

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Gesner v. Coast Capital Savings Federal  
Credit Union,*  
2024 BCCA 307

Date: 20240820  
Docket: CA49800

Between:

**Ashley Gesner**

Appellant  
(Plaintiff)

And

**Coast Capital Savings Federal Credit Union**

Respondent  
(Defendant)

Before: The Honourable Mr. Justice Abrioux  
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated  
March 25, 2024 (*Gesner v. Coast Capital Federal Savings*, 2024 BCSC 490,  
Vancouver Docket S231434).

## Oral Reasons for Judgment

The Appellant, appearing in person: A. Gesner

Counsel for the Respondent: A. Peck

Place and Date of Hearing: Vancouver, British Columbia  
August 16, 2024

Place and Date of Judgment: Vancouver, British Columbia  
August 20, 2024

**Summary:**

*Following a summary trial, the appellant's claim against the respondent was dismissed. The appellant appealed to this Court and applies for orders extending the time to file and serve her factum, adding new respondents to the appeal, and for substitutional service of the new respondents. The appellant's basis for requesting that new respondents be added is that she has received new information which she says demonstrates that she ought to have also claimed against the proposed respondents. Held: The application to extend the time for the appellant to file and serve the appeal factum is granted, and the remaining applications are dismissed. The extension of time is unopposed by the respondent. The remaining applications are dismissed because there is no basis upon which to add new respondents to the appeal. The issue on appeal will be whether the summary trial judge erred in dismissing the appellant's claim. The proposed respondents were not parties to the claim and will not be directly impacted by this Court's decision on the appeal.*

**ABRIOUX J.A.:**

**Introduction**

[1] The appellant applicant, Ashley Gesner, applies for orders seeking to add certain persons and entities as respondents to her appeal, for substitutional service, and for an extension of time to file her factum and serve the added respondents.

[2] The appeal is brought from the order made following a summary trial which dismissed Ms. Gesner's action against the respondent, Coast Capital Savings Federal Credit Union ("Coast Capital"). The trial judge's reasons for judgment are indexed at 2024 BCSC 490 [*Reasons*].

[3] There are two preliminary matters which must first be addressed. Coast Capital says it is improperly named as a respondent on this appeal, its correct name being Coast Capital Savings Federal Credit Union. Ms. Gesner agrees. I am satisfied, as was the trial judge, that Coast Capital Savings Federal Credit Union is the proper name for the respondent and order that the style of proceeding in this Court be amended accordingly.

[4] Coast Capital was late by one day in filing its materials in hard copy form in response to Ms. Gesner's application. Ms. Gesner was, however, served with those materials in electronic form several days earlier. She says the physical materials

should not be received since she has not had the chance to properly “verify” them. Counsel for Coast Capital advised the Court that the hard copies are the same as those forwarded electronically. I am satisfied there is no prejudice to Ms. Gesner in the hard copies being received and I direct that they be accepted for filing.

**Background**

[5] The underlying appeal arises from a dispute between Ms. Gesner and Coast Capital. At all material times, Ms. Gesner was a customer of Coast Capital. Broadly stated, Ms. Gesner alleges that Coast Capital failed to provide her with services and supports that she expected and says she was entitled to receive.

[6] Ms. Gesner was recently granted a no fees order by Justice Butler. In his reasons for granting the order, Justice Butler provided a summary of the lower court proceedings which I would adopt:

[4] On March 1, 2023, Ms. Gesner filed a notice of civil claim against Coast Capital. On March 2, 2023, she filed an application for summary trial. On August 25, 2023, Coast Capital applied to strike, or alternatively, dismiss the claim.

[5] Both applications came before Justice McDonald on September 26, 2023. She summarized the claims as follows:

[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.

[6] After concluding that the matter was appropriate to be decided by way of summary trial, the judge addressed the following issues, whether Coast Capital:

- (1) wrongfully delayed opening Ms. Gesner’s business account;
- (2) wrongfully debited funds or withdrew mortgage and line of credit payments;
- (3) failed to defer Ms. Gesner’s mortgage payments and thus, forced her to sell her property; and
- (4) was liable for damages for cyber fraud.

