

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bower v. Vancouver City Savings Credit Union*,
2025 BCSC 99

Date: 20250123
Docket: 246974
Registry: New Westminster

Between:

Steven Albert Bower

Plaintiff

And

**Vancouver City Savings Credit Union
doing business as Vancity and Michelle E. Guy**

Defendants

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for the Plaintiff:

M. Menkes

Counsel for the Defendant, Vancouver City
Savings Credit Union:

L. Bevan

Place and Date of Hearing:

New Westminster, B.C.
October 2, 2024

Place and Date of Judgment:

New Westminster, B.C.
January 23, 2025

Overview

[1] The defendant Vancouver City Savings Credit Union (“Vancity”) brought a summary trial application to dismiss the plaintiff’s claim for breach of privacy and for false reporting of missed payments to credit data collection agencies (“Credit Bureaus”). The plaintiff says judgment should be entered in his favour.

[2] By way of brief background, in 2007, Vancity loaned money (the “Surrey Loan”) pursuant to a loan agreement (the “Loan Agreement”) to the plaintiff and his father to buy a property in joint tenancy on 152 Street in Surrey (the “Surrey Property”). The Surrey Loan was secured by a mortgage registered against the Surrey Property (the “Surrey Mortgage”).

[3] In 2012, the plaintiff’s father transferred his 50% interest in the Surrey Property equally to the plaintiff and to the plaintiff’s three siblings. This transfer constituted a default under the Surrey Mortgage, as it was done without Vancity’s knowledge or consent.

[4] On July 29, 2020 and August 12, 2020, Vancity gave notice to the plaintiff, his father and his three siblings that the Surrey Mortgage was in default due to the unauthorized transfer and other reasons. Vancity demanded payment of the outstanding balance on the Surrey Loan. Vancity eventually initiated foreclosure proceedings.

[5] On July 30, 2020, Vancity disclosed loan and mortgage documents in its possession (the “Surrey Mortgage Documents”) to the defendant Michelle E. Guy, then counsel to the plaintiff’s three siblings. The plaintiff says this disclosure was a breach of his privacy.

[6] In June 2021, Vancity declined to renew a loan made to the plaintiff and another person (the “Cambie Loan”), which had been used to buy a property and which was secured by a mortgage (the “Cambie Mortgage”). Vancity formally demanded repayment of the Cambie Loan and eventually initiated foreclosure proceedings when the Cambie Loan was not repaid promptly.

[7] When the plaintiff failed to pay the outstanding balance of the Surrey Loan and Cambie Loan in response to Vancity's demand, Vancity reported to credit bureaus that the plaintiff had missed payments on the loans. The plaintiff alleges these were false reports that lowered his credit rating and caused him harm.

[8] The plaintiff bears the onus of proving his claims on a balance of probabilities even though this summary trial application was filed by Vancity.

[9] Based on the affidavits filed, I am able to find the facts necessary to decide the issues between the parties, and it would not be unjust to decide this proceeding on a summary trial given the lack of complexity of the matter and the cost of taking the matter forward to conventional trial.

[10] For the reasons that follow, I am satisfied that the action should be dismissed with costs to Vancity.

Did Vancity violate the plaintiff's privacy by disclosing documents to counsel for the plaintiff's siblings?

[11] Vancity says Mr. Bower had no reasonable expectation of privacy in these circumstances for the following reasons:

- a) disclosure of the Surrey Mortgage Documents to Ms. Guy was necessary for a legitimate business purpose, namely the recovery of a mortgage loan from Mr. Bower and his siblings; and
- b) the disclosure was authorized under Vancity's loan renewal agreement with Mr. Bower and Vancity's Privacy Code, which applies the *Personal Information Protection Act*, S.B.C. 2003, c. 63.

[12] I am dismissing the breach of privacy claim but on slightly different grounds. Vancity says Mr. Bower had no reasonable expectation of privacy; however, I find Mr. Bower had a privacy interest in the Surrey Mortgage Documents that was circumscribed by the loan renewal agreement and Vancity's entitlement to use the documents for a legitimate business use. By disclosing the Surrey Mortgage

Documents to Ms. Guy, Vancity did not violate Mr. Bower’s privacy because the documents disclosure was not inconsistent with the scope of his privacy interest in the documents. Further, Vancity did not violate Mr. Bower’s privacy “wilfully and without a claim of right”, which means the necessary elements to establish the statutory tort of breach of privacy are not proven.

Legal framework for the tort of violation of privacy

[13] Section 1 of the *Privacy Act*, R.S.B.C. 1996, c. 373, creates the statutory tort of violation of privacy:

- 1 (1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of another.
- (2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.
- (3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.
- (4) Without limiting subsections (1) to (3), privacy may be violated by eavesdropping or surveillance, whether or not accomplished by trespass.

