

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Gesner v. Coast Capital Savings Federal  
Credit Union*,  
2026 BCCA 40

Date: 20260204  
Docket: CA49800

Between:

**Ashley Gesner**

Appellant  
(Plaintiff)

And

**Coast Capital Savings Federal Credit Union**

Respondent  
(Defendant)

Before: The Honourable Mr. Justice Groberman  
The Honourable Madam Justice Horsman  
The Honourable Justice Winteringham

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 No. S231434)

The Appellant, Appearing in Person: A. Gesner

Counsel for the Respondent: A. Peck  
S. Macdonald

Place and Date of Hearing: Vancouver, British Columbia  
March 7, 2025

Additional Materials Received: January 12 and January 14, 2026

Place and Date of Judgment: Vancouver, British Columbia  
February 4, 2026

**Written Reasons by:**

The Honourable Mr. Justice Groberman

**Concurred in by:**

The Honourable Madam Justice Horsman  
The Honourable Justice Winteringham

**Summary:**

*Ms. Gesner was a member of the defendant credit union from 2017 to 2023. Her financial situation deteriorated, her credit rating fell, and she was unable to keep current with debts. She brought a claim against the credit union alleging breach of contract, negligence, and breach of fiduciary duties. The allegations were founded on a number of discrete situations: the failure of the credit union to advise Ms. Gesner against taking a fixed-term mortgage, its alleged failure to open a business account in a timely manner, its failure to take steps to prevent her from falling victim to an online fraud, and its actions in continuing to transfer funds to a mortgage account after the mortgage had been paid off. The judge dismissed the claims. On appeal, Ms. Gesner filed additional evidence and argued that the trial judge erred in law and in factfinding, and that the summary trial had been unfair. Held: appeal dismissed. The fresh evidence is not admissible. With due diligence, it could have been presented at trial and would not have resulted in any different findings. Breach of contract was not established, and the credit union was not in a fiduciary relationship with Ms. Gesner. The evidence did not disclose negligence on the part of the credit union, except, perhaps, with respect to the continued transfer of funds into the mortgage account. That transfer did not result in any damages. Finally, there was no procedural unfairness in the summary trial.*

**Reasons for Judgment of the Honourable Mr. Justice Groberman:**

[1] This is an appeal from a Supreme Court of British Columbia judgment on a summary trial of Ms. Gesner’s civil claim against her credit union, Coast Capital Savings Federal Credit Union (“Coast Capital”). In that action, Ms. Gesner alleged that Coast Capital had mishandled her affairs causing her financial loss. She claimed in breach of contract, negligence, and breach of fiduciary duty. The judge dismissed all of her claims.

[2] On appeal, Ms. Gesner alleges several factual and legal errors in the judgment below. She also says the summary trial was unfair to her as a self-represented litigant.

**Factual Background:**

[3] Ms. Gesner became a member of Coast Capital in 2017. At that time, she had completed a program in environmental design and wished to pursue architectural studies. She describes herself as an entrepreneur and she wished to grow her business.

[4] At the time Ms. Gesner joined Coast Capital, she intended to design and build a home on property on Bowen Island. She believed that financing such a project would be facilitated by her being a member of Coast Capital.

[5] Ms. Gesner and her father were joint owners of a property in Vancouver which she rented to a tenant. In early 2018, they decided to refinance the mortgage with Coast Capital even though they would have to pay a penalty to the other institution to do so.

[6] Ms. Gesner and her father opted for a five-year fixed-term mortgage. The mortgage was registered in March 2018. In addition to the mortgage loan, it also secured a home equity line of credit (the “Line of Credit”).

[7] In October 2018, Ms. Gesner set up an automatic monthly transfer from her personal chequing account to the Line of Credit in the amount of \$190. In June 2019, she set up a second automatic transfer in the additional amount of \$1,561 per month.

[8] In August 2019, Ms. Gesner applied for and received a Visa Desjardins credit card.

[9] In about March 2020, the effects of the COVID-19 pandemic began to be felt in British Columbia. The consequences were widespread, and the financial problems faced by Ms. Gesner were serious. The person who was renting Ms. Gesner’s Vancouver property ceased to be a tenant after she lost her job. Ms. Gesner, herself, had no stable job or income.

