COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Sood v. Hans,*
2023 BCCA 138

Date: 20230329
Docket: CA48223

Between:

Aditya Sood and 1139314 B.C. Ltd.

Appellants
(Defendants)

And

Baldev Singh Hans

Respondent
(Plaintiff)

Before: The Honourable Mr. Justice Hunter
The Honourable Mr. Justice Grauer
The Honourable Justice Marchand

On appeal from: An order of the Supreme Court of British Columbia, dated March 18, 2022 (*Hans v. Sood*, 2022 BCSC 450, New Westminster Docket S209415).

Counsel for the Appellants:	W.E. Knutson, K.C. J.L. Foster
Counsel for the Respondent:	B.B. Olthuis J. Hernaez
Place and Date of Hearing:	Vancouver, British Columbia March 14, 2023
Place and Date of Judgment:	Vancouver, British Columbia March 29, 2023

Written Reasons by:
The Honourable Mr. Justice Hunter

Concurred in by:
The Honourable Mr. Justice Grauer
The Honourable Mr. Justice Marchand

Summary:

In 2018, the appellants brought an application before a master for an order cancelling a certificate of pending litigation ("CPL") that had been filed against six properties held by the appellants. The application was brought pursuant to ss. 256–257 of the Land Title Act, although the appellants alleged grounds in addition to hardship. The master considered whether the CPL complied with s. 215 of the Act, ultimately concluding that while the case was thin, the CPL should not be cancelled on that account. The master then cancelled the CPL under s. 257, and ordered security to be paid, which was done. Three years later, the appellants brought an application for an order that the CPL had not been in compliance with s. 215, and that accordingly security should not have been ordered and should now be released. The chambers judge dismissed the application on the basis that the proper course for the appellants to have taken if they wished to challenge the validity of the CPL was to appeal the master's order. The appellants appeal to this Court, submitting that the master did not have the jurisdiction to cancel the CPL for non-compliance with s. 215 and thus that an appeal would have been of no avail.

Held: Appeal dismissed. It is correct that a master does not have the inherent jurisdiction of a superior court to cancel a CPL for non-compliance with s. 215. Notwithstanding that limitation, it was incumbent upon the appellants to raise all arguments on which they wished to rely when they brought the application to cancel, whether before a master or a judge of the Supreme Court. The application to raise these arguments now amounts to a collateral attack on the master's order. It is too late to raise an argument that could have and should have been made at the time of the application in order to support the argument that a CPL that was cancelled on terms on the appellants' application could have been cancelled outright on a different legal theory.

Reasons for Judgment of the Honourable Mr. Justice Hunter:

[1] The issue in this appeal is whether it is open to a party who has obtained an order cancelling a certificate of pending litigation ("CPL") on payment of security to bring a new application years later for an order that the CPL could have been cancelled on a different legal theory not requiring security, and thereby obtain a release of the security ordered to be posted.

[2] The issue arises from a dispute between the parties concerning what the respondent Hans alleges was a joint venture to purchase properties to develop and sell them. In December 2018, the respondent filed a Notice of Civil Claim against the appellants and lodged a CPL against six properties scheduled to be sold by the appellants a week later. The appellants sought cancellation of the CPL before a

master, who ordered cancellation of the CPL on grounds of hardship on the basis that the appellants post $800,000 as security, which was done.

[3] Three years later, the appellants appear to have had second thoughts about the strategy they adopted in 2018. They now seek an order that the CPL was never compliant with s. 215 of the *Land Title Act*, R.S.B.C. 1996, c. 250 ("*LTA*") and ought to have been cancelled pursuant to that provision without the necessity of posting security. Accordingly, say the appellants, the security should never have been ordered, and should now be released back to them.

[4] The application was dismissed by a chambers judge on the basis that if the appellants disagreed with the requirement to pay security contained in the master's order, their remedy was to appeal the order.

[5] On appeal, the appellants argue that the CPL was invalid when it was filed because the underlying claim failed to meet the pre-conditions of s. 215(1), namely a claim for an estate or interest in land. The appellants argue further that the master did not have the jurisdiction to cancel the CPL for non-compliance with s. 215, and thus the order of the master under s. 257 should not now preclude the appellants from relief under s. 215.

[6] Granting the order sought by the appellants would effectively vary the master's order by removing the requirement for security for the cancellation of a CPL that took place three years before the instant application was filed. In my opinion, the doctrine of collateral attack prevents a party from obtaining such an order.

[7] For the reasons that follow, I would dismiss the appeal.

