

Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trademark Agents  
595 Burrard Street, P.O. Box 49314  
Suite 2600, Three Bentall Centre  
Vancouver BC V7X 1L3 Canada  
Tel: 604-631-3300 Fax: 604-631-3309

**Laura Cundari, FCI Arb**

Partner

Dir: 604-631-4177

[laura.cundari@blakes.com](mailto:laura.cundari@blakes.com)

Reference: 23814/4

January 15, 2021

**VIA PROCES SERVER**

David Pace-Bonello  
14 - 94 East Avenue South  
Hamilton, Ontario  
L8N 2T4

**Re: *LCB Services Ltd. et al. v. David Pace-Bonello et al.*  
British Columbia Supreme Court Action No. S-210446**

Dear Sir:

Please find enclosed for service upon you a filed copy of the Notice of Civil Claim in the above-noted matter.

Yours truly,

Laura Cundari

LAU/lmi  
Encl.

51238650.1

TORONTO

CALGARY

VANCOUVER

MONTREAL

OTTAWA

NEW YORK

LONDON

Blake, Cassels & Graydon LLP | [blakes.com](http://blakes.com)

JAN 14 2021



No.  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

LCB SERVICES LTD., 2642985 ONTARIO INC.,  
and ZACHARY KILLAM

PLAINTIFFS

AND

DAVID PACE-BONELLO, JOEY NICOL,  
and DREAMHOST LLC

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs 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 Plaintiffs.

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 Plaintiffs 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 Plaintiffs,



- (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 PLAINTIFFS

### Part 1: STATEMENT OF FACTS

#### *The Parties*

1. The Plaintiff, LCB Services Ltd., is a company incorporated pursuant to the laws of British Columbia with an address for service in this proceeding at Suite 2600 – 595 Burrard Street, Vancouver, BC, V7X 1L3.
2. The Plaintiff, 2642985 Ontario Inc., is a company incorporated pursuant to the laws of Ontario with an address for service in this proceeding at Suite 2600 – 595 Burrard Street, Vancouver, BC, V7X 1L3. 2642985 Ontario Inc. is a wholly-owned subsidiary of LCB Services Ltd. and a consumer reporting agency registered pursuant to the *Consumer Reporting Act*, R.S.O. 1990, c. C.33.
3. The Plaintiff, Zachary Killam, is a director of LCB Services Ltd. and 2642985 Ontario Inc., a resident of British Columbia, and has an address for service in this proceeding at Suite 2600 – 595 Burrard Street, Vancouver, BC, V7X 1L3.
4. LCB Services Ltd. and 2642985 Ontario Inc. do business as the Landlord Credit Bureau (together, “**LCB**”). LCB operates and maintains a record keeping platform for landlords and a reporting agency, and provides other real estate related services. LCB provides services across Canada and operates a website located at <https://landlordcreditbureau.ca> (the “**LCB Website**”).
5. Most of the LCB Website is freely available to the public. However, portions of the LCB Website are available only to users who register with LCB.
6. An affiliate of LCB provides similar services in the United States of America (“**USA**”), and operates a nearly identical website located at <https://landlordcreditbureau.com>.
7. The Defendant, David Pace-Bonello (“**Bonello**”), is an individual with an address at 14 – 94 East Ave South, Hamilton, Ontario, L8N 2T4.
8. The Defendant, Joey Nicol (“**Nicol**”, and together with Bonello, the “**Personal Defendants**”), is an individual with an address at 14 – 94 East Ave South, Hamilton, Ontario, L8N 2T4.



9. The Defendant, DreamHost LLC ("**DreamHost**", and together with the Personal Defendants, the "**Defendants**"), is a limited liability company incorporated pursuant to the laws of California with an address for service of 417 Associated Rd., Brea, California, USA, 92821. DreamHost is a web hosting service provider.

10. The Personal Defendants, or some of them, have accused LCB of unlawful and unethical conduct, infringed the trademark and copyright of LCB, and sought to damage the business and reputation of the LCB and their directors.