[10] Ms. Gesner’s factum also indicates that she was the victim of domestic violence in April 2020, though this matter does not appear to have been an issue at trial. Ms. Gesner says her income fell precipitously as a result of the event.

[11] Coast Capital deferred the payments on the mortgage in April, May, and June 2020 due to the pandemic. It also allowed Ms. Gesner and her father to make

interest-only payments on the mortgage in October and November 2020, and in February 2021.

[12] A Federal loan program known as the Canada Emergency Business Account (“CEBA”) was initiated in March 2020, to assist small businesses in coping with the financial effects of the pandemic. Under the program, small businesses that met eligibility criteria were able to apply for CEBA assistance through their financial institutions.

[13] Ms. Gesner first contacted Coast Capital in mid-December 2020, to discuss an application under the CEBA program. After some subsequent discussion, Coast Capital wrote to Ms. Gesner on January 12, 2021, providing her the requirements for different types of business accounts. Coast Capital’s representative advised Ms. Gesner that “[a]s a sole proprietorship, this will be nice and quick”, and said, “After I set this up and you go into the branch and sign, [we] can get you immediately onto online banking to apply for the CEBA loan”. According to Coast Capital, the account was opened on January 18, 2021. Ms. Gesner disputes that assertion.

[14] Ms. Gesner appears to have proceeded to gather information for her CEBA application beginning in early 2021. On March 1, 2021, she wrote to the Coast Capital seeking relief with respect to the mortgage and stated, “It has taken weeks for me to set up my business account with Coast Capital in order for me to apply for CEBA business loans.” There is no suggestion in the communication that the account was not in place at that time.

[15] In March 2021, Ms. Gesner says she received a cheque in settlement of claims for the domestic violence that occurred about a year earlier. She says that when she deposited it, the teller humiliated her by calling her “kiddo” and making inquiries to ensure the cheque was legitimate. Ms. Gesner purports, on appeal, to add a claim for discrimination based on those events.

[16] In September 2021, Ms. Gesner’s application for a CEBA loan was rejected by the Federal Government due to her failure to meet all eligibility requirements by

September 3, 2021. Ms. Gesner contends that the rejection was a result of Coast Capital's failure to open a business account in a timely manner.

[17] Ms. Gesner and her father sold the Vancouver property in July 2021, and received approximately \$206,000 in proceeds after the mortgage and Line of Credit balance of about \$340,000 was paid out. That figure included an early payout penalty of approximately \$8,400. The early payout penalty was in accordance with the mortgage contract. Ms. Gesner contends that Coast Capital should not have been entitled to the penalty because it ought to have counselled her against taking a fixed-term mortgage.

[18] Beginning in January 2021, Ms. Gesner had been contacted online by a person purporting to be a celebrity who was interested in her. She ultimately became convinced she was in a relationship with that person. In September 2021, she sent them \$100,000 in Bitcoin that she purchased with her Desjardins Visa card. By October 2021, she realized she had been defrauded and reported the matter to police, but she has been unable to recover the funds.

[19] After the sale of the Vancouver property in July of 2021, Coast Capital continued to transfer funds from Ms. Gesner's chequing account to the mortgage account, despite the mortgage and associated Line of Credit having been paid out. The automatic transfers continued for three months. When, in October 2021, Ms. Gesner noticed money was being transferred, she contacted Coast Capital, which immediately cancelled the automatic transfers and moved the amount credited to the mortgage account back to Ms. Gesner's chequing account. It also sent her a restaurant gift card as an acknowledgement of the problem.

[20] Unfortunately, Ms. Gesner's financial situation continued to deteriorate, and in November 2022, she made demands on Coast Capital to compensate her. Her allegations include suggestions that Coast Capital's actions left her vulnerable and open to being the target of cybercriminals. The notice of civil claim was filed in 2023.

**The Summary Trial Judgment**

[21] Ms. Gesner set the claim down for a summary trial. The judge concluded that it was appropriate to deal with the matter through that procedure.

[22] The material before the chambers judge was extensive, and much of Ms. Gesner’s material was not well-organized. The judge faced some formidable challenges in figuring out exactly what Ms. Gesner’s claims were. Ultimately, the judge addressed six separate allegations.

