

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gesner v. Canadian Imperial Bank of
Commerce*,
2025 BCSC 1274

Date: 20250708
Docket: S232175
Registry: Vancouver

Between:

Ashley Gesner

Plaintiff

And:

**Canadian Imperial Bank of Commerce, Behzad
Hatamikia and Amit Chaturvedi**

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

The Plaintiff, appearing in person:

A. Gesner

Counsel for the Defendants:

S. Evans

Place and Date of Hearing:

Vancouver, B.C.
June 23, 2025

Place and Date of Judgment:

Vancouver, B.C.
July 8, 2025

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Introduction

[1] The plaintiff, Ashley Gesner, applies for a recession order setting aside a settlement agreement dated June 4, 2024, on several grounds (the “Recession Application”) along with other relief sought. Also set for hearing on June 23, 2025, (the “Hearing”) was an application filed on June 10, 2025 by the defendant, Canadian Imperial Bank of Commerce (“CIBC”), for a declaration that the plaintiff be declared a vexatious litigant and that she may not be permitted to file any further legal proceedings, or file any applications in the Court without leave of the Court (the “Vexatious Litigant Application”).

[2] The plaintiff opposed having the Vexatious Litigant Application heard on June 23, 2025, since she had not yet had an opportunity to file a response and responding affidavits due to being busy with other matters.

[3] On June 13, 2025, the plaintiff also filed a without notice application seeking to strike the defendants’ pleadings and allegations for being vexatious. This application was also set for hearing on June 23, 2025. The defendants had not filed a response to this application.

[4] I decided to proceed to hear the Recession Application and the other applications were adjourned. Considering the adjournment of the Vexatious Litigant Application, I made the following Order:

The plaintiff may not bring any new proceedings or applications against the defendants CIBC, Behzad Hatamikia, Amit Chaturvedi, and their former and current counsel until the rendering of the decision on the vexatious litigant application.

[5] The plaintiff’s signature was waived on the form of this order, but counsel for the defendants was required to serve, via email, the filed order on the plaintiff.

[6] I will review the background facts, the proceedings to date, and provide a review of the legal principles before analyzing the merits of the Recession Application. I will then consider the issue of costs, since both parties sought special costs against the other.

Relevant Background Facts

[7] The plaintiff took out a student loan from CIBC and alleges that she was overcharged interest beyond the contractual rate of interest.

[8] On March 23, 2023, the plaintiff filed a notice of civil claim seeking “\$94,000 reimbursed into [her] new bank account at [her] new financial provider to repair Trust”. She further sought an order that her credit be restored as she was a victim of cyber fraud and that she took “misguided” advice. The named defendants were CIBC and two CIBC employees, Behzad Hatamikia and Amit Chaturvedi. Counsel for the defendants was Brenna Fahey at Borden Ladner Gervais LLP (“BLG”).

[9] On July 12, 2023, from approximately 5:40 to 6:45 p.m., the plaintiff attended a meeting at the law firm of BLG and met with Ms. Fahey and Ross McGowan to discuss settlement (the “July Meeting”). The plaintiff secretly recorded some of the July Meeting. At the July Meeting, a written offer was presented to the plaintiff that would have waived CIBC’s then outstanding debt against the plaintiff in exchange for a release and dismissal. There was no settlement achieved at the July Meeting. The plaintiff confirmed this in her oral submissions before me at the Hearing. The plaintiff obtained a certified transcript of the audio that she had recorded at the July Meeting.

[10] On July 13, 2023, the plaintiff prepared a schedule of the overcharges of interest which she notes amounted to \$26,896.04. She confirmed during the Hearing this was the number she prepared.

[11] On August 4, 2023, Mr. McGowan emailed the plaintiff asking if she was going to confirm that the basic terms of the settlement met with her approval.

[12] In August 2023, the plaintiff advised that she had secretly recorded the July Meeting and made a counteroffer of settlement demanding payment of \$345,000 from CIBC. She advised that if the counteroffer was not accepted, she would report Mr. McGowan to the Law Society for his bullying and belligerence, and Ms. Fahey for threatening the plaintiff’s fertility.

[13] Mr. McGowan responded informing the plaintiff that her threat was contrary to s. 346 of the *Criminal Code*, R.S.C. 1985, c. C-46, and it was extortion and should be withdrawn and not repeated. The plaintiff then advised that if there was no settlement she would advance a claim for breach of her human rights.

[14] In an email dated August 7, 2023, the plaintiff sought \$20,000 in exchange for not sharing her experience or the recording of the “unethical conduct” that occurred at the July Meeting.

[15] On August 18, 2023, the plaintiff filed a complaint against Mr. McGowan with the Law Society of British Columbia (the “Law Society”). The plaintiff served the complaint by delivering a copy to Mr. McGowan’s office. On December 8, 2023, Mr. McGowan provided a response to the Law Society, following which the Law Society’s complaint file was closed.