[7] On the first issue, the judge found that Ms. Gesner had not established that Coast Capital had any obligation to open her business account within a certain time and that it failed to do so, or that the timing

resulted in actionable loss or damage: at para. 26. On the second issue, the judge found that Ms. Gesner had not established that Coast Capital was liable, and to the extent the funds were debited, it was solely the result of Ms. Gesner's actions: at para. 34. On the third issue, the judge found that there was no evidence to support Ms. Gesner's claims that Coast Capital wrongfully failed to grant her additional payment deferrals. Further, the judge found that there was inadequate proof that Ms. Gesner suffered any loss or damage recoverable from Coast Capital: at para. 34. On the final issue, the judge found that Ms. Gesner had not established that Coast Capital was liable for the loss or damage she claims as a result of participating in a fraudulent online scheme: at para. 49. Additionally, the judge found that Ms. Gesner failed to show that Coast Capital wrongfully caused her credit rating to decline: at paras. 50–55.

[8] Ultimately the judge dismissed Ms. Gesner's application seeking judgment on the claim.

[7] Ms. Gesner filed her notice of appeal on April 19, 2024. On May 3, 2024, Justice Butler granted Ms. Gesner's application for a no fees order. He had the following to say about the nature and merits of Ms. Gesner's appeal:

[20] In her notice of appeal, Ms. Gesner states that she wishes to appeal incorrect facts that influenced the judgment. Specifically, she states that Coast Capital neglected to open a business account for her and neglected to close her mortgage, and is thus liable for damages. As set out above, Ms. Gesner states "inaccurate facts" as one of her grounds of appeal. It is apparent from the statements in the Form 22 that Ms. Gesner intends to challenge the findings of fact and inferences drawn by the judge.

...

[22] On the basis of the limited information before me, it appears that the merits of the appeal are not strong. Ms. Gesner will have to demonstrate that the judge made clear errors that were material to her decision. While it is difficult to assess the validity of those allegations on the information before me, it is apparent that the appeal will be challenging. Nevertheless, I cannot conclude that the appeal is bound to fail. It may be that once Ms. Gesner has obtained the transcripts and had the benefit of appropriate legal advice that she will be able to develop arguable grounds of appeal. In that regard, I encourage her to contact the Access Pro Bono lawyer to whom she has been referred to discuss the appeal.

[8] This application was filed on August 7, 2024. Ms. Gesner seeks the following orders, in her words:

A time extension to serve new Respondents. Prepare Book of Factum with new evidence that was served to the Plaintiff late.

Ability to serve new parties electronically or through social media as businesses do not have a physical brick and mortar office available to the general public.

**Extension of Time to File Appeal Factum**

[9] I will first address Ms. Gesner’s application for an extension of time to file and serve her appeal factum.

[10] Ms. Gesner’s delay in filing her factum is explained, in part, by the fact that she is self-represented. She says that she has received new information and evidence that she seeks to incorporate into her written argument, including banking records she obtained from Coast Capital. Ms. Gesner has filed a lengthy affidavit which apparently contains some or all of her new evidence. She further alleges that Coast Capital failed to provide the documents in a timely manner, which impacted the fairness of the summary trial proceedings.

[11] Coast Capital does not oppose Ms. Gesner’s request for an extension of time to file her factum, but does oppose granting Ms. Gesner any relief as it relates to introducing new evidence. Coast Capital denies any failure on its part to provide documents and says that the evidence Ms. Gesner now seeks to rely on was always available to her and was not requested until after the summary trial hearing. In any event, the issue of whether Ms. Gesner can introduce new evidence on the appeal is not properly before me, and is best left to the division hearing the appeal.

[12] I would grant Ms. Gesner’s application for an extension of time to file and serve her factum but would decline to make any order with respect to the new evidence. In doing so, I wish to make clear that to the extent Ms. Gesner wishes to introduce new evidence on the appeal and rely on it in her submissions to the Court, she will be required to obtain leave from this Court by bringing an application pursuant to Rule 59. Unless otherwise ordered, that application must be heard by the division hearing the appeal. For Ms. Gesner’s benefit, I also note that to obtain leave to introduce fresh evidence, she will be required to satisfy the four-part test

from *Palmer v. The Queen*, [1980] 1 S.C.R. 759, which was set out in *M.P.W. v. Victoria (City)*, 2023 BCCA 341 at para. 18 (Chambers):

- (1) The evidence was not discoverable by reasonable diligence before the end of trial;
- (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial;
- (3) The evidence must be credible in the sense that it is reasonably capable of belief; and
- (4) The evidence must be conclusive in the sense that it could reasonably be expected to have affected the result.