[23] First, she considered the claim that Coast Capital wrongly delayed opening Ms. Gesner’s business account. She found the evidence established that the business account was, in fact, opened on January 18, 2021, which was a reasonable time. She found no breach of contract and did not find the timing of the opening of the business account led to the rejection of the CEBA application.

[24] Second, the judge considered Coast Capital’s actions in continuing to transfer funds from Ms. Gesner’s chequing account to the mortgage account in August, September and October of 2021. She concluded that Coast Capital was acting properly under Ms. Gesner’s instructions. She considered that, until Ms. Gesner withdrew the automatic transfer instructions, Coast Capital was entitled to act under them.

[25] Third, the judge addressed the question of whether Coast Capital had an obligation, in the spring or summer of 2021, to defer Ms. Gesner’s mortgage payments. She found there was no such obligation under the terms of the mortgage, and accepted that Coast Capital was entitled to insist that Ms. Gesner abide by the mortgage agreement.

[26] Fourth, the judge addressed the issue of whether Coast Capital forced Ms. Gesner into a sale of the property below market value. She noted that Coast Capital had not insisted on a sale of the property, and Ms. Gesner’s own evidence did not suggest that it had done so.

[27] Fifth, the judge considered whether Coast Capital was liable to Ms. Gesner for failing to prevent her from purchasing Bitcoin and being defrauded by an online fraudster. She found Coast Capital did not issue Ms. Gesner's credit card and was not in a position to prevent her from using it to purchase Bitcoin. She also found no evidence suggesting Ms. Gesner had requested that Coast Capital stop payments destined for the fraudster.

[28] Finally, the trial judge considered the claim that Coast Capital had destroyed Ms. Gesner's credit rating by reporting that she was delinquent on debts. The judge accepted that Coast Capital had made no reports of delinquency. She also noted that Ms. Gesner was, in fact, well behind on her debt payments, and that her credit rating naturally fell when the situation became apparent to rating agencies.

### **Post-Trial Discovery**

[29] In May 2024, weeks after the judgment below was pronounced, Ms. Gesner sought disclosure of banking records from Coast Capital. Coast Capital provided Ms. Gesner with the requested records. Ms. Gesner claims the summary trial was unfair because she did not have the records prior to the trial.

### **The Appeal**

[30] On appeal, Ms. Gesner raises many of the issues that the trial judge dealt with but also attempts to raise other issues, some of which were arguably within the bounds of the original claim and some of which were not.

[31] She has filed volumes of new material in the hope of bolstering her claim. She also alleges the litigation has been conducted improperly by the defence and makes new allegations that her privacy has been compromised by a failure of the defendant, its counsel, and several judicial officers to ensure that sealed documents are not disclosed publicly.

[32] I note that I, myself, appear in the list of judicial officers who are alleged to have failed to protect Ms. Gesner's privacy. It appears Ms. Gesner is of the view that my denial of her request to seal part of a Supreme Court file (*Gesner v. Buitrago*,

2025 BCCA 320) is something that she is entitled to raise on this appeal. If it were, I would consider recusing myself, notwithstanding that doing so would delay further the release of the judgment in this matter. The issue raised by Ms. Gesner is, however, not properly part of the current appeal.

[33] If Ms. Gesner considers that rulings of judges or associate judges contain errors, there are proper avenues to follow. It is not appropriate to simply fold them into an existing unrelated appeal.

**Fresh Evidence**

[34] Ms. Gesner has filed voluminous books of documents that she says ought to be part of this appeal. She has also filed affidavits containing new arguments and has included arguments in her factum that were not raised below.

[35] The criteria for admission of fresh evidence on appeal are stringent, and were set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759. In general, evidence that could have been placed before the trial court with due diligence will not be admitted as new evidence on appeal. Even if evidence could not have been put before the trial court with due diligence, it will generally not be considered on appeal unless it could have made a decisive difference in the case.

[36] Ms. Gesner suggests that Coast Capital acted improperly by not providing her with copies of banking and credit card statements until she asked for them a few weeks after the trial. She claims, without documentary evidence, to have requested them earlier.

[37] It is difficult to understand how an entrepreneur like Ms. Gesner could have functioned without keeping proper business records, including her banking statements. But, in any event, it would have been a simple matter for her to obtain them before trial.