[16] On September 14, 2023, the plaintiff filed an amended notice of civil claim (“ANOCC”) in which she left out the individually named defendants from the style of cause. It is not clear to me why she did so since there was no discontinuance of the actions against the two individuals. She advanced the same claim for the overcharging of the interest. She set out the following additional claims:

2. The Defendant failed to meet FIDUCIARY DUTY to protect and serve client’s interest. Plaintiff was provided wrongful, damaging counsel by Advisors Amit chaturvedi and Hatamikia after being denied support + while Ms. Gezner acquired \$788,000 in real estate 820 credit \$80,000 to Operate AG Designs.

3. Emotional Damages and Duress for Mistreatment/Misconduct of Legal Defendants after hours July 12th 5:30-6:30pm at the office of Bordner Ladner Gervais.

[17] Under Part 2 of the ANOCC, the plaintiff sought the following relief:

1. Accounts divested
Credit Score returned to 820 with TransUnion and Equifax
2. FAIR monetary settlement for causing 10YRS of hardship due to Breach of Contract, Student Usury, Discrimination Harm caused to Academic Performance, Reputation and Wellness

3. FAIR settlement to receive therapy for the severe Misconduct of Legal Defendants causing psychological damage from threats, bullying and badgering victim.
Abusing privilege, power and shaming Plaintiff without legal counsel Present.

[18] In Part 3 of the ANOCC, the plaintiff included the following relief:

Breach of Contract, Breach of Trust “Good faith” Student Usury \$26,896.04
Plaintiff repeatedly sought support and escalated complaints for ten years!

[19] As a result of the allegations in the ANOCC, Mr. McGowan decided that he had a professional obligation to withdraw as counsel for the defendants.

[20] On October 6, 2023, the defendants filed a notice of change of solicitor appointing Steven Evans of Miller Thomson LLP as counsel.

[21] On October 26, 2023, a notice of trial was filed by the defendants setting the trial date for August 26, 2024, for five days.

[22] On December 15, 2023, the parties attended a case planning conference before Justice Saunders who made some procedural orders and directed that the parties attend a settlement conference.

[23] On April 9, 2024, the parties were scheduled to attend a settlement conference but no judge was assigned, and the settlement conference was adjourned.

[24] It appears at some point in time that the plaintiff sought to reopen her complaint against Mr. McGowan. Erin Berger of the Law Society responded on April 11, 2024, advising that having assessed the documents that had been dropped off, she had determined that there was no new issue, and there was no issue requiring an investigation. I note that the last paragraph of the letter states:

This correspondence and any other documents relating to the complaint and its investigation are not admissible as evidence in any other proceedings without the consent of the author of the material or the Executive Director pursuant to section 87 of the *Legal Profession Act*.

[25] The plaintiff attached the April 11, 2024 Law Society letter as an exhibit to an affidavit she swore and filed on January 8, 2025 in this action. There is no indication that the necessary steps were taken to comply with the Law Society’s direction on the use of the April 11, 2024 correspondence.

[26] On April 18, 2024 at 5:56 p.m., the plaintiff emailed Mr. Evans asking how the settlement negotiation was coming along, asking about the non-disclosure agreement, and advising she wanted to pick up her cheque very soon and avoid the five-day trial and media coverage.

[27] On April 19, 2024, at 4:20 p.m., Mr. Evans emailed the plaintiff a formal settlement offer noting that the offer was identical to CIBC’s last offer, except that CIBC was no longer requiring that the plaintiff agree to a confidentiality clause. The proposed form of release was attached.

[28] The settlement offer, which is on Miller Thomson letterhead and is dated April 19, 2023, which should read 2024 as the email sending it is dated April 19, 2024, states as follows:

We write to provide a formal Offer to Settle pursuant to Rule 9-1. The Defendants, Canadian Imperial Bank of Commerce, Behzad Hatamikia and Amit Chaturvedi (collectively, the “Bank”) reserve the right to bring this offer to the attention of the Court for consideration in relation to costs after the Court has pronounced judgment on all other issues in the action.

The Bank is interested in reaching a fair settlement of the action so that all parties can move on from the dispute. Accordingly, the Bank proposes to settle this matter on the following terms and conditions:

1. The Bank agrees to pay you \$15,500 (the “Settlement Payment”);
2. The Bank will eliminate the \$11,434.32 in outstanding debt you owe to the Bank;
3. The Bank will report to Equifax and TransUnion that your debts to the Bank have been satisfied;
4. You agree to a full and final release of all claims in the form attached; and
5. You agree to a consent dismissal of the action without costs to any party.

This offer is open for acceptance until 4pm on May 3, 2024.

We encourage you to seek independent legal advice.

[29] On April 22, 2024 at 9:37 a.m., the plaintiff emailed Mr. Evans asking when she could come and pick up her cheque and “sign off”.