### ***The Website & the Blog***

11. In or around July 2020, the Personal Defendants created a website located at <https://landlordcreditbureaufacts.com> (the "**Website**"). The Website purports to contain information about LCB, LCB's business, and LCB's current and former directors and officers.

12. On or about January 7, 2021, the Personal Defendants created another website at <http://www.blog.landlordcreditbureaufacts.com/> (the "**Blog**"). The Blog purports to contain information about LCB, LCB's business, and LCB's current and former directors and officers.

13. The Website and the Blog are hosted by DreamHost.

14. The Personal Defendants hid their identity as the developers of the Website and the Blog by using a private URL registration with DreamHost.

15. The Website and the Blog are freely available to the public. The Personal Defendants do not charge individuals to view material on the Website and the Blog.

16. At all material times, the Website and the Blog contained substantially the same statements about LCB, LCB's business, and LCB's current and former directors and officers.

### ***The Defamatory Statements on the Website & the Blog***

17. Since in or around July 2020, numerous defamatory statements have been published on the Website and the Blog.

18. On the Website, the Blog, or both, the Personal Defendants have published, among other statements, the following false and defamatory statements about LCB:

- (a) "There is currently no finding of fact from the Registrar that Landlord Credit Bureau is not compliant with the Consumer Reporting Act but there have been issues with them not disclosing information as required under the act which are the subject of pending complaints";
- (b) LCB maintains a "bad tenant" list and shares "tenants personal information without express consent";
- (c) LCB "claims landlords have the right to share your personal information with them without your prior consent";



- (d) "Once [a letter is sent to the Plaintiffs] it is unlawful for Landlord Credit Bureau to share your data with anyone, protecting your personal information and circumventing the process the LCB uses to put you on their bad tenant list"; and
- (e) LCB is registered as credit reporting agency in an attempt to "circumvent one of the core findings of [the Ontario Privacy Commissioner's] report."

19. On the Website, the Blog, or both, the Personal Defendants have published the following false and defamatory statements about LCB's directors and officers, including:

- (a) Mr. Killam "is running a property management business where he acts as a residential landlord while at the same time running a supposedly impartial third party credit bureau. The conflict of interest situation here is very striking – if you are a tenant of Mr. Killam in one of his Live Well properties you are automatically getting signed up for the Landlord Credit Bureau and Killam would have a hand in arbitrating any disputes a tenant might raise against Live Well Properties reporting to the bureau. This would be like if Equifax also owned a bank that lent money. The people tasked with managing your credit should never be your creditors. This is a clear conflict of interest and we believe Mr. Killam should at least divest himself of his holdings in Live Well Property Management if he wants to also operate a credit bureau for Landlords."
- (b) Marv Steier, a former director of LCB, "is a long time landlords rights activist and owner of several companies attempt to create bad tenant list-style resources for landlords. His prior attempts at launching tenant blacklist resources appear to have failed in Canada."

(together with the statements in paragraph 18, the "Defamatory Statements").

20. The dates upon which the Defamatory Statements were published on the Website, the Blog, or both, are within the knowledge or discoverability of the Personal Defendants.

21. Numerous individuals in British Columbia, including LCB's clients, have read the Defamatory Statements. The names and other particulars of the individuals who read the Defamatory Statements are not presently known to the Plaintiffs.

### ***Passing Off***

22. LCB Services Ltd. is the owner of the "Landlord Credit Bureau" trademark application (Trademark Application No. 2046431) (the "Mark") and LCB derives rights from the Mark at common law.

23. LCB has used the Mark in association with LCB's wares and services, namely, the operation of a record keeping platform for landlords, a reporting agency, credit reporting service for landlords and tenants, real estate services, and rental property services, since at least 2016 throughout Canada.

24. LCB has generated substantial goodwill in the Mark in association with its wares and services.



25. LCB has not authorized others to use the Mark in association with LCB's wares and services.

26. The Personal Defendants have used and reproduced LCB's Mark on the Website, the Blog, or both in connection with LCB's wares and services. The Personal Defendants have used screenshots of the public and registered users only portions of the LCB Website containing the Mark and included the Mark in the URL of the Website and the Blog. In doing so, the Personal Defendants have misrepresented to the public the source of their wares and services to be those of LCB, causing harm to LCB.