Background

The 2018 Application Proceedings

[8] On December 13, 2018, the respondent Hans filed a Notice of Civil Claim against the appellants in relation to what was said to be a joint venture to purchase properties to develop and sell them. Mr. Hans alleged that the appellants had

breached the joint venture agreement by assigning six of these properties to a third party in a transaction that was scheduled to close on December 20, 2018.

[9] Section 215(1)(a) of the *LTA* provides that a person who has commenced a proceeding and who is claiming an estate or interest in land may register a certificate of pending litigation against the land in the same manner as a charge is registered. Mr. Hans' original Notice of Civil Claim did not contain a claim for an interest in respect of land. The CPL was nevertheless issued on that Notice of Civil Claim. The next day, Mr. Hans, presumably recognizing his error, filed an Amended Notice of Civil Claim that did assert a beneficial and equitable interest in the properties. He then filed the Amended Notice of Civil Claim with the CPL in the Land Title office on December 17, 2018.

[10] On the same day the CPL was registered, the appellants brought an application for an order cancelling the CPL pursuant to ss. 256 and 257 of the *LTA*. These provisions permit cancellation of a CPL on the grounds of hardship on payment of security fixed by the Court. In addition to ss. 256 and 257, the appellants submitted in their application that the CPL "should be cancelled forthwith on the basis that the Plaintiff has not demonstrated that there is an arguable case or a triable issue, nor an interest in land in question". As well, the appellants cited Rule 9(6), the summary judgment rule in support of their application. The application contained a statement that the matter was within the jurisdiction of a master, and a master heard the application on short notice the next day.

[11] Following submissions, the master delivered oral reasons for judgment, indexed at 2018 BCSC 2586. He began his analysis in this way:

> [1] The application here is to cancel a CPL lodged against six lots. The cancellation is sought pursuant to s. 256 of the *Land Title Act*, R.S.B.C. 1996, c. 250 which has to have reference to s. 257. Reference is also made to s. 215 which deals with the obvious point that before you get to either of those you have to deal with whether or not there is an interest in land claimed here or one upon which there reasonably might be a triable issue about an interest in land.

[12] The master then began his analysis by explicitly considering s. 215 in these terms:

> [11] The hurdle is not high for the plaintiff to establish a triable issue to get him into s. 215. A number of cases that have been referred to me both today and previously indicate that. …
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> …
>
> [13] … On balance, I think the argument with respect to an interest in land may be thin, but I cannot say that it is a certainty and that there is no triable issue.
>
> [14] On that basis I think we are past s. 215 and we get to s. 256. I have discretion to cancel. The consequence of not cancelling will be to stop a conveyance of property which is set to occur in two days' time.

[13] The master ordered the cancellation of the CPL on payment of security of $800,000. The security was posted. On payment of the security, the CPL was cancelled and the transaction completed. No appeal was taken of the master's order. The trial of the main action has not yet taken place, but we are advised that it has been set down for November of this year.

The Application Proceedings in 2021

[14] On November 30, 2021, the appellant 1139314 B.C. Ltd. ("113") filed a Notice of Application seeking an order that the CPL that had previously been registered on title to the six properties but had been cancelled pursuant to the master's December 2018 order was non-compliant with the requirements of s. 215 of the *LTA* and was invalid when it was filed. 113 sought an order that the security that had been filed pursuant to the master's order be released to it, together with accumulated interest.

[15] In support of the application, 113 submitted that the Notice of Civil Claim filed by Mr. Hans in 2018 did not satisfy the preconditions of s. 215 for the issuance of a CPL, and accordingly the CPL should have been cancelled at that time without the necessity of security. 113 further submitted that any comments made by the master concerning s. 215 compliance should not bar its claim, as a master does not have the jurisdiction to cancel a CPL for failure to comply with s. 215.

[16] The respondent opposed the relief sought on the basis that the appellants had not appealed the master's order. The respondent took the position that the validity of the CPL was *res judicata* and barred by the doctrines of issue estoppel and collateral attack.

[17] The chambers judge hearing the matter held that the appellants' remedy, if they disagreed with the master's order, was to appeal it. Absent an appeal, the parties were bound by the order. The judge did not find it necessary to determine whether a master has jurisdiction to determine the validity of a CPL.

Position of the Appellants on Appeal

[18] The appellants' first position is that it was improper for the respondent to obtain the CPL on the basis of the original Notice of Civil Claim but then file the CPL with the Amended Notice; the respondent should have obtained a new CPL on the strength of the Amended Notice.