[30] On April 22, 2024 at 9:54 a.m., the plaintiff emailed Mr. Evans stating:

I haven't had a vacation since 2019 and been exploited since 2013, opened my account and began slavery in Canada since 1994.

Ready to run towards freedom!

This amount certainly is far from putting me back into a position of empowerment as if no negligence occurred. But as I mentioned before I have no TRUST in our 'Justice' system that accommodates criminal behavior and actions. I'll sort out my trauma myself.

Please be certain to provide proof that you've contact Equifax and TransUnion with a letter relieving me of alleged debts. Ross McGowan agreed to do this July 12, 2023 on record.

Confirm, I can speak my truth to any Journalist, media and film makers concerning my experience.

[31] On April 26, 2024, Matthew Wray, an associate at Miller Thompson, met with the plaintiff so that she could sign the settlement agreement and release and be provided with a cheque representing the settlement funds. Mr. Wray described the meeting as follows:

16....The meeting was intense. The Plaintiff spoke angrily about her grievances with Canadian Imperial Bank of Commerce (“CIBC”) and Mr. McGowan. She dropped to her knees on the floor to dramatize how CIBC was “forcing her to her knees”. Several minutes into the meeting, I requested Miller Thompson’s receptionist join to act as a witness to the Plaintiff’s behaviour.

17. During the meeting, I repeatedly advised the Plaintiff that no one was forcing her to sign the settlement agreement and release and that she did not have to accept the settlement. I also advised her that CIBC does not have the ability to restore her credit score, but instead would be reporting to her credit bureaus that her debts to CIBC had been resolved.

18. After approximately 30-40 minutes, the Plaintiff signed the settlement agreement and release and I provided her with a cheque for the settlement funds.

[32] The settlement agreement was executed by the plaintiff and by Mr. Evans as lawyer for the defendants and is dated April 26, 2024, and includes the following (the “Settlement Agreement”):

NOW THEREFORE FOR VALUABLE CONSIDERATION of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, each Party hereby agrees as follows:

1. CIBC shall pay Ms. Gesner the total sum of \$15,500.00 (the “**Settlement Funds**”) in full and final settlement of the Action;
2. CIBC will eliminate the \$11,434.32 in outstanding debt that Ms. Gesner Owes to CIBC; and
3. CIBC will report to Equifax and TransUnion that Ms. Gesner’s debts to CIBC have been satisfied;

In exchange:

4. Ms. Gesner will execute a full and final release of all claims in the form attached as Schedule “A” hereto; and
5. Ms. Gesner will execute a consent dismissal of the Action without costs to any party.

...

General Terms

...

12. This Agreement contains the entire agreement between the Parties hereto relating to the subject matter hereof and there are no oral agreements, statements, representations, warranties, collateral agreements, undertakings, conditions or agreements whatsoever respecting the subject matter hereof, other than as specifically referenced herein.

13. The Parties declare that they have carefully read and understood this Agreement and have received independent legal advice prior to executing the same, or that they have waived their right to independent legal advice, and that they are not under any legal disability.

[33] The full and final release was also executed by the plaintiff on April 26, 2024.

The plaintiff also signed a consent order which was filed on June 4, 2024 (the “Consent Dismissal Order”). The Consent Dismissal Order provided:

1. The within proceeding is hereby dismissed without costs to any party;
2. The said dismissal shall be for all purposes of the same force and effect as if judgment had been pronounced after a trial of the proceeding on its merits; and
3. This Order may be executed in electronic counterparts, each of which will be deemed an original and all of which shall constitute the Consent Order.

[34] On April 26, 2024, the plaintiff emailed Mr. Evans an Instagram post showing her holding the settlement cheque, in which she includes the following statement:

... Today I accepted an unfair offer to avoid a 5 day trial at the Supreme Court of Canada, not because I felt that was what I deserved for harming me for thirty years and costing me millions, ONLY because I no longer trust our Justice...

[35] On April 29, 2024, Mr. Wray emailed the plaintiff an internal email chain from CIBC indicating that CIBC had updated its credit reporting for the plaintiff.

[36] On May 31, 2024, credit reports for the plaintiff from Equifax and TransUnion were obtained showing that the plaintiff's debt to CIBC had been settled.

[37] On August 30, 2024, the plaintiff filed a complaint with the British Columbia Human Rights Tribunal relating to the July Meeting. On August 30, 2024, the British Columbia Human Rights Tribunal confirmed receipt of the plaintiff's complaint form. The plaintiff provided a copy of the Form 7.1 – General Application form in her application record. She complained about Mr. McGowan and Ms. Fahey and set out the following reasons for her complaint:

THE FACTS SUPPORT THE COMPLAINT OF VERBAL ASSAULT, THREATS TO LIVELIHOOD, EGREGIOUS HARASSMENT, VIOLATIONS TO MY CANADIAN HUMAN RIGHTS. DENIAL OF FREEDOM, LIBERTY, EQUALITY AND SAFETY. THE FACTS HAVE BEEN REVIEWD BY SEVEREAL SUPREME COURT JUDGES WHO HAVE WAIVED FEES. SETTLEMENT OFFER WAS MADE WHICH IS AN ADMITTANCE OF GUILT. NO NDA SIGNED, NO SETTLEMENT RECEIVED FOR VERBAL ASSAULT AND WEAPONIZED DEAL ABUSING POWER.