### ***Copyright Infringement***

27. The Plaintiffs are the owners of some or all of the names, images, and the photographs contained on the LCB Website (the "**Works**"). Copyright subsists in each of the Works, of which the Plaintiffs have right to.

28. The Defendants have reproduced substantial portions of the Works on the Website, the Blog, or both.

29. The Defendants have used the Works without permission of the Plaintiffs.

30. On or about January 4, 2021, LCB served DreamHost with a takedown notice pursuant to the *Digital Millennium Copyright Act* (United States) ("**DMCA**"), asserting that many of the images, text, and designs located on the Website infringe the Works, and that use of the Works has not been authorized by the Plaintiffs.

31. Shortly thereafter, DreamHost removed the Website in accordance with the takedown notice.

32. On or about January 6, 2021, the Personal Defendants filed a DMCA counter notification to the takedown notice, asserting that the Website does not infringe the trademark or copyright of the Plaintiffs.

33. On or about January 7, 2021, the Personal Defendants launched the Blog and reproduced the Works on this new website.

### **Part 2: RELIEF SOUGHT**

34. The Plaintiffs claim against the Defendants:

- (a) an interim, interlocutory, and permanent injunction restraining the Personal Defendants from further writing, posting, or publishing or causing to be written, posted, published, or otherwise publishing the Defamatory Statements or the Portraits, or publishing further defamatory statements about or concerning the Plaintiffs or LCB's current and former directors and officers;
- (b) an interim, interlocutory, and permanent injunction restraining the Defendants from further using, producing, reproducing, posting, publishing, or causing to be used, posted, produced, reproduced, published, or otherwise publishing, reproducing, or producing the Mark, including such use in any domain name;



- (c) an interim, interlocutory, and permanent injunction restraining the Defendants from further using, producing, reproducing, posting, publishing or causing to be used, posted, produced, reproduced, published, or otherwise publishing, reproducing, or producing the Works or any substantial portion thereof;
- (d) a mandatory order compelling the Defendants to remove the Defamatory Statements, the Mark, and the Works from all Internet websites, online message boards, and social media platforms within their control;
- (e) a mandatory order compelling the Defendants to transfer the Website, the Blog, and any other domains within their control that include the Mark to LCB;
- (f) general damages;
- (g) special damages;
- (h) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (i) the costs of this proceeding; and
- (j) such further and other relief as this Honourable Court may seem just.

### Part 3: LEGAL BASIS

#### *Defamation*

35. The Personal Defendants' published or caused to be published the Defamatory Statements.

36. In publishing the Defamatory Statements, the Personal Defendants acted maliciously and in bad faith.

37. In the alternative, the Personal Defendants published the Defamatory Statements under the guise of consumer protection, while knowing that the Defamatory Statements were false or misleading and/or while intentionally, recklessly, or callously disregarding the falsity of the Defamatory Statements, and without regard to the harm that the allegations and inaccurate statements would cause the Plaintiffs.

38. The words in the Defamatory Statements referred to or were understood to refer to the Plaintiffs. The sole purpose of the Website and the Blog is to comment on LCB, LCB's business, and LCB's current and former directors and officers.

39. The Defamatory Statements relate to the business of LCB, which it carries on in British Columbia, and to Mr. Killam, who resides in British Columbia.

40. The Defamatory Statements in their entirety, in their natural and ordinary meaning, including their express and implied meaning in their full context, and/or by innuendo, are false and defamatory of the Plaintiffs.

41. In addition to the natural and ordinary meanings of the Defamatory Statements, the Defamatory Statements would lead a reasonable reader to conclude, or would mean or would be understood to mean, the following regarding LCB:

- (a) engages in unlawful activities, including the misuse of personal information without consent;
- (b) unlawfully and/or improperly obtains and misuses personal information;
- (c) acts with callous disregard for privacy legislation and the personal information of tenants;
- (d) operates its business in a manner that is contrary to applicable law and regulations;
- (e) is managed or directed by dishonest and untrustworthy individuals;
- (f) is the subject of complaints to regulators; and
- (g) is not a legitimate credit reporting agency and is only registered as a credit report agency in order to violate privacy legislation.

