The Applications

[9] There are two applications before me: (1) Ms. Gesner’s March 2, 2023 summary trial application; and (2) Coast Capital’s August 25, 2023 application to strike, or alternatively, dismiss the Claim.

[10] I note that Ms. Gesner’s March 2, 2023 application is filed in action no. S213422. This is not the action number for this claim; rather, it is the action number for the proceeding under which Ms. Gesner obtained an order for a fee waiver. Ms. Gesner is actually seeking judgment on the Claim filed in Action No. S231434 on March 1, 2023. Therefore, I order that the March 2, 2023, application be treated as if it had been filed in Action No. S231434.

[11] Ms. Gesner filed a number of notices of application in addition to the one filed on March 2, 2023. For example, she filed applications on August 9 and 18, 2023. Ms. Gesner submits that all of the applications she filed seek the same thing: judgment on the Claim.

[12] During submissions, Ms. Gesner confirmed that she seeks to have her Claim determined by summary trial pursuant to Rule 9-7 of the *Supreme Court Civil Rules*. Ms. Gesner submitted that her application record received on September 22, 2023, contains all of the evidence she needs to support the Claim.

[13] Indeed, the material Ms. Gesner’s application record includes her affidavits made March 1, 2023, July 13, 2023, August 9, 18 and 29, 2023, as well as the affidavit of Jason Chieh-Shieh Wang made August 28, 2023.

[14] The bulk of Ms. Gesner’s application record consists of documents that are exhibits to affidavits. For example, the exhibits to her affidavits include items such as:

- a) communications between Ms. Gesner and employees of Coast Capital;
- b) letters and documents related to Ms. Gesner’s complaint to the Ombudsman for Banking Services and Investments about the Canadian Imperial Bank of Commerce (“CIBC”); and
- c) a copy of Ms. Gesner’s occurrence report at the West Vancouver Police Department regarding her October 2021 complaint about being the victim of an online romance scam and being defrauded of approximately \$115,000 worth of Crypto currency.

[15] Coast Capital filed a response to Ms. Gesner’s application. Coast Capital’s response is supported by affidavits from a Coast Capital employee, Mr. Beukers, and an affidavit by a legal administrative assistant, Ms. Morris, who is employed by counsel for Coast Capital.

Is the Claim suitable for Summary Trial?

[16] The court must decide whether the matter is suitable for summary trial even when, as here, the parties seek a summary trial. The summary trial rule makes it possible, under the appropriate circumstances, for judges to try the issues raised by the pleadings on affidavits. The rule also allows judges to decide summarily, if the judge can find the facts necessary for that purpose, even though there may be disputed issues of fact and law, and also provided the judge does not find it unjust to do so: *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 28-35 [*Gichuru*].

[17] To decide whether proceeding summarily would be unjust, a judge should consider factors such as, the amount involved, the complexity of the matter, urgency and prejudice that may arise by reason of delay, the cost of taking the matter to a conventional trial in relation to the amount involved, whether credibility is a critical factor to determining the dispute, and, any of the relevant factor arising on this important issue: *Gichuru*, at paras. 30-31.

[18] Both parties must be prepared to prove their claim, or their defence, at the summary trial hearing. Even though a summary trial is heard on affidavits in chambers, it is a trial of the action and the plaintiff retains the onus of proof for establishing the plaintiff's claims: *Gichuru*, at paras. 32 and 35.

[19] Having considered the submissions and the evidence, I find that it is appropriate to decide the matter summarily including because the disputed issues of fact and law are capable of determination on the basis of the evidence in the record. As to whether it would be unjust to decide the matter summarily, I have concluded that it is not unjust to do so.

[20] I concluded it is not unjust to decide the matter summarily for reasons that include the amount involved in the claim and the straight-forward nature of the issues raised in the Claim. In my view, credibility is not a critical issue in determining the Claim. It is also relevant to consider Ms. Gesner's submission that the application record contains all of the evidence that she says is necessary to prove the Claim.

The Claim

Did Coast Capital wrongfully delay opening the business account?

[21] Ms. Gesner alleges that Coast Capital is liable for failing to promptly set up a basic business account for the business she was operating. Ms. Gesner's allegation is that Coast Capital took in excess of ten months to set up a basic business account. She submits this delay is actionable because it caused her damage, for

example, because it delayed her application for government financial assistance during COVID-19.

[22] In her affidavit made August 18, 2023, Ms. Gesner attaches emails with Coast Capital employees from December 8, 2020 to January 11, 2021. In these emails, Ms. Gesner and the employees of Coast Capital discuss her wish to apply for government assistance known as, Canada Emergency Business Account (“CEBA”), and a “Sole Proprietorship membership”.

[23] In Ms. Gesner’s affidavit made July 13, 2023, she attaches various emails such as the January 12, 2021 email to Coast Capital where Ms. Gesner notes, among other things, that it has taken weeks to set up her business account. However, in a differed email dated January 12, 2021, a Coast Capital employee provides Ms. Gesner with the requirements for each type of account and states that the account will be set up quickly to give her access to online banking to apply for CEBA. However, the employee notes Ms. Gesner also needs to come into the branch to sign documents.