[38] Mr. McGowan has not formally responded to the complaint. It is not clear to me on the evidentiary record what the status of this complaint is.

[39] On November 7, 2024, the plaintiff spoke to Mr. Evans at the Vancouver Law Courts and she advised she wanted CIBC to seal her court file and she was upset that her credit reports did not state that she was in good standing with CIBC.

[40] On November 26, 2024, at 1:40 p.m., Mr. Evans emailed the plaintiff commenting as follows on the credit score issue:

...With respect to your credit score, the Bank's obligation in the settlement agreement was to report to the credit bureaus that your debt had been satisfied. The Bank did so promptly in accordance with the agreement. I recognize that this is not satisfactory to you and I have been speaking with the Bank for the past two weeks about revising the credit reporting so that the Bank's reporting no longer has any detrimental impact on your credit rating. I expect that I will have an update in this regard very soon. ...

[41] On November 27, 2024, at 1:38 p.m., Mr. Evans emailed the plaintiff stating:

Further to my email below, I am advised by my client that they have submitted a request to the credit bureaus to update your credit rating from R9 to R1. I am advised that it can take up to one month for the bureaus to be updated. I cannot say what impact this change in the CIBC credit rating will have on your overall credit score, but R1 is the best rating, so I assume it should have a positive impact. I will let you know once I receive confirmation that the bureaus have been updated.

I trust this satisfies your concerns regarding the settlement agreement.

[42] On December 19, 2024, Mr. Evans advised the plaintiff that Equifax had updated her CIBC credit rating to R1. An Equifax credit report dated January 21, 2025, confirms that for CIBC, the credit rating is R1.

[43] On December 20, 2024, the plaintiff emailed Mr. Evans the following bill of costs:

FORM 62
(RULE 14-1 (20))

No. S 23 2175
VANCOUVER REGISTRY

In the Supreme Court of British Columbia

Between

ASHLEY GESNER

Plaintiff(s)

and

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant(s)

BILL OF COSTS

23.
MARCH 2023

This is the bill of costs of:

ASHLEY GESNER

: PAID \$26,896.04 JUDGMENT USURY
+ 19.99% INTEREST \$5109.87 UNPAID

Tariff scale

Unit value

MAY 2024 - JANUARY 2025

TARIFF ITEMS

LOSS OF WAGES 2023-2025 \$55,000.00 x 2 YRS

= \$110,000.00

Item #

Description

of Units Claimed

of Units Allowed

LOSS OF OPPORTUNITIES

TIME DELAYS

2012-2025 \$260,000.00

Total number of units:

Multiply by unit value: \$ _____ \$ _____

Sub total: \$ _____ \$ _____

Applicable taxes: \$ _____ \$ _____

Total: \$ _____ \$ _____

DISBURSEMENTS

PSYCHOLOGICAL ABUSE. INTIMIDATION, BULLYING,

Description

Claimed

Allowed

HARASSMENT

2023-2025

FEAR. SAFETY COMPROMISED.

REPUTATIONAL HARM. OBSTRUCTION OF JUSTICE
WITHHOLDING BANK RECORDS UNTIL JULY 13, 2024

Description	Claimed	Allowed
Sub total: \$	\$	\$
Applicable taxes: \$	\$	\$
Total: \$	\$	\$
TOTAL ALLOWED	\$	\$

Date: _____

Signature of Assessing Officer _____

PRINTING FEES BOOK OF EXHIBITION / BOOK OF AUTHORITIES
 PRE TRIAL LITIGATION
 JUDGE BIUWACH FEE WAIVER
 JUDGE SAUNDERS
 JUDGE VOS
 PREPARATION OF TRANSCRIPTS
 VERNON COURT REPORTER \$387.50

NOTICE OF APPLICATION
 PRIVACY REQUEST \$1350.00

\$375,497.37

ECONOMIC ABUSE
 1994-2024 30 YRS AS A CANADIAN

[44] On December 27, 2024, the plaintiff made another report to the Law Society respecting Mr. McGowan, Ms. Fahey and others. She asserts that she was subjected to: “verbal assault, intimidation, and harassment” by Mr. McGowan and Ms. Fahey. It is not clear on the evidentiary record the status of this complaint.

[45] On January 8, 2025, the plaintiff filed a notice of application seeking a sealing order and an order that the defendant remedy the plaintiff’s credit score as per the settlement agreement. She further sought special costs. The application was returnable on January 21, 2025. On January 21, 2025, the parties were before Justice Tammen. According to the court summary sheet, he ordered the plaintiff to file a fresh application setting out with more specificity: 1) anonymity order; and 2) some form of sealing order that complied with practice direction 58, and no order as to costs.