42. In addition to the natural and ordinary meanings of the Defamatory Statements, the Defamatory Statements would lead a reasonable reader to conclude, or would mean or would be understood to mean, the following regarding Mr. Killam:

- (a) is dishonest and cannot be trusted;
- (b) is knowingly, intentionally, or recklessly acting in a conflict of interest; and
- (c) does not exercise proper judgment and makes poor business decisions.

43. By reason of the publication of the Defamatory Statements, LCB has suffered reputational harm and damage to its business including, among other things, the loss of existing and potential clients.

44. By reason of the publication of the Defamatory Statements, Mr. Killam has suffered reputational harm.

45. The Plaintiffs have incurred costs and spent a significant amount of time investigating who is behind the Website and the Blog in seeking to have the Defamatory Statements removed from the Internet.

46. The Defamatory Statements have caused irreparable harm to LCB's business and reputation and to Mr. Killam's reputation, and the Personal Defendants have shown they will republish the Defamatory Statements in alternate formats or publications.

47. The Defamatory Statements, or some of them, remain published on the Website, the Blog, or both and can be viewed by the public in British Columbia and elsewhere as at the date of filing of this Notice of Civil Claim, and therefore the publication of the Defamatory Statements is ongoing.



***Passing Off***

48. LCB has established goodwill in association with the Mark and associated wares and services.

49. The Personal Defendants, through the Website, the Blog, or both, have used and continue to use the Mark. The Personal Defendants are using the Mark in the same wares and services as that of LCB.

50. The Personal Defendants' use of the Mark is without the consent of LCB.

51. The Personal Defendants, through the use of the Mark via the Website, the Blog, or both, have misled and are misleading consumers with respect to the source of the Personal Defendants wares or services. For example, the name of the Website and the Blog and the content included therein has led the public to believe that the Website, or the Blog, or both originate from LCB.

52. The deception by the Personal Defendants and passing off the Mark has resulted in harm to LCB.

***Copyright Infringement***

53. The Defendants, through the Website, the Blog, or both, have reproduced substantial portions of the Works without permission of the Plaintiffs.

54. The reproduction of the Works was without the consent of the Plaintiffs.

55. The reproduction of the Works has infringed the rights of the Plaintiffs, and caused the Plaintiffs harm.

56. The Plaintiffs plead and rely upon:

- (a) *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (b) *Libel and Slander Act*, R.S.B.C. 1996, c. 263;
- (c) *Privacy Act*, R.S.B.C. 1996, c. 373;
- (d) *Trademarks Act*, R.S.C. 1985, c. T-13; and
- (e) *Copyright Act*, R.S.C. 1985, c. C-42.

Plaintiffs' address for service:

Blake, Cassels & Graydon LLP  
Barristers and Solicitors  
Suite 2600, Three Bentall Centre  
595 Burrard Street, PO Box 49314  
Vancouver, BC V7X 1L3  
Attention: Laura M. Cundari

Fax number address for service (if any):

N/A

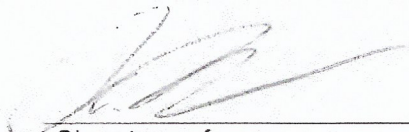


E-mail address for service (if any): Vancouver.service@blakes.com and  
laura.cundari@blakes.com

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street, Vancouver, B.C.

Date: 14/Jan/2021

  
\_\_\_\_\_  
Signature of  
 Plaintiff  lawyer for Plaintiffs  
for Laura M. Cundari

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.



## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim in defamation, breach of privacy, trademark infringement, copyright infringement, and breach of contract.

### 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:

*Court Order Interest Act*, R.S.B.C. 1996, c. 79

*Libel and Slander Act*, R.S.B.C. 1996, c. 263

*Privacy Act*, R.S.B.C. 1996, c. 373

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

The Plaintiffs claim the right to serve this pleading on the Defendants, David Pace Bonello, Joey Aspen Nicol, and DreamHost LLC, outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts on which the proceeding against the Defendants is based because the claim concerns a tort committed in British Columbia a business carried on in British Columbia.