

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

DEC 21 2004



IN THE SUPREME COURT OF BRITISH COLUMBIA

S047104

No.  
Vancouver Registry

BETWEEN:

ANDREW BODNAR

PLAINTIFF

AND:

COMMUNITY SAVINGS CREDIT UNION, NORTH SHORE  
CREDIT UNION, CHEMAINUS CREDIT UNION, COMOX  
VALLEY CREDIT UNION, KOOTENAY SAVINGS CREDIT  
UNION, VERNON & DISTRICT CREDIT UNION, VILLAGE  
CREDIT UNION and GREATER VANCOUVER COMMUNITY  
CREDIT UNION

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

## WRIT OF SUMMONS

Name and address of each Plaintiff:

ANDREW BODNAR  
c/o Hordo & Bennett  
1801 - 808 Nelson Street  
Vancouver, B.C. V6Z 2H2

Name and address of each Defendant:

COMMUNITY SAVINGS CREDIT UNION  
1170 - 8<sup>th</sup> Avenue  
New Westminster, B.C. V3M 2R6

NORTH SHORE CREDIT UNION  
3<sup>rd</sup> Floor, 1112 Lonsdale Avenue  
North Vancouver, B.C. V7M 2H2

CHEMAINUS CREDIT UNION  
9781 Willow Street  
Chemainus, B.C. V0R 1K0

COMOX VALLEY CREDIT UNION  
305 – 1797 Comox Avenue  
Comox, B.C. V9M 3L9

KOOTENAY SAVINGS CREDIT UNION  
200 – 999 Farwell Street  
Trail, B.C. V1R 3V1

VERNON & DISTRICT CREDIT UNION  
3108 – 33 Avenue  
Vernon, B.C. V1T 2N7

VILLAGE CREDIT UNION  
1013 Brunette Avenue  
Coquitlam, B.C. V3K 1E6

GREATER VANCOUVER COMMUNITY CREDIT UNION  
1801 Willingdon Avenue  
Burnaby, B.C. V5C 5R3

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the Defendants: Community Savings Credit Union, North Shore Credit Union, Chemainus Credit Union, Comox Valley Credit Union, Kootenay Savings Credit Union, Vernon & District Credit Union, Village Credit Union and Greater Vancouver Community Credit Union.

TAKE NOTICE that this action has been commenced against you by the Plaintiff for the claims set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST:

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this Court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the Plaintiff's address for delivery, which is set out in this Writ, and
- (b) if a Statement of Claim is provided with this Writ of Summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this Court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

**JUDGEMENT MAY BE TAKEN AGAINST YOU IF**

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

**TIME FOR APPEARANCE**

If this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere, or, if the time for appearance has been set by order of the Court, within that time.

**TIME FOR DEFENCE**

A Statement of Defence must be filed and delivered to the Plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this Writ of Summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above, or

if the time for defence has been set by order of the Court, within that time.

- (1) The address of the registry is:

800 Smithe Street  
Vancouver, B.C.

(2) The Plaintiff's ADDRESS FOR DELIVERY is:

1801 - 808 Nelson Street  
Box 12146, Nelson Square  
Vancouver, B.C.  
V6Z 2H2

Fax number for delivery:  
(604) 682-7872

(3) The name and office address of the Plaintiff's solicitor is:

Hordo & Bennett  
Barristers and Solicitors  
1801 - 808 Nelson Street  
Box 12146, Nelson Square  
Vancouver, B.C.  
V6Z 2H2  
Telephone: (604) 682-5250  
Fax: (604) 682-7872  
Counsel Reference: Paul R. Bennett and Mark W. Munteer

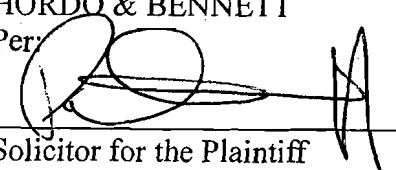
The Plaintiff's claim is:

(SEE ATTACHED STATEMENT OF CLAIM)

DATED at Vancouver, British Columbia, this 21<sup>st</sup> day of December, 2004.