**Adding Respondents to Appeal**

[13] The entities that Ms. Gesner seeks to add as respondents are listed in her written argument, being “Visa Desjardins”, credit reporting agencies “Equifax” and “TransUnion”, the cryptocurrency trading/investment platform “Binance”, and two individuals. As I understand her argument, she alleges that these persons and entities contributed to damages she claims to have suffered, or caused her separate damages, and that some of them are affiliated with Coast Capital. On that basis, she seeks an order adding them as respondents to the appeal.

[14] All of these persons and entities with the exception of Binance appear to have been known to Ms. Gesner prior to her application for summary trial. While the identity of Binance, according to Ms. Gesner, was not known to her, one of the principal issues on summary trial was her allegation that she had been defrauded of approximately \$115,00.00 in Crypto currency: *Reasons* at para. 14

[15] The power to add respondents to an appeal is set out in Rule 18 of the *Court of Appeal Rules*, B.C. Reg. 120/2022, which reads (in part):

- 18 (1) A justice may make an order under subrule (2), if
  - (a) a person was not named as a respondent in a notice of appeal or notice of cross appeal, and
  - (b) the justice determines that the person has interests that could be affected by the relief sought in the appeal or cross appeal.
- (2) On application by a person referred to in subrule (1)(a), a justice, in the circumstances referred to in that subrule, may order that

- (a) the person be added as a respondent to the appeal,
- (b) the notice of appeal or notice of cross appeal, as applicable, be amended to name the person as a respondent, and
- (c) the person be served the amended notice of appeal or notice of cross appeal, as applicable.

[...]

[16] Rule 18 replaced the former Rule 2(2), which provided that a justice could add a person not named as a respondent if that person “could be affected by the order requested”. The new language of the provision has not changed the relevant considerations, which require determining whether the person’s legal, financial, or reputational interests will be affected by the result of the appeal: *Sunshine Coast (Regional District) v. Vanderhaeghe*, 2023 BCCA 192 at paras. 19–20 (Chambers).

[17] Applications pursuant to Rule 18 are usually brought by persons seeking to be added as respondents. In *Held v. Sechelt (District)*, 2021 BCCA 92 (Chambers), Justice Fisher stated the threshold question that applies is “whether the order from which the appeal is taken has a direct effect on the legal rights of the applicant”: at para. 11. Modified to these circumstances, the question becomes whether the order appealed from had a direct effect on the interests of the entities Ms. Gesner seeks to add as respondents and whether they could be impacted by the result of the appeal.

[18] The order under appeal dismissed Ms. Gesner’s claim against Coast Capital. Aside from Coast Capital, none of the entities listed in Ms. Gesner’s written argument were named as defendants to the claim or appeared in the court below.

[19] In her written and oral submissions, Ms. Gesner asserted that the documents she has obtained post-trial have assisted her in identifying additional parties against whom she should have claimed in the underlying action. She has also, without obtaining an order in the Supreme Court, apparently had an amended notice of civil claim accepted for filing in that court since the judge dismissed her action. That amended pleading apparently includes the putative respondents she now seeks to add on this appeal.

[20] On appeal, the issue will be whether the summary trial judge erred in dismissing Ms. Gesner's claim against Coast Capital. It will not be open to Ms. Gesner to expand, in this Court, the underlying claim itself and seek a remedy from any persons or entities other than Coast Capital.

[21] On that basis, I am unable to see how any of the entities Ms. Gesner seeks to add as respondents could be affected by the result of the appeal and I dismiss that application.

[22] The other orders sought by Ms. Gesner relate to extending timelines for service or service by alternative methods for the respondents that she has unsuccessfully sought to add to the appeal. They are moot given my conclusion that Ms. Gesner's application to add respondents to the appeal must be dismissed.

**Disposition**

[23] The style of proceedings in CA49800 is amended to replace the respondent's name of "Coast Capital Federal Savings" with "Coast Capital Savings Federal Credit Union".

[24] The time for Ms. Gesner to file and serve her appeal factum is extended to Friday, September 13, 2024. Her remaining applications are dismissed.

[25] Coast Capital seeks its costs of this application. In my view, these costs should be considered as part of the costs of the appeal proper. Accordingly, there will be no order for costs that relate to these particular applications.

"The Honourable Mr. Justice Abrioux"