[14] To prove the statutory tort of violation of privacy, the plaintiff must establish that the defendant a) violated his privacy, b) wilfully and c) without claim of right. In other words, not every release of a person’s personal information will give rise to a cause of action.

[15] Section 2(2) of the *Privacy Act* provides some defences and limits on what acts or conduct will be considered a violation of privacy:

- 2 (2) An act or conduct is not a violation of privacy if any of the following applies:
 - (a) it is consented to by some person entitled to consent;
 - (b) the act or conduct was incidental to the exercise of a lawful right of defence of person or property;
 - (c) the act or conduct was authorized or required under a law in force in British Columbia, by a court or by any process of a court;
 - (d) the act or conduct was that of

- (i) a peace officer acting in the course of the peace officer's duty to prevent, discover or investigate crime or to discover or apprehend the perpetrators of a crime, or
- (ii) a public officer engaged in an investigation in the course of the public officer's duty under a law in force in British Columbia,

and was neither disproportionate to the gravity of the crime or matter subject to investigation nor committed in the course of a trespass.

[16] To provide context for the tort of breach of privacy, our Court of Appeal recently outlined the principles that underpin privacy protection in *G.D. v. South Coast British Columbia Transportation Authority*, 2024 BCCA 252 [*South Coast*]:

[67] A number of key points arise upon review of the scholarly texts and caselaw addressing the origins and values underlying modern privacy protection:

- a. Modern privacy rights are concerned with the intrusive potential of scientific and technological advancements;
- b. Common law privacy protections must adapt and change with social context;
- c. An individual's right to control the use and disclosure of their personal information is a core aspect of privacy; and
- d. An individual's reasonable expectation of privacy over information is determined subjectively from the individual's perspective, and objectively, based on what is reasonable, and requires consideration of the full context and all the circumstances, including the potential for misuse of that information.

[17] The first step in the analysis of a possible violation of privacy is to identify the privacy interest in issue, which includes the plaintiff's reasonable expectation of privacy in the circumstances, both subjectively and objectively: *South Coast* at para. 119.

[18] What constitutes a privacy violation depends on the context, including the nature, incidence and occasion of the act or conduct and the relationship between the parties: *Insurance Corporation of British Columbia v. Ari*, 2023 BCCA 331 at para. 86; *Privacy Act*, s. 1(3).

[19] As noted recently by our Court of Appeal, the term "wilful" in the *Privacy Act* has not been given detailed consideration: *Situmorang v. Google*, 2024 BCCA 9 at

para. 79; citing *Duncan v Lessing*, 2018 BCCA 9 at para. 83. That said, the definition adopted by Lambert J.A. in *Hollinsworth v. BCTV* (1998), 59 B.C.L.R. (3d) 121, 1998 CanLII 6527 (C.A.) [*Hollinsworth*] is frequently cited and relied upon:

[29] I turn first to the word "wilfully". In my opinion the word "wilfully" does not apply broadly to any intentional act that has the effect of violating privacy but more narrowly to an intention to do an act which the person doing the act knew or should have known would violate the privacy of another person....

[20] At para. 87 of *South Coast*, the Court of Appeal noted that "wilful" modifies "violate the privacy of another", which "links the wilfulness to a specific alleged violation of privacy, and the question of what is a reasonable expectation of privacy in a particular case is a fact-based contextual inquiry...."

[21] In *Hollinsworth*, the Court of Appeal affirmed that "a claim of right" means "an honest belief in a state of facts which, if it existed, would be a legal justification or excuse": at para. 30.

Analysis

What is the privacy interest in issue?

[22] I am satisfied that Mr. Bower had a reasonable expectation that Vancity would not disclose Surrey Mortgage Documents to third parties, except with his consent or as required to enforce the Surrey Loan.

[23] Mr. Bower's right to privacy includes informational privacy, i.e., the right to control the use of his personal information by those to whom he provided it for a specific purpose: *South Coast* at para. 122; *Ari* at paras. 65–87. Mr. Bower's right to privacy extends to the personal information provided to Vancity in connection with the Surrey Loan and documents containing his personal information, including the Surrey Mortgage Documents.

[24] In terms of his subjective expectation, Mr. Bower deposed that he would not expect that his family members or anyone not a party to the Loan Agreement would ever be entitled to his private information, including his sensitive financial information, without his consent.

[25] From an objective perspective, I accept that a reasonable person would not expect Vancity to disclose a customer's personal information without the customer's consent or for a "compelling lawful interest": *Ari* at paras. 91–92. A reasonable person would expect Vancity may use a customer's personal information only for a legitimate business purpose: *Ari* at paras. 27, 39 and 53–54.