[19] While this position is sound, if the original CPL had been cancelled, the respondent would have been entitled to re-file a CPL based on its Amended Notice of Civil Claim: *Bilin v. Sidhu,* 2017 BCCA 429, at para. 68 [*Bilin*]. As the Amended Notice had already been issued when the original CPL was filed, there is little efficacy in speculating on the likely course of events, three years after the application, had this point been taken at the time.

[20] But the appellants say that under either the original or amended pleading, the respondent did not allege any factual or legal basis for a claim to an interest in the subject properties. This argument is the basis of their application for immediate cancellation of the CPL without security due to the non-compliance with s. 215. The appellants submit that either the master did not deal with this issue, or if he did, he lacked jurisdiction to do so. Accordingly, they say that the issue is open and should be resolved.

Did the master lack the jurisdiction to cancel the CPL on the ground that the respondent's claim did not comply with s. 215?

[21] The appellants' position is that the master did not have the jurisdiction to cancel the CPL on the ground that the respondent's claim did not satisfy the preconditions of s. 215 because the jurisdiction to make such an order derives from the inherent jurisdiction of a superior court, and masters do not possess inherent jurisdiction. Thus, the appellants say that the question of s. 215 compliance is open and should be resolved on this appeal.

[22] The chambers judge did not find it necessary to determine the scope of the master's jurisdiction concerning s. 215. The respondent agrees that it is unnecessary to determine this issue for this appeal, but submits that if the issue is to be determined, then his view is that the master does have jurisdiction to make an order concerning compliance with s. 215. As the appellants' argument depends to a considerable extent on this jurisdictional question, I propose to deal with it at the outset.

The Statutory Framework

[23] Section 215(1) of the *LTA* reads in relevant part:

> A person who has commenced or is a party to a proceeding, and who is
>
> (a) claiming an estate or interest in land …
>
> …
>
> may register a certificate of pending litigation against the land in the same manner as a charge is registered…

This provision is found in Part 14, "Registration of Title to Charges, Division 3, Certificate of Pending Litigation" of the *LTA*.

[24] The statutory authority to cancel a CPL is found in ss. 252 to 257 of the *LTA*, which are part of Part 16, "Cancellation of Charges". The most common basis for the cancellation of a CPL is ss. 256–257, which allow the court to cancel a CPL for reasons of hardship and inconvenience, provided the applicant posts security set by

the court. Nothing in ss. 252–257 provides a basis for cancelling a CPL for failure to comply with the preconditions of s. 215.

[25] In *Bilin*, however, this Court held that a judge of the Supreme Court of British Columbia had the jurisdiction to cancel a CPL where the pleadings filed in support of the CPL are incapable of supporting a claim to an interest in land, notwithstanding that there is no explicit statutory authority for such an order. Justice Kirkpatrick, writing for the Court, contrasted this scenario with the circumstance where there is no triable issue to support the claim for an interest in land. In that situation, the proper approach is to bring an application under Rule 9-6(4) for the summary dismissal of the part of the claim that relates to land.

[26] In *Berthin v. Berthin*, 2018 BCCA 57, Justice Fenlon confirmed that the court had jurisdiction to cancel a CPL immediately for failure to meet the threshold requirements of s. 215, or for hardship and inconvenience pursuant to ss. 256–257, but the court did not have the jurisdiction to cancel a CPL immediately when the underlying claim was dismissed (at para. 44). In that circumstance, s. 254 requires a property owner to wait until the appeal period has expired or until the final disposition of any appeal that has been filed.

[27] The effect of *Bilin*, *Berthin* and subsequent decisions of this Court is that there are three principal means by which a CPL may be cancelled. In order of their utility for an applicant, they are as follows:

> (i) An applicant may apply for immediate cancellation of the CPL without security for failure to comply with the preconditions of s. 215(1) of the *LTA*;
>
> (ii) An applicant may apply for immediate cancellation of the CPL with security on grounds of hardship and inconvenience, pursuant to ss. 256 and 257 of the *LTA*; and
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> (iii) An applicant may apply for cancellation of a CPL if either the action in which it was obtained or the part of the action in which an interest in land was claimed has been dismissed, and either the time limited for appeal has

expired and no notice of appeal has been filed or a notice of appeal has been filed and has been finally disposed of, pursuant to s. 254 of the *LTA*.