[46] On January 9, 2025, Mr. Evans advised the plaintiff that her TransUnion credit report for CIBC had been updated to R1 and he provided a statement from TransUnion confirming this.

[47] On May 5, 2025, the plaintiff filed a notice of application seeking the following orders (the “May 5 Application”):

1. Damages for Breach of Contract and Negligence: An order awarding the Plaintiff damages in the amount of \$250,000.00 for the failure to remedy the Plaintiff’s credit score for 18 months during litigation, following the Defendant’s breach of contract in the amount of \$26, 896.04, and for neglecting to remedy the breach and restoration in accordance with the settlement agreement dated June 4, 2024.
2. Special Costs. An order requiring the Defendants to take all necessary steps to remedy the offence of false reporting as per the Credit Reporting Act that caused severe foreseeable financial harm and emotional distress.
3. Injunctive relief. An order enjoining the Defendants from further harassment, intimidation, solicitation or any other conduct that may harm the Plaintiff’s reputation, creditworthiness or ability to conduct business. Special costs for issuing threats, withholding bank records and interfering with a fair trial and violating her human rights. Costs for court transcripts and nearly three years of loss of wages.

[48] The May 5 Application was scheduled for hearing on May 26, 2025 and then changed to May 30, 2025.

[49] On May 30, 2025, the plaintiff filed a without notice application seeking a sealing order returnable on May 30, 2025 (the “Sealing Application”). The parties appeared before Justice Sharma for hearing the May 5 Application, and according to the court summary record the following orders were made:

1. The Notice of Application filed on May 5 2025 is Dismissed.
2. Ms. Gesner’s Notice of Application filed May 30 2025 seeking a sealing order is set down in general chambers on June 16 2025.
3. Ms. Gesner shall serve CIBC with the sealing order and affidavit in court today, May 30 2025.
4. Ms. Gesner can file a Notice of Application seeking to set aside the June 4 2024 consent order and about seeking special costs. Ms. Gesner is to file the Notice of Application by June 6 2025. Counsel will reply by the rules of court, and it is to be heard in general chambers on June 23 2025.

[50] On June 4, 2025, the plaintiff filed the Recession Application, in which the orders sought included:

1. An Recession Order setting aside the initial settlement agreement dated June 4, 2024, on the grounds of:
Inaccuracy. ...
 - Plaintiff gave promissory signature under duress, threats, intimidation, coercive force and bad faith conduct by the Defendants Ross McGowan, Brenna Fahey and Steven Evans;
 - Non-compliance with the agreed terms, specifically the failure to immediately rectify the Plaintiff’s credit score with Equifax/TransUnion R1 ‘Excellent’ standing as stipulated in the agreement;
 - Breach of contract and tortious negligence by the Defendant.Obstruction of Justice by withholding Plaintiff’s bank records during a criminal investigation of fraud and identity theft.
Damages for Discrimination for denying fair banking practices and not meeting fiduciary duties.
2. Compensatory Damages for:
 - Breach of Contract (1994-2024);
 - Tortious Negligence;
 - Bad Faith Conduct;
 - Punitive Damages for irreparable foreseeable harm caused by the Defendant’s actions;
 - Emotional Distress and Psychological Abuse;
 - Loss of Income (March 2023-July 2025);

- Legal Fees incurred (March 2023-July 2025).
- 3. Any further relief this Honourable Court deems just such as Punitive Damages, reimbursement of legal fees, transcript fees, printing fees.

[51] On June 10, 2025, CIBC filed the Vexatious Litigant Application returnable on June 23, 2025. This application did not proceed on June 23, 2025.

[52] On June 13, 2025, the plaintiff filed a notice of application also returnable on June 23, 2025. This application was not heard on June 23, 2025. The application sought an extensive list of relief, including:

1. The striking of the defendants' pleadings against the plaintiff and allegations for being "vexatious";
2. To strike all affidavits;
3. Abuse of process;
4. Collusion and obstruction of justice;
5. Defamation, tortious interference, and negligence;
6. *Privacy Act* violations;
7. Coercive control, intimidation, and gender-based discrimination;
8. Sanctions against Miller Thomson LLP;
9. Harassment and discrimination;
10. Obstruction of justice;
11. Collusion with adverse parties;
12. An urgent injunction; and
13. A referral to the RCMP for financial crimes and witness tampering.

[53] It also asserted in the factual background an allegation of “Judicial bias & procedural unfairness”, referencing a decision made by Justice Ross and asserting that he erred in judgment and abused the Court process. She further seeks that “Judge Ross’s failed to recuse despite conflict of having prejudicial bias”. As far as I can discern, Justice Ross has not heard any of the applications in this proceeding but did hear a series of applications in the *Gesner v. Jennings* action, Vancouver Reg. No. S235587, with reasons indexed at 2025 BCSC 223.