[24] In an email dated September 15, 2021, Coast Capital’s CEBA Business Team advised Ms. Gesner that her CEBA application has been declined for failing to “successfully demonstrate that she met the CEBA eligibility requirements within program deadlines”.

[25] Sean Beukers, the director of lending operations for Coast Capital, states in his affidavit #1 made August 24, 2023, that based on his review of Ms. Gesner’s member file, she has been a member since October 20, 2017. Ms. Gesner holds both a personal and a sole proprietorship membership along with certain associated accounts, including a business account. The business account was opened on January 18, 2021.

[26] I accept Mr. Beuker’s evidence that Ms. Gesner’s business account was opened on January 18, 2021. In my view, Ms. Gesner has failed to establish that the timing of the opening of the business account is actionable, for example,

because it took so long that it violates the terms of an agreement with Coast Capital. Ms. Gesner has not established that Coast Capital had an obligation to open the business account within a specified period of time and that it failed to do so. The evidence also fails to establish that the timing of the opening of the business account resulted in actionable loss or damage to Ms. Gesner.

Did Coast Capital wrongfully debit funds?

[27] Ms. Gesner also alleges that Coast Capital is liable for wrongfully “borrowing” funds or withdrawing mortgage and line of credit payments, from her account when it was not authorized to do so. Coast Capital denies these allegations.

[28] Mr. Beukers states in his affidavit #1, that Ms. Gesner and her father jointly obtained a mortgage on March 22, 2018. In addition, there was a line of credit associated with the mortgage. On July 27, 2021, Coast Capital provided a payout statement with current balances for the mortgage and line of credit. When the property was sold, the balances were paid out.

[29] On October 5, 2021, Ms. Gesner reported to Coast Capital that three mortgage payments had been withdrawn from her account after the mortgage had been paid out. However, Coast Capital’s submission is that Ms. Gesner is responsible for those automatic withdrawals.

[30] Mr. Beukers states that according to Coast Capital’s records, Ms. Gesner set up automatic monthly transfers from her chequing account on October 30, 2018 and June 14, 2019. Ms. Gesner directed those automatic transfers toward the mortgage and line of credit accounts, respectively. After the mortgage and line of credit were paid out, there is no evidence that Ms. Gesner arranged to cancel the automatic monthly transfers from her chequing account.

[31] The automatic transfers occurred on each of August 1, September 1 and October 1, 2021. I find that Ms. Gesner set up the automatic monthly transfers from her chequing account.

[32] Once Ms. Gesner contacted Coast Capital on October 5, 2021, regarding the automatic monthly transfers in August, September and October, Coast Capital credited the funds back to her chequing account and cancelled the automatic monthly transfers. I find that Coast Capital promptly returned the funds to Ms. Gesner's chequing account.

[33] Ms. Gesner provides no evidence to prove that she took steps prior to October 5, 2021, to cancel the automatic monthly transfers that she had set up in her chequing account. There is also no evidence that prior to October 5th, Ms. Gesner had asked Coast Capital to stop the automatic transfers. There is also no evidence to show that Coast Capital was responsible for canceling the automatic transfers after the mortgage and line of credit had been paid out.

[34] In short, Ms. Gesner has not established that Coast Capital is liable for the automatic transfers she arranged and which continued after the mortgage and line of credit had been paid out. To the extent the funds were debited, I find it was solely the result of Ms. Gesner's decision to arrange for the automatic monthly transfers and her failure to terminate those transfers once they were no longer needed.

Did Coast Capital fail to defer payments and cause her to sell her property?

[35] Ms. Gesner submits that Coast Capital failed to defer her mortgage payments and by failing to do so, she was forced to sell her property. As a result, she claims for loss and damage.

[36] Ms. Gesner has provided documents related to her requests to defer her mortgage. For example, on March 25, 2021, Ms. Gesner emailed an employee of Coast Capital to complain about taking "months to set up a business account" and charging her interest instead of "deferring and freezing my payments during COVID-19".

[37] Mr. Beukers states in his affidavit made August 25, 2023, that Coast Capital granted Ms. Gesner and her father deferrals of the mortgage payments owing on

their mortgage in each of April, May and June 2020. Coast Capital also allowed interest-only payments on the mortgage for each of October 1, 2020, November 1, 2020 and February 1, 2021.

[38] When Ms. Gesner requested further mortgage deferrals, Coast Capital advised that it would consider additional mortgage deferrals once Ms. Gesner had received an offer to purchase the property. Ms. Gesner then advised Coast Capital that the property had been listed for sale.

[39] In her February 15, 2023, demand letter to Coast Capital, Ms. Gesner seeks damages of \$1,000,000 for causing her to sell the property. In other words, Ms. Gesner alleges that Coast Capital is liable for causing her to sell the property by failing to grant her further mortgage deferrals.

[40] However, there is no evidence to establish that Coast Capital was required to provide Ms. Gesner with additional payment deferrals but it wrongfully failed to do so. There is also no evidence to demonstrate that Coast Capital agreed to defer additional payments and then it failed to abide by that agreement.