[26] I accept that using Mr. Bower's personal information to enforce the Surrey Loan and the Surrey Mortgage is a legitimate business purpose. This degree of disclosure is consistent with the terms of the Surrey Loan and Vancity's Privacy Code. Further, as set out in Vancity's Privacy Code, a reasonable person would recognize that Vancity may share their personal information with others with whom they share liability for a Vancity loan.

[27] Mr. Bower agreed that, pursuant to s. 14 of the 2018 renewal agreement for the Surrey Loan, Vancity "may collect, use and disclose all personal information of the Borrower regarding the [Surrey Loan] and the [Surrey Mortgage] (including credit and default information) in connection with ... any collection or enforcement proceedings in respect of the [Surrey Loan] and the [Surrey Mortgage]". Mr. Bower and his father were identified as "Borrower" under the 2018 renewal agreement.

[28] Section 1.3 of the Vancity Privacy Code provides that "[i]n limited circumstances, Vancity may collect, use, disclose or retain personal information without [the customer's] knowledge or consent". Examples of when Vancity may use or disclose a customer's personal information without their knowledge or consent includes when such use or disclosure is permitted by law or when Vancity needs to collect a debt from the customer. Where liability for a loan is shared with others, s. 2.12 of the Vancity Privacy Code allows Vancity to share the borrower's information with those with whom liability is shared.

[29] The Surrey Mortgage Documents included Mr. Bower's core biographical data and sensitive financial information (including the terms of the Loan Agreement), which was personal information that he reasonably viewed as private. In my view, it

was reasonable for Mr. Bower to expect Vancity to safeguard his personal information and not disclose it to third parties except:

- a) with his consent;
- b) to third parties who are also liable for the Surrey Loan;
- c) when disclosure is permitted by law; or
- d) as part of enforcement proceedings in respect of the Surrey Loan.

Did Vancity violate Mr. Bower's privacy?

[30] Mr. Bower has failed to prove that Vancity violated his privacy by disclosing the Surrey Mortgage Documents inconsistently with his privacy interest. In particular, Mr. Bower has failed to prove that his siblings were not third parties who were also liable for the Surrey Loan.

[31] When the Surrey Mortgage Documents were disclosed, the siblings were on title to the Surrey Property. Sections 21 and 22 of the *Property Law Act* provide the legal basis for Vancity's claim that the siblings were liable for the Surrey Loan. Mr. Bower has failed to prove that the siblings were not liable because they received their interest by way of gift. Mr. Bower deposed that his father transferred his interest in the Surrey Property to Mr. Bower's siblings without Mr. Bower's involvement, i.e., he is not able to provide direct evidence as to whether his father transferred his interest to Mr. Bower's siblings as a gift or otherwise. I am not prepared to deduce the siblings received their interest as a gift based only on the transfer document, which showed consideration of "\$1.00 other good and valuable consideration". Mr. Bower's sister's refusal to transfer title of the Surrey Property back to Mr. Bower's father appears to be inconsistent with a gratuitous transfer.

[32] Even if Vancity had violated Mr. Bower's privacy, for the reasons that follow I am not satisfied that any violation was done wilfully and without a claim of right.

Did Vancity wilfully disclose Mr. Bower's personal information without a claim of right?

[33] I am not satisfied that Vancity wilfully disclosed Mr. Bower's personal information without a claim of right. Mr. Bower has failed to establish: (i) that Vancity knew or ought to have known that disclosing the documents would violate Mr. Bower's privacy in the circumstances and (ii) that Vancity did not have an honest belief that they were entitled to disclose the documents as part of their efforts to enforce the Surrey Loan.

[34] Chris Freeman is a team manager with Vancity. He deposed that the Surrey Mortgage Documents were disclosed to Ms. Guy to enforce Vancity's right to recover the amounts owing to Vancity under the Surrey Mortgage pursuant to ss. 20 to 24 of the *Property Law Act*, R.S.B.C., c. 377. Mr. Freeman deposed that Vancity authorized the disclosure of the Surrey Mortgage Documents on the basis that it was permitted to do so under the Vancity Privacy Code and the 2018 renewal agreement.

[35] Based on Mr. Freeman's evidence, I am not able to find that Vancity *wilfully* violated Mr. Bower's privacy. I am not satisfied that the plaintiff has proven that Mr. Freeman knew or ought to have known that disclosing the Surrey Mortgage Documents to Ms. Guy would violate Mr. Bower's privacy in these circumstances. There is no evidence to support an inference that Mr. Freeman subjectively knew disclosing the documents would be a privacy violation.