[54] On June 16, 2025, the parties appeared before Justice Tucker on the Sealing Application. Justice Tucker granted a sealing order which did not include an anonymization order for the style of cause.

[55] At the Hearing the plaintiff handed up a draft order seeking the following orders:

- a) That the Court find that the defendants engaged in systemic abuse, obstruction of justice, defamation, and coercive control, violating the plaintiff’s rights under the *Charter of Rights and Freedoms*, *Privacy Act*, *Criminal Code*, and *Supreme Court Civil Rules*.
- b) Special costs against the defendants CIBC, Ross McGowan, and Steven Evans, jointly and severally due to: bad faith litigation tactics, collusion with non-parties, and obstruction of justice.
- c) A permanent injunction restraining the defendants from: contacting the plaintiff or third parties; withholding, altering, or destroying any financial, medical, or legal records pertaining to the plaintiff, filing further vexatious motions without leave of the Court.
- d) A declaration by the Court that the defendants engaged in: defamation by false public and private statements damaging the plaintiff’s reputation; collusion with CIBC; coercive control, by financial sabotage, psychological harassment, and duress in forcing a consent order; and obstruction of justice by withholding bank records, falsifying evidence, and misleading the Court.

- e) A referral to the Law Society and RCMP seeking an order that: the conduct of Miller Thompson LLP is referred to the Law Society for violating Rule 3.2-2 (harassment/discrimination) and Rule 5.1-1(counsel's duty of honesty); the RCMP is directed to investigate witness tampering and financial crimes.
- f) The striking of the defendants' pleadings including all affidavits and pleadings filed by the defendants be struck for abuse of process (retaliatory litigation) and fraudulent evidence (perjured statements by Evans/McGowan).
- g) The defendants must immediately restore the plaintiff's credit rating to its pre-violation status.
- h) Punitive damages of \$250,000 for egregious conduct.

Issue 1: Should the Settlement Agreement and Consent Dismissal Order be set aside?

Legal Principles

[56] The kinds of grounds on which a contract may be set aside, being fraud, undue influence, duress, and coercion, are also required for setting aside a consent order: *Pond v. Pond*, 2017 BCCA 243 at para. 2.

[57] Justice Morely provided the following commentary on the setting aside of consent orders in *The Owners, Strata Plan VIS 1549 v. Cinnabar Brown Holdings Ltd.*, 2025 BCSC 426:

[44] Consent orders cannot be set aside lightly. When a party, particularly a party that has access to legal advice, whether the lawyer is on the record or not, has consented to an order of the court and especially if other parties rely on that, it will have to be exceptional that it can later be set aside. This principle respects the litigation autonomy of parties and is probably necessary for the administration of justice.

[45] To be sure, there are exceptional or unusual circumstances in which a consent order can be set aside. The parties agree that the test is the one set out in *Racz v. Mission (District)*, 1988 CanLII 2937 (BCCA), more recently referred to in *Pond v. Pond*, 2017 BCCA 243, at para. 2:

A court ... has inherent jurisdiction to set aside a judgment or order:

- a) which has been obtained by fraud, collusion or perjury;

- b) which constitutes an abuse of process;
- c) on the ground that fresh evidence has been discovered; or
- d) which was obtained by consent on a ground which would invalidate a compromise not contained in a judgment or order.

[58] There is a strong public interest in favour of resolving disputes through agreement, and it is the policy of the courts to promote and enforce settlement agreements: *Turcotte v. Godine*, 2022 BCCA 24 at para. 52.

Position of the Parties

[59] The plaintiff claims that she was under duress, economic and psychological pressure, and that a contract should be set aside if one party was forced into an agreement under illegitimate pressure, leaving no reasonable alternative. She relies on the transcript of the July Meeting to support her allegations. She further alleges that CIBC breached the terms of the agreement by failing to correct the plaintiff's credit score as agreed. She further submits that where one party is significantly disadvantaged, the courts may rescind agreements. She relies on the decision *Lloyd's Bank Ltd. v. Bundy* [1975] QB 326.

[60] The defendants submit that the plaintiff has failed to show any reasonable basis to set aside the Settlement Agreement or the Consent Dismissal Order. They point to her Instagram post in which she asserts that she entered into the Settlement Agreement because she did not trust the justice system to award her the damages she believed that she deserved. They further point out that the plaintiff has not offered to return the settlement funds paid to CIBC.

Analysis

[61] During the Hearing, the plaintiff's focus was to bring me to various portions of the transcript of the July Meeting to show what she asserted were examples of coercion and duress. On my review of the entirety of the transcript I am not persuaded that there is evidence that the counsel in attendance were attempting to

pressure the plaintiff to enter a settlement. The evidence supports that no settlement agreement was achieved at the July Meeting.

[62] The settlement that was entered into occurred approximately nine months later when the defendants had different counsel acting on their behalf.