[41] To the extent Ms. Gesner believes that Coast Capital should have provided her with additional payment deferrals, that is not supported by the evidence. Ms. Gesner has not referred to any term of the mortgage or other agreement to show that Coast Capital was obligated to do so. I find the claim for damages for Coast Capital's failure to grant Ms. Gesner additional payment deferrals is not established

[42] Ms. Gesner submits that Coast Capital is also liable for her decision to sell the property. On approximately August 1, 2021, Ms. Gesner and her father sold the property for \$600,000. According to the 2021 BC Assessment, the property's 2021 assessed value was \$715,000.

[43] Counsel for Coast Capital points out that in Ms. Gesner's October 2021 complaint to the police related to being a victim of an online romance fraudulent scheme, Ms. Gesner described her reasons for selling the property. According to

the complaint, Ms. Gesner said she lost some or all of the net proceeds from the sale of the property when she was duped into sending Bitcoin to the scammers as part of the scheme. In the complaint, Ms. Gesner states she sold the property for reasons that included losing her tenant, having no income herself and believing that she was dating someone who was living in the USA.

[44] I find the claim for damages for the sale of property is not established. Ms. Gesner has not shown that Coast Capital directly or indirectly required her, or caused her, to sell the property.

[45] Further, while there is evidence of the assessed value for the property, there is no evidence to demonstrate that the property was sold for less than fair market value. There is also no evidence that Coast Capital had any involvement in the negotiation of the sale price. As a result, I find there is inadequate proof that Ms. Gesner suffered any loss or damage from selling the property recoverable from Coast Capital.

Is Coast Capital liable for damages for cyber fraud?

[46] Ms. Gesner alleges that after she became a victim of a fraudulent online romance scheme and after she reported it, Coast Capital failed to provide her with protection and security.

[47] For example, Ms. Gesner is concerned that she was able to use her Visa card to obtain and contribute Bitcoin to the fraudulent scheme. As mentioned, Ms. Gesner claims Coast Capital inadequately protected her from victimization at the hands of cyber fraudsters.

[48] However, Mr. Beuker's evidence is that Coast Capital did not issue Ms. Gesner a Visa or other credit card. Mr. Beuker's evidence is that Coast Capital is not a credit card issuer and so if a member seeks a credit card, it directs its members to a third-party credit card issuer. I accept Mr. Beuker's evidence that Coast Capital never issued Ms. Gesner a Visa card.

[49] In my view, Ms. Gesner has not shown that Coast Capital, for example, failed to follow her instructions to stop transfers from her Coast Capital accounts and going into the fraudulent scheme. I find that Ms. Gesner has not established that Coast Capital is liable for loss or damage she claims as a result of using her credit card, or her funds generally, to participate in a fraudulent online romance scheme.

[50] Ms. Gesner also seeks to have Coast Capital restore her credit rating to its previously higher rating. Ms. Gesner is concerned that Coast Capital has wrongfully caused her credit rating to decline.

[51] Mr. Beuker's evidence is that Ms. Gesner is currently indebted to Coast Capital for approximately \$12,000 and her account is past due. Mr. Beuker states that Coast Capital employees have accurately reported the past-due amounts associated with Ms. Gesner's account.

[52] However, Mr. Beuker states that Coast Capital has not sent Ms. Gesner's past due account to a third-party debt collection service and Coast Capital employees have not contacted Ms. Gesner about the past due amounts since at least April 3, 2023. Coast Capital denies that it is responsible for determining Ms. Gesner's credit rating or that it had been the cause of her alleged credit rating decline. I accept Mr. Beuker's evidence on this matter.

[53] I find that Ms. Gesner has failed to establish that Coast Capital is the cause of her declining credit rating. For example, Ms. Gesner has not demonstrated that Coast Capital has incorrectly recorded or reported her past-due account balance. In fact, there is evidence that Ms. Gesner wrote to Coast Capital on January 10, 2023, stating that she was unable to pay her current debts and that she would advise when she could resume repayment.

[54] I find that to the extent Ms. Gesner's credit rating has declined, it is not due to any wrongful or actionable conduct by Coast Capital. It appears that Ms. Gesner has had difficulty repaying the amount that she owes to Coast Capital. She has not provided evidence to demonstrate that she is not indebted to Coast Capital.

[55] It is commonly understood that failing to pay one's debts when they are due will have a negative impact on one's credit rating. Therefore, I find that to the extent Ms. Gesner's credit rating had declined, that is more likely than not due to reporting by creditors, such as Coast Capital, regarding late or missed payments and outstanding balances owed by Ms. Gesner. In short, I find that Ms. Gesner has failed to show that any reporting by Coast Capital is incorrect or the cause of any actionable damage.

Disposition

[56] The style of cause in Action No. S231434 is amended to replace the defendant's name of "Coast Capital Federal Savings" with "Coast Capital Savings Federal Credit Union".

[57] For the reasons explained, Ms. Gesner's application seeking judgment on the Claim is dismissed with costs.

[58] As the Claim has been dismissed, it is unnecessary to determine Coast Capital's August 25, 2023 application.

"E. McDonald J."