



No.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

YING JIANG

PLAINTIFF

AND:

PEOPLES TRUST COMPANY, PEOPLES CARD SERVICES LIMITED
PARTNERSHIP, PEOPLES CARD SERVICES LTD., VANCOUVER CITY
SAVINGS CREDIT UNION, CITIZENS BANK OF CANADA, AMEX BANK OF
CANADA, and ALL TRANS FINANCIAL SERVICES CREDIT UNION LIMITED

DEFENDANTS

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

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The representative Plaintiff, Ying Jiang, resides in the City of Vancouver in the Province of British Columbia.
2. The Defendant, Peoples Trust Company (“Peoples Trust”), is a trust company incorporated pursuant to the *Trust and Loan Companies Act*, S.C. 1991, c. 45 and extra-provincially registered pursuant to the laws of British Columbia with a head office at Suite 1400, 888 Dunsmuir Street in the City of Vancouver in the Province of British Columbia and a registered address for delivery at PO BOX 49130, 2900 – 595 Burrard Street in the City of Vancouver in the Province of British Columbia.
3. Peoples Card Services Limited Partnership is a limited partnership formed pursuant to the laws of British Columbia with a head office at Suite 1400, 888 Dunsmuir Street in the City of Vancouver in the Province of British Columbia and a registered address for delivery at PO BOX 49130, 2900 – 595 Burrard Street in the City of Vancouver in the Province of British Columbia.

4. Peoples Card Services Ltd. is a company incorporated pursuant to the laws of Canada and extra-provincially registered pursuant to the laws of British Columbia with a head office at Suite 1400, 888 Dunsmuir Street in the City of Vancouver in the Province of British Columbia and a registered address for delivery at PO BOX 49130, 2900 – 595 Burrard Street in the City of Vancouver in the Province of British Columbia.

5. Peoples Card Services Ltd. is the general partner of Peoples Card Services Limited Partnership (together, “Peoples Card”).

6. Peoples Card is a subsidiary of Peoples Trust (together, “Peoples”).

7. The Defendant, Vancouver City Savings Credit Union (“Vancouver City”), is a credit union incorporated pursuant to the *Credit Union Incorporation Act*, R.S.B.C. 1996, c. 82 with a head office and address for delivery at 183 Terminal Avenue, PO Box 2120, Stn. Terminal in the City of Vancouver in the Province of British Columbia.

8. The Defendant, Citizens Bank of Canada (“Citizens Bank”), is a bank incorporated pursuant to the *Bank Act*, S.C. 1991, c. 46 with a head office and address for delivery at 183 Terminal Avenue in the City of Vancouver in the Province of British Columbia.

9. Citizens Bank is a wholly-owned subsidiary of Vancouver City (together, “Vancity”).

10. The Defendant, Amex Bank of Canada (“Amex”) is a bank incorporated pursuant to the *Bank Act*, S.C. 1991, c. 46 with a head office and address for delivery at 101 McNabb Street in the City of Markham in the Province of Ontario.

11. The Defendant, All Trans Financial Services Credit Union Limited (“All Trans”), is a provincially regulated credit union incorporated under the laws of Ontario with a head office at 3250 Bloor St. W, Suite 707 in the City of Etobicoke in the Province of Ontario.

[REDACTED]

The Plaintiff's Circumstances

12. On June 20, 2014, the representative Plaintiff purchased a prepaid purchase card (the "Card") from a Real Canadian Superstore located in Burnaby, British Columbia. The Card has a face value of \$25.00, was issued by Citizens Bank, and is branded with a Visa logo.
13. The Card's packaging states, *inter alia*,:
 - a. "THE PERFECT GIFT";
 - b. "\$3.95 activation fee";
 - c. "Good thru 11/2016";
 - d. "Use at millions of merchants worldwide, including online。";
 - e. "Funds on card never expire";
 - f. "Monthly Fee (Starts month after Good Thru date) \$2.50";
 - g. "Foreign Currency Margin 2.5%"; and
 - h. "This Visa Gift Card is not refundable at retail stores. Additional Guidelines may apply. See enclosed Terms and Conditions for details。"
14. The cardholder agreement enclosed with the Card states, *inter alia*,:

19. Law and Jurisdiction.

This Agreement will be interpreted in accordance with the laws of the province of British Columbia and the applicable laws of Canada. In the event of a dispute, you agree that the courts in British Columbia shall be competent to hear such dispute and you agree to be bound by any judgment of that court.
15. The representative Plaintiff paid \$28.95 for the Card. This amount represents the \$25.00 face value of the Card plus a \$3.95 activation fee.
16. The representative Plaintiff is a consumer and purchased the Card for personal use.

The Defendants' Prepaid Card Offerings

17. This proceeding involves prepaid purchase cards ("Prepaid Cards") sold and/or issued, both within and outside British Columbia, by Peoples, Vancity, Amex, All Trans, and each of them (collectively, the "Defendants").

18. The Prepaid Cards are branded with either a Visa, MasterCard, or American Express logo and are accepted as a form of payment anywhere in the world and online at all merchants that accept the applicable brand of card.

19. The Prepaid Cards are prepaid purchase cards that have a monetary value and are sold and/or issued to persons in exchange for the future supply of goods or services to a consumer.

20. The Defendants offer the Prepaid Cards in two varieties: non-reloadable cards and reloadable cards.

21. Non-reloadable Prepaid Cards are pre-loaded with a fixed value, such as \$25.00, \$50.00, \$100.00, or \$200.00, and are activated at the point-of-sale upon paying the value of the card plus an activation or purchase fee. Non-reloadable Prepaid Cards have an expiry date and cannot be reloaded with additional funds.

22. Reloadable Prepaid Cards allow the purchaser to initially load the card with any chosen value and are activated at the point-of-sale upon paying the chosen value plus an activation or purchase fee. Reloadable Prepaid Cards can be reloaded with additional funds at any time.

23. For both reloadable and non-reloadable Prepaid Cards, the Defendants impose, fees, including discount fees, and deductions (collectively, "Fees") including some or all of the following:

- a. activation or purchase fees upon purchase;
- b. monthly administrative or maintenance fees;
- c. transaction or point-of-sale fees when a Prepaid Card is used;

- d. insufficient funds fees;
- e. enquiry fees for enquiries about a Prepaid Card, including querying the balance;
- f. refund processing fees;
- g. expiration fees;
- h. re-activation fees;
- i. foreign exchange service charges, conversion fees, margins, or discounts when the card is used for a purchase in a foreign currency;
- j. domestic or international ATM fees;
- k. over-the-counter cash advance fees;
- l. card closure and balance return fees;
- m. reload fees; and
- n. PIN Change fees.

24. The packaging of the Defendants' Prepaid Cards prominently refers to an agreement that is entered into upon purchase of each of the Prepaid Cards (a "Cardholder Agreement").

25. A paper copy of the Cardholder Agreement is contained inside the packaging of the Prepaid Cards. The same Cardholder Agreement is also publically accessible on the Defendants' websites.

26. The Cardholder Agreement details a Defendant's and individual Class Member's rights and obligations with respect to the Prepaid Cards. The rights and obligations include, *inter alia*, payment of fees, expiry dates, and other legal clauses.

27. The Cardholder Agreement for the Prepaid Cards issued by Peoples states, *inter alia*:

The parties attorn to the jurisdiction of British Columbia and this Agreement shall be construed in accordance with and governed by the laws of the Province of British Columbia and Canada.

28. The Cardholder Agreement for the Prepaid Cards issued by Vancity states, *inter alia*,:

This Agreement will be interpreted in accordance with the laws of the province of British Columbia and the applicable laws of Canada. In the event of a dispute, you agree that the courts in British Columbia shall be competent to hear such dispute and you agree to be bound by any judgment of that court.