HORDO & BENNETT

Per:

  
Solicitor for the Plaintiff

MM/ca

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ANDREW BODNAR

PLAINTIFF

AND:

COMMUNITY SAVINGS CREDIT UNION, NORTH SHORE  
CREDIT UNION, CHEMAINUS CREDIT UNION, COMOX  
VALLEY CREDIT UNION, KOOTENAY SAVINGS CREDIT  
UNION, VERNON & DISTRICT CREDIT UNION, VILLAGE  
CREDIT UNION and GREATER VANCOUVER COMMUNITY  
CREDIT UNION

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**STATEMENT OF CLAIM**

1. The representative Plaintiff Andrew Bodnar, a resident of British Columbia, brings this action on his own behalf and on behalf of all persons resident in British Columbia who have paid a fee for the advance of or increase in an "Overdraft Loan", as that term is defined in para. 10 below, from any one of the Defendants (the "Class").
2. The Defendant Community Savings Credit Union is a credit union incorporated under the laws of British Columbia with a registered and records office at 1170 8<sup>th</sup> Avenue, New Westminister, B.C. V3M 2R6.
3. The Defendant North Shore Credit Union is a credit union incorporated under the laws of British Columbia with a registered and records office at the 3<sup>rd</sup> Floor, 1112 Lonsdale Avenue, North Vancouver, B.C. V7M 2H2.

4. The Defendant Chemainus Credit Union is a credit union incorporated under the laws of British Columbia with a registered and records office at 9781 Willow Street, Chemainus, B.C. V0R 1K0.

5. The Defendant Comox Valley Credit Union is a credit union incorporated under the laws of British Columbia with a registered and records office at 305 – 1797 Comox Avenue, Comox, B.C. V9M 3L9.

6. The Defendant Kootenay Savings Credit Union is a credit union incorporated under the laws of British Columbia with a registered and records office at 200 – 999 Farwell Street, Trail, B.C. V1R 3V1.

7. The Defendant Vernon & District Credit Union is a credit union incorporated under the laws of British Columbia with a registered and records office at 3108 – 33 Avenue, Vernon, B.C. V1T 2N7.

8. The Defendant Village Credit Union is a credit union incorporated under the laws of British Columbia with a registered and records office at 1013 Brunette Avenue, Coquitlam, B.C. V3K 1E6.

9. The Defendant Greater Vancouver Community Credit Union is a credit union incorporated under the laws of British Columbia with a registered and records office at 1801 Willingdon Ave, Burnaby, B.C. V5C 5R3.

#### **Overdraft Charges**

10. At all material times, the standard account agreement entered into between each of the Defendant Credit Unions and each of its members provides that in the event that the Credit Union honours a cheque or other instrument drawn by the member when there are insufficient funds standing to the credit of the member's account, the Credit Union at its discretion may consider the cheque or other instrument as an application for a loan by the member to the extent there are not sufficient monies standing to the credit of the account to pay the cheque (the "Overdraft Loan").

11. For each Overdraft Loan advanced by the Defendants to each member of the Class, by the payment of a cheque or other instrument when there are insufficient funds standing to the credit of that member's account to pay the cheque or instrument, each of the Defendants has charged, and each Class member has paid, an overdraft charge in excess of \$5.00.

12. Since 1997, the Plaintiff Andrew Bodnar has operated a chequing account at the New Westminster Branch of Community Savings Credit Union and has been advanced in excess of 100 Overdraft Loans (the "Plaintiff's Overdraft Loans"), and has paid overdraft charges in respect of each of those Overdraft Loans. The particulars of each of the Plaintiff's Overdraft Loans and their respective overdraft charges are well known to Community Savings Credit Union. Examples include:

- (a) On November 20, 1997, an overdraft charge of \$17 for an Overdraft Loan of \$2,576.68 outstanding for one day;
- (b) On November 29, 1999, overdraft charges of \$17 for an Overdraft Loan of \$92.91 outstanding for four day;
- (c) On October 18, 2000, an overdraft charge of \$17 for an Overdraft Loan of \$1,140.38 outstanding for two days;

**Section 347 of the Criminal Code**

13. The arrangement by which the Defendants have advanced and advance Overdraft Loans to their members, in accordance with the standard terms of the account agreement between the Defendants and each of their members, including the arrangement by which Community Savings Credit Union advanced the Plaintiff's Overdraft Loans, constitutes an arrangement for the advancing of credit within the meaning and for the purposes of s. 347(1) of the *Criminal Code*, which prohibits the receipt of interest for the credit advanced under such an arrangement at a criminal rate.