[38] Even though the new evidence manifestly does not meet the first *Palmer* criterion, I have carefully made my way through the voluminous affidavits and new

documents, trying to ensure that no injustice would be occasioned by failing to admit them into evidence.

[39] It is clear to me that the new material does not add anything to the evidence that was before the trial judge. While some of the material would have been helpful, in that it would have served to confirm the judge’s findings, no injustice to Ms. Gesner could possibly be occasioned by excluding it.

[40] I have taken a similar approach to the new arguments presented on appeal. Many are capable of being resolved on the evidentiary record, and some are closely related to arguments that were made below. Others, such as the privacy arguments, manifestly do not belong to the current appeal. Again, recognizing that Ms. Gesner is self-represented and not legally sophisticated, I have considered all of the arguments that she raises that could properly belong with the subject matter of this appeal. If any had been meritorious, it might have been necessary to invite additional submissions on them. However, I have concluded there is no basis on which the arguments could succeed. It is, therefore, not necessary to invite further submissions.

[41] I will then, briefly address the main points of Ms. Gesner’s appeal:

**Failure to Advise Ms. Gesner not to take a Fixed-Term Mortgage**

[42] Ms. Gesner alleges that Coast Capital ought to have advised her against taking a fixed-term mortgage, as it should have known she would want to sell the property before the term expired.

[43] It is apparent that Ms. Gesner and her father were fully aware of the consequences of choosing a fixed-term mortgage — indeed, they were required to pay out a similar fixed-term mortgage when they decided to move their business to Coast Capital. Further, it is clear that they were fully informed about the various mortgage options. Coast Capital’s duty was, at highest, to inform Ms. Gesner fully and fairly about her options. It did so.

**Failure to Open a Business Account in a Timely Manner**

[44] Ms. Gesner first approached Coast Capital in mid-December 2020, about making a CEBA application. The evidence discloses that there was some ensuing correspondence, and that it culminated with correspondence on January 12, 2021, in which Coast Capital outlined the various types of accounts available and the requirements. The evidence supports the judge’s finding that Ms. Gesner’s Business Account was opened on January 18, 2021. That finding is entitled to deference.

[45] The evidence does not support Ms. Gesner’s assertion that her CEBA application failed because the opening of her business account was delayed. Rather, the indication is that it was rejected because she had failed to prove eligibility by September 2021.

[46] The judge therefore made no error in dismissing the claim with respect to late opening of the business account.

**August, September and October 2021 Transfers**

[47] The judge found Coast Capital was neither negligent nor in breach of contract in continuing the automatic transfers from Ms. Gesner’s chequing account to the mortgage account following the payout of the mortgage and Line of Credit in July 2021.

[48] Ms. Gesner has not identified anything in the contractual relationship between Coast Capital and herself showing that its decision to treat the transfer instructions as applicable notwithstanding the payout of the mortgage was improper. Accordingly, the chambers judge’s decision on that issue is entitled to deference.

[49] That said, it seems to me at least arguable that a reasonable financial institution would recognize that the payout of the mortgage and Line of Credit represented an important change of circumstances. There was no longer any reason for Ms. Gesner to be making payments toward the mortgage (which no longer existed) or the Line of Credit (which presumably vanished along with the mortgage). In my view, Coast Capital’s decision to provide Ms. Gesner with a gift card

underlines the fact that it made no sense for the automatic transfers to have continued.

[50] I would observe, however, that even if there was negligence on the part of Coast Capital, it was at least matched by negligence on the part of Ms. Gesner, who was equally capable of ending the transfers.

[51] I note, as well, that even if it could be said that Coast Capital acted unreasonably in continuing to perform the monthly transfers, the claim would still have to be dismissed, because there is no evidence that the transfers caused Ms. Gesner any loss. The transfers were reversed as soon as Ms. Gesner drew them to Coast Capital's attention, and there is no evidence of either foregone interest or of service charges incurred by Ms. Gesner as a result of the transfers.

**Duty to Defer Mortgage Payments in the Spring and Summer of 2021**

[52] Ms. Gesner made a number of allegations to the effect that Coast Capital ought to have lowered its interest rates or deferred Ms. Gesner's payments as she encountered more serious financial troubles. It is not clear on what legal basis she advances such arguments. Coast Capital was under no contractual obligation to extend indulgences to Ms. Gesner.