Inherent Jurisdiction and s. 215

[28] In subsequent judgments of this Court, the jurisdiction recognized in *Bilin* to cancel a CPL for non-compliance with s. 215 has been characterized as the exercise of the inherent jurisdiction of the superior court: *Berthin* at para. 33; *NextGen Energy Watervliet TWP, LLC v. Bremner*, 2018 BCCA 219 at paras. 7–9; *Yi Teng Investment Inc. v. Keltic (Brighouse) Development Ltd.*, 2019 BCCA 357 at para. 31; *Beach Estate v. Beach*, 2021 BCCA 238 at paras. 56, 60–61; *Lipskaya v. Guo*, 2022 BCCA 118 at para. 64.

[29] The respondent takes the position that the use of the term inherent jurisdiction to describe the jurisdiction to cancel a CPL for failure to comply with the preconditions of s. 215 is inapt. He says that inherent jurisdiction is limited to the core jurisdiction of the courts to control their processes and enforce their orders, and the cancellation of a CPL for failure to comply with s. 215 does not rise to this level of significance. I do not agree.

[30] The doctrine of inherent jurisdiction permits a judge of a superior court to exercise power to regulate the practice of the court in order to prevent abuse of its process: *Bea v. The Owners, Strata Plan LMS 2138*, 2015 BCCA 31 at para. 27, citing *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725 at paras. 29, 30, 38, and 41. The court's inherent jurisdiction may be used to fill gaps in statutorily granted powers. Inherent jurisdiction is part of procedural law, not substantive law: *Bea* at paras. 32–36.

[31] In the case of cancellation of a CPL for failure to comply with the provisions of s. 215, there is a gap in the statutory provisions of Part 16 of the *LTA* which, if not addressed through the court's inherent jurisdiction, could lead to abuse of the CPL procedure. Inherent jurisdiction was the basis of the Court's judgment in *Bilin* and is the basis for any application to cancel a CPL for failure to comply with the requirements of s. 215.

[32] The respondent further argues that in any event, a master has the same jurisdiction as a judge sitting in chambers, save and except where the Chief Justice has directed that a master should not exercise jurisdiction. That is not quite accurate. It is well known that there is no inherent jurisdiction in the office of a master as there is in the office of a superior court judge: *Attorney-General for Ontario and Display Service Co. v. Victoria Medical Building*, [1960] S.C.R. 32 at 43. In British Columbia, the source of a master's jurisdiction is found in s. 11.3(2) of the *Supreme Court Act*, R.S.B.C. 1996, c. 443, which reads as follows:

> Subject to the limitations of section 96 of the *Constitution Act*, 1867, a master has the same jurisdiction under any enactment or the Rules of Court as a judge in chambers unless, in respect of any matter, the Chief Justice has given a direction that a master is not to exercise that jurisdiction.
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> [Emphasis added.]

[33] Thus, the master's jurisdiction is limited to the statutory jurisdiction (including jurisdiction conferred by the Rules) exercised by a judge in chambers, subject to the Chief Justice's Practice Direction. That jurisdiction does not extend to a jurisdiction to cancel a CPL where the pleadings filed in support of the CPL are incapable of supporting a claim to an interest in land. The jurisdiction to make such an order is not authorized by statute and requires the exercise of the court's inherent jurisdiction. It follows that I agree with Master Bouck's decision in *Fritz v. 848 Yates Nominee Ltd.*, 2019 BCSC 1294, to similar effect.

[34] The respondent has pointed out that several masters have purported to exercise jurisdiction to cancel a CPL for non-compliance with s. 215, but it does not appear that the jurisdiction issue was raised before them: *Stonewater Ventures (No. 185) Ltd. v. Stonewater Ventures (No. 168) Ltd.*, 2022 BCSC 114 (Master); *1113464 B.C. Ltd. v. 1207759 B.C. Ltd.*, 2021 BCSC 1922 (Master); *Zou v. Rai*, 2021 BCSC 1931 (Master). In my respectful opinion, these judgments should not be followed in the future.

The Common Law Defences

Position of the Parties

[35] The appellants acknowledge that the difficulty in assessing the 2018 master's judgment arises from the failure of the parties to provide the master with the current law as reflected in *Bilin* and *Berthin*. They submit nonetheless that the basis of the application before the master was hardship and inconvenience, not the failure to comply with s. 215. Although the master referred to s. 215, he should not be taken to have made a decision as to the respondent's compliance with s. 215; if he did, he lacked jurisdiction to decide that question, and his comments concerning s. 215 compliance should not bar consideration of that issue now.