[36] Even accepting that "wilful" includes "ought to have known", I am not satisfied that Vancity ought to have known that disclosing the Surrey Mortgage Documents to Ms. Guy would be a violation of Mr. Bower's privacy. Mr. Bower's privacy interest in the Surrey Mortgage Documents was limited by the reasonable expectation that Vancity could disclose the Surrey Mortgage Documents when seeking to enforce the Surrey Loan, which Vancity sought to do against Mr. Bower's siblings. Vancity asserted that Mr. Bower's siblings were liable for the Surrey Loan by virtue of ss. 20 to 24 of the *Property Law Act*, and Vancity demanded the full amount secured by the

Surrey Mortgage from Mr. Bower's siblings. I accept that Vancity provided the Surrey Mortgage Documents to Ms. Guy as part of Vancity's attempt to enforce the Surrey Loan.

[37] Further, based on Mr. Freeman's affidavit, I accept that Vancity honestly believed that it was entitled to disclose the Surrey Mortgage Documents to Ms. Guy by virtue of the 2018 renewal agreement and the Vancity Privacy Code as part of Vancity's efforts to enforce the Surrey Loan.

[38] Mr. Bower argues that Vancity was not entitled to enforce the Surrey Loan against his siblings because s. 21(2)(b) of the *Property Law Act* would exempt them from liability for the Surrey Loan on the basis that the siblings received their interest in the Surrey Property by way of gift. However, at the time the Surrey Mortgage Documents were disclosed, Vancity had no information about the transfer of Mr. Bower's father's interest in the Surrey Property. Vancity was justified in seeking to enforce the Surrey Mortgage against Mr. Bower's siblings. Section 21(2)(b) of the *Property Law Act* might have given Mr. Bower's siblings a defence to Vancity's claim under the Surrey Mortgage, but Vancity had no way of knowing that defence would be raised when it made a demand of the siblings.

[39] The plaintiff has failed to prove that Vancity wilfully violated his privacy without a claim of right. Mr. Bower's claim for breach of privacy is dismissed.

Is Vancity liable to the plaintiff for false reporting to credit bureaus?

[40] The plaintiff has failed to prove on a balance of probabilities that Vancity is liable to Mr. Bower for reporting to the Credit Bureaus his failure to pay the mortgages.

[41] In the amended notice of civil claim, Mr. Bower alleges that Vancity falsely reported to the Credit Bureaus that he had missed payments under the Surrey Mortgage. Mr. Bower does not plead any legal basis for a claim against Vancity in respect of reports to the Credit Bureaus.

[42] In his application response, Mr. Bower relies on ss. 4, 5, 112, 189–192 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 [*BPCPA*] to support his claim related to false reporting to the Credit Bureaus. The *BPCPA* does not provide a legal basis for Mr. Bower’s claim. Section 189 of the *BPCPA* makes it an offence to contravene s. 5 or s. 112 of the *BPCPA*. Section 192 of the *BPCPA* allows a court that convicts a defendant under the *BPCPA* to order compensation for an aggrieved consumer who has suffered a pecuniary loss as a result of the commission of an offence under the *BPCPA*. Vancity has not been convicted of an offence under the *BPCPA*, which means that s. 192 does not provide a legal basis for an award of damages to Mr. Bower. Further, the *BPCPA* provides an exhaustive code, and breach of the *BPCPA* does not create an actionable wrong: *Koubi v. Mazda Canada Inc.*, 2012 BCCA 310 at paras. 63–65, leave to appeal to SCC ref’d, 35017 (17 January 2013).

[43] Mr. Bower does not advance a tort claim in respect of the alleged false reporting to Credit Bureaus.

[44] In any event, I am not satisfied that Mr. Bower has proven the information Vancity provided to the Credit Bureaus was false. Vancity reports a payment as missed or delinquent to the Credit Bureaus when a borrower refuses or neglects to make a payment or where Vancity refuses to accept a borrower’s payment due to Vancity’s decision to note the borrower in default and accelerate the balance of the loan. In this case, on July 29, 2020, Vancity demanded payment in full of the balance of the Surrey Loan by August 10, 2020. From August 10, 2020 until the Surrey Loan was paid in full (including amounts ordered payable through the foreclosure proceeding), Vancity was entitled to report a payment was missed or delinquent. Mr. Bower has failed to prove that Vancity reported to the Credit Bureaus a missing or delinquent payment at a time when the Surrey Loan or Cambie Loan had been paid in full.

[45] In oral submissions, Mr. Bower submitted that the question regarding the alleged false report is whether an accelerated demand is the financial equivalent of a

missed payment. Based on the pleadings, the factual question is whether Mr. Bower has proven that Vancity provided false information to the Credit Bureaus. I find he has failed to meet that onus. I am satisfied based on Mr. Freeman's evidence that Vancity's reports to the Credit Bureaus about Mr. Bower were consistent with Vancity's usual practice. Mr. Bower has failed to prove that Vancity's practice is inconsistent with industry practice or with the reporting guidelines of the Credit Bureaus.

Conclusion

[46] The plaintiff's action is dismissed. Vancity is entitled to costs of the action.

"Lamb J."