14. The overdraft charges rendered by the Defendants in respect of each Overdraft Loan advanced by them to the Class Members, including overdraft charges rendered by Community Savings Credit Union in respect of the Plaintiff's Overdraft Loans, constitute

interest for the purpose of s. 347(1) of the Criminal Code, as s. 347(2) of the *Criminal Code* excludes from the definition of interest only those overdraft charges “not exceeding five dollars”.

15. The effective rate of interest earned by the Defendants from the collection of overdraft charges from the Class members in respect of Overdraft Loans routinely exceeds, and in the case of each overdraft charge collected by Community Savings Credit Union in respect of each of the Plaintiff's Overdraft Loans, the effective annual rate of interest earned by Community Savings Credit Union exceeded, 60% of the principal amount of each Overdraft Loan advanced, calculated in accordance with generally accepted actuarial practices and principles, and constitutes a criminal rate of interest as defined in s. 347(1) of the *Criminal Code*.

16. The collection by the Defendants of overdraft charges from various Class members in respect of their Overdraft Loans, including the collection by Community Savings Credit Union of the overdraft charges in respect of the Plaintiff's Overdraft Loans, constitutes the receipt of interest at a criminal rate, contrary to s. 347(1)(b) of the *Criminal Code*.

17. The Defendants have knowingly and deliberately collected overdraft charges which violate s. 347(1)(b) for the purpose of receiving an unlawful rate of return on Overdraft Loans.

### **Unjust Enrichment**

18. The Defendants have been enriched by the receipt of overdraft charges paid by members of the Class that exceed the maximum rate of interest permitted by s. 347(1) of the Criminal Code (the “Unlawful Overdraft Charges”) and in particular, Community Savings Credit Union has been enriched by the receipt of the Unlawful Overdraft Charges paid by the Plaintiff in respect of the Plaintiff's Overdraft Loans.

19. Each member of the Class has been deprived by the payment of the Unlawful Overdraft Charges each member has paid to the Defendants, and in particular, the Plaintiff has suffered a deprivation by the payment of the Unlawful Overdraft Charges in respect of the Plaintiff's Overdraft Loans.



20. There is no juristic reason why the Defendants should have received or should retain the benefit of the Unlawful Overdraft Charges collected from the Class members resulting in the receipt by the Defendants of interest at a criminal rate, and in particular, there is no juristic reason for Community Savings Credit Union to have received or to retain the benefit of the Unlawful Overdraft Charges paid by the Plaintiff resulting in the receipt by Community Savings Credit Union of a criminal rate of interest in respect of the Plaintiff's Overdraft Loans.

21. As is set out in para. 13 through 20 above, the Defendants have been unjustly enriched by the collection of Unlawful Overdraft Charges from the Plaintiff and other members of the Class, and holds the unlawful benefit they have received pursuant to the collection of these Unlawful Overdraft Charges from the Plaintiff and other Class members in trust for them.

#### **Unconscionable Trade Practices**

22. The Plaintiff and all Class members who have paid overdraft charges prior to July 4, 2004 are "consumers" within the *Trade Practices Act*, R.S.B.C., c. 457 and all Class members who have paid overdraft charges on or after July 4, 2004 are "consumers" within the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2, s. 1.

23. The Overdraft Loans advanced to the Plaintiff and to all members of the Class prior to July 4, 2004 are "consumer transactions" within the meaning of the *Trade Practices Act* and the Overdraft Loans advanced to all members of the class on or after July 4, 2004 are "consumer transactions" within the meaning of the *Business Practices and Consumer Protection Act*.