29. The Defendants' Prepaid Cards are issued under different brand names and sold to consumers, both within and outside British Columbia, at a variety of retailers, such as drug stores, supermarkets, gas stations, and convenience stores. The Defendants' Prepaid Cards are frequently sold alongside gift cards for other merchants and retailers.

The Class

30. The representative Plaintiff brings this action on her own behalf and on behalf of all consumers who purchased, received, or acquired one or more Prepaid Cards issued or sold by any of the Defendants, on or after November 1, 2008 and who:

- a. reside in the province of British Columbia;
- b. entered into a Cardholder Agreement with Vancity, Peoples, or either of them that contains a choice of law and jurisdiction clause in favour of British Columbia law and courts; or
- c. opt-in to this proceeding.

(the "Class" or "Class Members")

31. The representative Plaintiff is a member of the Class.

32. The Class Members, and each of them, have suffered damages as a result of the charging of Fees, the expiration of the Prepaid Cards, or both.



Part 2: RELIEF SOUGHT

1. The representative Plaintiff claims on her own behalf and on behalf of the Class Members against the Defendants for:
 - a. a certification order pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the “*CPA*”) that Class Members whose Cardholder Agreements contain a choice of law and jurisdiction clause in favour of British Columbia be automatically included in this class proceeding on an opt-out basis;
 - b. in addition, a certification order pursuant to the *CPA* that Class Members who reside in British Columbia be automatically included in this class proceeding on an opt-out basis;
 - c. a declaration pursuant to s. 172(1)(a) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the “*BPCPA*”) that the Fees contravene ss. 56.2 and 56.3 of the *BPCPA*;
 - d. a declaration pursuant to s. 172(1)(a) of the *BPCPA* that the Defendants have contravened s. 5(1) of the *BPCPA*;
 - e. a declaration pursuant to s. 172(1)(a) of the *BPCPA* that the Defendants have contravened s. 9(1) of the *BPCPA*;
 - f. damages;
 - g. in addition, or in the alternative, an accounting and restitution to all Class Members of all Fees charged and/or received by the Defendants;
 - h. in addition, or in the alternative, an order pursuant to s. 172(3)(a) of the *BPCPA* that the Defendants restore to the Class Members all monies received from the Fees;
 - i. in addition, or in the alternative, an order pursuant to s. 10(2)(a) and (c) of the *BPCPA* that Defendants restore to the Class Members all monies received from the Fees;
 - j. in addition, or in the alternative, an accounting and restitution to all Class Members of all amounts unlawfully retained by the Defendants in relation to expired Prepaid Cards;

- k. in addition, or in the alternative, an order pursuant to s. 172(3)(a) of the *BPCPA* that Defendants restore to the Class Members all monies unlawfully retained by the Defendants in relation to expired Prepaid Cards;
- l. in addition, or in the alternative, an order pursuant to s. 10(2)(a) and (c) of the *BPCPA* that Defendants restore to the Class Members all monies unlawfully retained by the Defendants in relation to expired Prepaid Cards;
- m. a permanent injunction pursuant to s. 172(1)(b) of the *BPCPA*, restraining the Defendants, and each of them, from, directly or indirectly, receiving, collecting, or charging the Fees;
- n. a permanent injunction pursuant to s. 172(1)(b) of the *BPCPA*, restraining the Defendants, and each of them, from, directly or indirectly, causing or allowing, or threatening to cause or allow, the Prepaid Cards to expire;
- o. in addition, an order pursuant to s. 172(3)(c) of the *BPCPA*, that the Defendants advertise to the public in a manner that will assure prompt and reasonable communication to consumers, and on terms or conditions that this Honourable Court considers reasonable, the particulars of any judgment, declaration, order, or injunction granted against the Defendants;
- p. punitive damages;
- q. pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- r. the costs of administering the plan of distribution of the recovery in this proceeding; and
- s. such further and other relief that, as to this Honourable Court, seems meet and just.

Part 3: LEGAL BASIS

1. The Class Members are consumers within the meaning of the *BPCPA*.
2. Vancity and Peoples, each with headquarters in British Columbia, are suppliers within the meaning of the *BPCPA* in relation to all consumers that reside within or outside of British Columbia.