[63] The plaintiff did not present any evidence to support that she was under duress as a result of the actions of the defendants or their counsel at the meeting that took place on April 26, 2024, when the settlement documents were executed.

[64] I accept the evidence of Mr. Wray that during the April 26, 2024 meeting he repeatedly advised the plaintiff that no one was forcing her to sign the Settlement Agreement and release and that she did not have to accept the settlement. I further accept that he told the plaintiff that CIBC did not have the ability to restore her credit score but instead would be reporting to her credit bureaus that her debts to CIBC had been resolved.

[65] The terms of the Settlement Agreement are clear that what CIBC was agreeing to do was to report to Equifax and TransUnion that the plaintiff's debts to CIBC had been satisfied. On the evidentiary record before me, that is precisely what CIBC did and, as such, that requirement of the Settlement Agreement was satisfied.

[66] The plaintiff acknowledged receipt of the settlement funds.

[67] I am not persuaded that the plaintiff has established the grounds necessary to set aside the Settlement Agreement and Consent Dismissal Order. There is no evidence that the Consent Dismissal Order was obtained by fraud, collusion or perjury. The plaintiff agreed to a settlement and agreed to sign a Consent Dismissal Order. She made that choice.

[68] I specifically find that there was no abuse of process that occurred. I do accept that some of the actions taken by the plaintiff post-Settlement Agreement could be described as abusive and reprehensible, although that issue is only before me in the context of what costs order I should make.

[69] There is no fresh evidence that has been discovered that supports that the Consent Dismissal Order should be set aside. After the Settlement Agreement the plaintiff expressed unhappiness in the fact that her credit score had not been changed. CIBC and their counsel took steps to assist the plaintiff in that regard, even though the terms of the Settlement Agreement did not require them to do so. As a result of the steps taken by CIBC, her credit rating relating to CIBC was changed to an R1 rating by Equifax and TransUnion. It is my understanding that this is the highest rating available.

[70] I note that after the Settlement Agreement and the Consent Dismissal Order were signed, the plaintiff sent a bill of costs to the defendants' counsel. The Consent Dismissal Order specifically provides that the proceeding was dismissed without costs. The reference to "without costs" means neither party may seek costs against the other. There was no basis for the plaintiff to send a bill of costs. There was no reason for the defendants to pay any costs to the plaintiff once the Settlement Agreement had been entered into and the Consent Dismissal Order signed and filed.

[71] I find that there is no basis to rescind the Settlement Agreement nor to set aside the Consent Dismissal Order. The parties entered into a binding settlement agreement regarding all issues in the action on April 26, 2024. The plaintiff ought not be bringing further applications attempting to challenge the settlement.

Issue 2: What costs order should be made?

Position of the Parties

[72] Both parties seek special costs as against the other. The plaintiff in her notice of application seeks reimbursement of legal fees. In support of her claim for special costs she refers to the *Nesbitt v. Neufeld*, 2011 BCCA 241, and the *Prokorym v. Turpin*, 2014 BCSC 1893, decisions. The defendants in their reply assert that the plaintiff's actions in attempting to relitigate settled claims are a breach of the Settlement Agreement and constitute reprehensible conduct meriting special costs.

Legal Principles

[73] Special costs can be awarded under Rule 14-1(3) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, and the inherent jurisdiction of the Court: *Shewchuk v. IBM Canada Limited*, 2017 BCSC 2211 at para. 55.

[74] Special costs are awarded against an unsuccessful party as punishment for reprehensible litigation conduct: *Grewal v. Sandhu*, 2012 BCCA 26 at para. 106; *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 134. The test for special costs was set out in *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.), where Justice Lambert, writing for the Court, determined that the threshold for awarding special costs is “reprehensible” conduct during the litigation, which includes “scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke”: at para. 17. He further explained this standard at para. 23:

...the fact that an action or an appeal “has little merit” is not in itself a reason for awarding special costs....Something more is required, such as improper allegations of fraud, or an improper motive for bringing the proceedings, or improper conduct of the proceedings themselves, before the conduct becomes sufficiently reprehensible to require an award of special costs.

[75] Special costs have been awarded in a wide range of circumstances, which include:

- (a) where a party pursues a meritless claim and is reckless with regard to the truth;
- (b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
- (c) where a party has displayed “reckless indifference” by not recognizing early on that its claim was manifestly deficient;
- (d) where a party made the resolution of an issue far more difficult than it should have been;
- (e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
- (f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;

- (g) where a party brings a proceeding for an improper motive;
- (h) where a party maintains unfounded allegations of fraud or dishonesty; and
- (i) where a party pursues claims frivolously or without foundation.

Mayer v. Osborne Contracting Ltd., 2011 BCSC 914 at para. 11, citations omitted.

[76] As this list indicates, reprehensible conduct can include conduct by a litigant who makes improper allegations of fraud, abuses the court’s process, and brings proceedings for an improper motive.