24. Each of the Defendants is a "supplier" of a consumer transaction within the meaning of the *Trade Practices Act* and the *Business Practices and Consumer Protection Act*.

25. The collection and receipt by the Defendants of overdraft charges which result in the receipt by the Defendants of interest on Overdraft Loans at a criminal rate, within the meaning of s. 347 of the *Criminal Code*, constitutes an unconscionable act or practice within the meaning of s. 4(1) of the *Trade Practices Act* and s. 8(1) of the *Business Practices and Consumer Protection Act*.

26. As a result of the unconscionable act and practices of the Defendants set out in para. 25 above, the Defendants received payments from the Class members, including the Plaintiff, which the Defendants was not entitled to receive, and is obliged to refund to the Plaintiff and Class members all Unlawful Overdraft Charges received by the Defendants from the Plaintiff Class members pursuant to s. 104(a) the *Business Practices and Consumer Protection Act*.

27. As a result of the unconscionable act and practices of the Defendants set out in para. 25 above, the Class members, including the Plaintiff, have suffered damages in the amount by which the overdraft charges paid by them in respect of their Overdraft Loans exceed 60% per annum, the maximum rate of return to the Defendants permitted by s. 347(1) of the *Criminal Code*.

### **Punitive Damages**

28. The conduct of the Defendants in collecting overdraft charges from the Class members which has resulted in the receipt by the Defendants of interest at a criminal rate, contrary to s. 347(1)(b) of the *Criminal Code*, and which is unconscionable under the *Trade Practice Act* and the *Business Practices and Consumer Protection Act*, is conduct intentionally and deliberately undertaken by the Defendants with a wanton indifference to its unlawfulness. Such conduct offends the moral standards of the community and warrants the condemnation of this Court.

WHEREFORE, the Plaintiff claims on her own behalf and on behalf of Class members:

- (a) a declaration that the overdraft charges received by the Defendants constitute interest within the meaning and for the purposes of s. 347 of the *Criminal Code*;
- (b) a declaration that all Unlawful Overdraft Charges received by the Defendants from the Plaintiff and Class members are held in a constructive trust for the benefit of the Plaintiff and Class members;

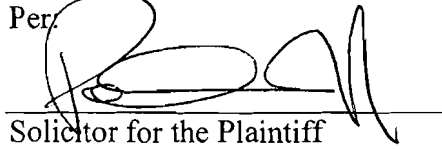
- (c) an accounting and restitution to the Plaintiff and Class members of all Unlawful Overdraft Charges received by the Defendants from the Plaintiff and Class members;
- (d) damages for unconscionable trade acts and practices pursuant to s. 22(1) of the *Trade Practice Act* and s. 105 the *Business Practices and Consumer Protection Act*.
- (e) punitive damages; and
- (f) interest.

Place of trial: Vancouver, British Columbia

DATED at Vancouver, British Columbia, this 21<sup>st</sup> day of December, 2004.

HORDO & BENNETT

Per:



Solicitor for the Plaintiff

THIS STATEMENT OF CLAIM is filed by the firm of Hordo & Bennett, Barristers and Solicitors, whose place of business and address for service is 1801 - 808 Nelson Street, Box 12146, Nelson Square, Vancouver, British Columbia, V6Z 2H2. Telephone: (604) 682-5250. Fax: (604) 682-7872. Counsel Reference: Paul R. Bennett, Mark W. Munteer

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No.  
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PLAINTIFF

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COMMUNITY SAVINGS CREDIT UNION,  
NORTH SHORE CREDIT UNION, CHEMAINUS  
CREDIT UNION, COMOX VALLEY CREDIT  
UNION, KOOTENAY SAVINGS CREDIT  
UNION, VERNON & DISTRICT CREDIT  
UNION, VILLAGE CREDIT UNION and  
GREATER VANCOUVER COMMUNITY  
CREDIT UNION

DEFENDANTS

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**WRIT OF SUMMONS AND STATEMENT OF CLAIM**

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HORDO & BENNETT  
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1801-808 NELSON STREET  
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V6Z 2H2  
(604) 682-5250

Counsel Reference: Paul R. Bennett and Mark W. Mounteer