3. Amex and All Trans, whose headquarters are in Ontario, are suppliers within the meaning of the *BPCPA* in relation to all consumers that reside within British Columbia.

4. The Defendants' sale and/or issuance of Prepaid Cards to each of the Class Members is a consumer transaction as defined in the *BPCPA*.

5. The Prepaid Cards sold and/or issued by the Defendants:

- a. are prepaid purchase cards pursuant to s. 56.1 of the *BPCPA*;
- b. have expiry dates contrary to s. 56.2 of the *BPCPA*; and
- c. charge Fees contrary to s. 56.3 of the *BPCPA*.

6. The Cardholder Agreements for Peoples and Vancity include a choice of law and jurisdiction clause in favour of British Columbia law and courts. With respect to Peoples and Vancity, the Class Members, whether within or outside of British Columbia, have submitted to the jurisdiction of British Columbia law and courts. Accordingly, the representative Plaintiff seeks, *inter alia*, certification of this action against Peoples and Vancity as set out in the case of *Lee v. Direct Credit West Inc.*, 2014 BCSC 462.

7. The Defendants, having contravened the *BPCPA*, have caused the Class Members to suffer damages.

8. The Defendants' wilful and blatant disregard of consumer protection legislation constitutes egregious and high-handed conduct that warrants an award of punitive damages.

9. The Defendants' representation to the Class Members, *inter alia*, that it has the right to charge and/or collect the Fees has the capability, tendency, or effect of deceiving or misleading a consumer and constitutes a deceptive act or practice contrary to s. 5(1) of the *BPCPA*.

10. The Defendants' Cardholder Agreement terms that impose Fees which, *inter alia*, contravene s. 56.2 and 56.3, are so harsh or adverse to the consumer as to be inequitable and constitute an unconscionable act or practice contrary to s. 8(1) of the *BPCPA*.

11. The Class Members are entitled under the law of restitution and pursuant to ss. 10(2)(a) and (c) and 172(3)(a) of the *BPCPA* to restitution in the amount of the Fees and, in relation to expired Prepaid Cards, the amounts unlawfully retained .

12. The Defendants' contraventions of the *BPCPA* have caused and will continue to cause irreparable harm to Class Members and other consumers. The Class Members seek a permanent injunction under s. 172(1)(b) of the *BPCPA* restraining the Defendants from further contravening the *BPCPA*.

13. The representative Plaintiff pleads and relies upon the provisions of:

- a. the *BPCPA*, including Parts 2, 4.1, and 10;
- b. *Prepaid Purchase Cards Regulation*, BC Reg 292/2008; and
- c. the *CPA*.

14. Such further legal bases as counsel may advise.

Plaintiff's address for service:

Fax number for service:

E-mail address for service: N/A

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia

Date: September 18, 2014



Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

Form 11

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The representative Plaintiff, Ying Jiang, claims the right to serve this pleading/petition on the Defendants, Amex Bank of Canada and All Trans Financial Services Credit Union Limited, outside British Columbia on the grounds that it concerns:

section 10(e)(i) “contractual obligations that, to a substantial extent, were to be performed in British Columbia”;

section 10(e)(iii) “contractual obligations, and the contract is for the purchase of property, services or both, for use other than in the course of the purchaser’s trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller”;

section 10(f) “restitutionary obligations that, to a substantial extent, arose in British Columbia”;

section 10(g) “a tort committed in British Columbia”; and

section 10(h) “a business carried on in British Columbia”.

of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28.



APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The representative Plaintiff, on behalf of all class members, seeks damages as well as restitution and restoration of losses suffered due to the Defendants' unlawful collection of fees and imposition of expiry dates in connection with prepaid purchase cards issued by the Defendants.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident;
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate);
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

- Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2*
- Prepaid Purchase Cards Regulation, BC Reg 292/2008*
- Class Proceedings Act, R.S.B.C. 1996, c. 50*