[77] The general principles governing special costs were summarized in *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73:

- a) the court must exercise restraint in awarding specials costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
- c) simply because the legal concept of “reprehensibility” captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court’s process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
- e) special costs can be ordered against parties and non-parties alike; and
- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a “bonus” or further compensation for that success.

[78] A party’s continual pursuit of an action that has been settled can be a basis for an award of special costs: *Shewchuk* at para. 59.

[79] Although leeway should be given to self-represented litigants participating in the justice system, particularly in respect to the procedural requirements, this does not mean that they have a “licence to employ accusations of dishonesty as a feature of their rhetoric unless such accusations are firmly grounded in the evidence, are relevant to the proceedings, and are responsibly made”: *The Owners, Strata Plan*

LMS3259 v. Sze Hang Holding Inc., 2015 BCCA 424 at para. 11. There is an expectation that all participants in the justice system treat one another professionally, and that includes the self-represented litigant: *Morecorp Holdings Ltd. v. Island Tug & Barge Ltd.*, 2009 BCSC 1692 at para. 37.

Analysis

[80] The plaintiff has targeted the former and current lawyers acting for the defendants. She has made serious allegations against them in the various applications and affidavits she filed in court. These unfounded allegations include:

1. Alleging duress, threats, intimidation, coercive force and bad faith conduct by Mr. McGowan, Ms. Fahey and Mr. Evans;
2. Alleging that the lawyers have breached the legal professional standards and engaged in “ethical malpractice”;
3. That Mr. McGowan and Ms. Fahey demonstrated “verbal assaults, omission of guilt and vexatious abusive tactics” showing an “intentional disregard for the Plaintiff’s human rights”;
4. The plaintiff was “stalked, harassed and subjected to multiple change of counsels”; and
5. Mr. Evans neglected to remedy the plaintiff’s credit which is a further act of “vexatious litigant abuse”.

[81] In the draft order she handed up to me, the plaintiff has referred to the lawyers as defendants in this action. The lawyers are not defendants in the action. The plaintiff cannot unilaterally add the past and future lawyers for the opposing party as defendants in the action. In the draft order she asserts that the lawyers were involved in “bad faith litigation”, including fabricating evidence and obstruction of justice. She further asserts that the lawyers have made “fraudulent evidence”, being the “perjured statements by Evans/McGowan”.

[82] Based on the evidentiary record before me, none of these allegations have a shred of merit. These types of allegations made against lawyers are serious. These types of allegations go to the core of a professional's identity and reputation and amount to reprehensible conduct deserving of rebuke from the Court. Where a lawyer's reputation has been falsely assailed, the Court's reproof should be felt: *Bajwa v. Habib*, 2019 BCSC 721 at para. 42; *Gichuru v. Smith*, 2014 BCCA 414 at para. 80.

[83] Self-represented litigants must understand that the court is not a free-fire zone where anything can be said regardless of the harm to others and their reputation: *Bajwa* at para. 43.

[84] The plaintiff alleges that an agreement was entered into during the July Meeting where CIBC agreed to immediately rectify the plaintiff's credit score and costs. No such agreement was proven. This supports that the plaintiff is prepared to make claims without regard to the truth.

[85] I do note at the commencement of the July Meeting Mr. McGowan urged the plaintiff to obtain independent legal advice from a lawyer. He further pointed out that the July Meeting was a without-prejudice discussion and that what was said could not be used in any court proceeding. At this point in time, Mr. McGowan was not aware that the plaintiff was secretly recording the meeting and would later threaten to release the transcript to the media and others. She later attempted to extort \$20,000, or else she would share her experience or the recording of the July Meeting to the Law Society or the public media. This type of threat is one that should not have been made.

[86] The plaintiff has expanded her allegations to include that the Law Society is complicit with a breach of the legal professional standards and "ethical malpractice". In regard to the Law Society, it appears that the plaintiff has breached s. 87 of the *Legal Profession Act*, S.B.C. 1998, c. 9 by attaching the letter from the Law Society without proper authorization to her affidavit which was filed in court.

[87] The plaintiff has further expanded her attack against a judge who did not rule in her favour in suggesting that Justice Ross “failed to recuse despite conflict of having prejudicial bias”. It remains unclear to me why the plaintiff referenced a decision made in a different proceeding than in this action.

[88] I am persuaded that an award of special costs to the defendants is warranted in the circumstances given the reprehensible allegations made by the plaintiff against current and former counsel in this proceeding. The plaintiff’s actions are malicious, reprehensible, and deserving of the Court’s rebuke.

Conclusion

[89] The following orders are made:

1. The plaintiff’s application filed June 4, 2025 is dismissed.
2. The defendants are entitled to their costs in preparation for and attendance at the application on June 23, 2025 as special costs.
3. The plaintiff’s signature on the form of the order is dispensed with.

[90] I request the defendants’ counsel send a copy of the filed order to the plaintiff.

“Forth J.”