[53] Ms. Gesner asserts that Coast Capital was in a fiduciary relationship with her but does not set out how such a relationship was formed. While it may well be that aspects of a credit union's interactions with its members could import fiduciary obligations, they would be unusual. There is nothing in the ordinary day-to-day business dealings between Ms. Gesner and Coast Capital that would have constituted it a fiduciary or required it to place Ms. Gesner's interests above its own.

[54] In my view, the judge made no error in dismissing this aspect of Ms. Gesner's claim.

**Discrimination With Respect to the Domestic Violence Settlement**

[55] Ms. Gesner claims she was humiliated by a Coast Capital employee who referred to her as “kiddo” and who took steps to verify the legitimacy of a cheque that she was depositing. The gravamen of Ms. Gesner’s allegation is that the employee treated her disrespectfully. Ms. Gesner describes the disrespect as amounting to “discrimination”.

[56] It is understandable that Ms. Gesner would feel aggrieved by disrespectful treatment, particularly when it occurred while she was depositing a cheque that was a settlement for a situation of domestic violence. Disrespect does not, in and of itself, give rise to a cause of action, and discrimination claims are the purview of human rights tribunals. Neither disrespect nor discrimination was actionable in this civil claim.

**Failure to Prevent Ms. Gesner from Being Defrauded**

[57] Ms. Gesner suggests Coast Capital had a responsibility to prevent her from purchasing Bitcoin with her Visa card.

[58] It seems to me difficult to suggest that the issuer of a Visa card has such an obligation, but, fortunately, it is not necessary to embark on an analysis of that question on this appeal. As the trial judge found, the evidence does not support Ms. Gesner’s contention that Coast Capital was the issuer of the Visa card.

[59] The chambers judge accepted evidence that Coast Capital does not, itself, issue credit cards. That evidence is consistent with the documentation surrounding the Visa account. The documentation shows that Coast Capital has an arrangement with Desjardins, under which Desjardins issues a credit card known as “Coast Visa Desjardins Modulo Gold”. The cardholder agreement in evidence bears both the Desjardins and Coast Capital logos at the top, but the text of the agreement clearly indicates that the card is issued by the Fédération des caisses Desjardins du Québec, and not by Coast Capital. The Credit Card Statements submitted by Ms. Gesner as part of her new evidence bear the Desjardins logo alone at the top. It

is evident the credit card is issued by Desjardins alone, and that Coast Capital does not administer the account.

[60] In my view, therefore, the chambers judge made no error in dismissing this aspect of the claim.

**Procedural Fairness**

[61] Despite having brought the summary trial application, and having urged the chambers judge to give judgment, Ms. Gesner says the procedure was unfair. She says, in particular, that the judge should not have given judgment because Ms. Gesner had not seen the banking and credit card statements.

[62] It was up to Ms. Gesner to seek disclosure of documents before pushing on with a summary trial application. Further, there is nothing in the additional documents that serves to change the complexion of this case. In my view, there was no procedural unfairness in the court below.

**Other Grounds of Appeal**

[63] I would also uphold the chambers judge’s finding that Coast Capital did not demand Ms. Gesner sell her property in July 2021, or press her to accept too low a price. Her finding that Coast Capital did nothing improper in respect of Ms. Gesner’s credit rating is also unassailable.

[64] While there are no other clear grounds of appeal set out in Ms. Gesner’s materials, there is a considerable amount of argument in her affidavits and in the exhibits that she attaches to them. I have thoroughly read all of the material and can safely say that none of the tangential arguments in them could change the result of this case.

[65] Finally, I will note Ms. Gesner’s contention that the judge erred in her understanding of “breach of contract”, “negligence”, and “breach of fiduciary duty”. I see nothing in the judgment below that would justify that view. The basic concepts of breach of contract, negligence, and breach of fiduciary duty are fundamental ones

in law and equity, and it can be safely presumed that the judge was aware of them. Nothing in her analysis departs from legal principle. In my view, Ms. Gesner has not shown any error.

**Conclusion**

[66] I would, therefore, dismiss the appeal.

“The Honourable Mr. Justice Groberman”

I AGREE:

“The Honourable Madam Justice Horsman”

I AGREE:

“The Honourable Justice Winteringham”