[36] The appellants also say that their failure to appeal the master's decision should not bar them from raising s. 215 compliance now. They obtained the judgment they sought, and had nothing to appeal. The issue they wish to raise now was either not before, or not properly before, the master.

[37] The respondent submits that having regard to the issues raised in the application and the comments of the master, the question of s. 215 compliance was before him. If he was not provided with the appropriate authorities, that was the responsibility of the appellants, who brought the application. Having raised the question of s. 215 compliance without providing the appropriate authorities, the appellants should not be permitted to relitigate the point. The failure to raise all of their available arguments when the application was made precludes doing so now. In the respondent's submission, the common law doctrines of *res judicata*, issue estoppel and abuse of process prevent consideration of an argument that should have been made at the time of the 2018 application.

[38] In my view, the scope of the 2018 notice of application and the comments of the master indicate that he considered the question of s. 215 compliance as part of the appellants' application. He addressed it by assessing whether there was a triable issue that the respondent was claiming an interest in land, which was the test commonly considered by Supreme Court judges for s. 215 compliance prior to *Bilin*.

The question is whether the lack of jurisdiction of the master to determine s. 215 compliance leaves that issue open for consideration now.

Failure to make all available arguments

[39] It has long been held that a litigant must bring all available arguments it wishes to advance to the original hearing of an issue. If a litigant fails to do so, the general rule is that it is not permitted to come back another time to revisit the issue: *McKnight v. Hutchison*, 2022 BCCA 27 at para. 125.

[40] This is a rule of considerable antiquity, and is generally traced back to this passage in the judgment in *Henderson v. Henderson*, (1843) All E.R. Rep. 378:

> In trying this question, I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.
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> [Emphasis added.]

[41] A more recent articulation of the same concept can be found in the Supreme Court of Canada judgment in *Danyluk v. Ainsworth Technologies Inc.,* 2001 SCC 44:

> [18] The law rightly seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry...

[42] In *Ahmed v. Canna Clinic Medicinal Society*, 2018 BCCA 319, this Court cited the principle in *Henderson* and illustrated the application of the principle in a case involving jurisdictional limitations:

> [24] *Kameka v. Williams*, 2009 NSCA 107 demonstrates this principle. In that case, the plaintiff successfully sued the defendant driver in Small Claims Court seeking compensation for property damage. The plaintiff then brought

> an action in Supreme Court against the driver and owner claiming compensation for personal injuries. The defendants applied to have the action struck as being barred by the doctrine of *res judicata* but the chambers judge dismissed the application. An appeal was allowed. Beveridge J.A. writing for the majority, observed:
>
> > [26] There have been numerous cases where a plaintiff has successfully brought a claim in a Small Claims Court, or other court of limited jurisdiction, for property damage arising from a motor vehicle accident and, as a consequence, barred from bringing a subsequent action in a superior court for damages for personal injury arising out of the same accident.

[43] But the appellants submit that applications under s. 215 and 256 are based on separate grounds, and may be brought separately. For example, if a s. 215 application is unsuccessful, the dismissal of that application does not prevent a subsequent application for hardship under s. 256: *Berthin*, at para. 44.

[44] I agree that an unsuccessful application under s. 215 would not prevent a later application under s. 256 for cancellation. In that circumstance, the CPL would still be in existence after the unsuccessful s. 215 application. Furthermore, hardship is a fact-dependent concept, and it may arise in circumstances not present at the time of the s. 215 application.

[45] It does not follow that a successful s. 256 application does not stand in the way of a subsequent application to challenge the validity of a CPL which is no longer in existence. Once a CPL is cancelled under s. 257, the opportunity to apply to cancel the same CPL under s. 215 is gone.

[46] In this case, the appellants applied for cancellation under the hardship provision, but it is apparent from the notice of application and the master's judgment that compliance with s. 215 was raised as a ground for cancellation. The failure to raise the arguments the appellants seek to raise in the current application weighs heavily against entertaining the argument at this late date.

Res Judicata and Issue Estoppel

[47] The respondent also relies on principles of *res judicata* and issue estoppel to argue that the rejection by the master of arguments based on s. 215 compliance prevents re-litigation of that issue.

[48] Issue estoppel is a branch of *res judicata*, which precludes the re-litigation of issues previously decided in court in another proceeding. For issue estoppel to be successfully invoked, three preconditions must be met: (1) the issue must be the same as the one decided in the prior decision; (2) the prior decision must have been final; and (3) the parties to both proceedings must be the same, or their privies: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 23 [*C.U.P.E.*"].

[49] Although it is arguable that these factors are present in the case at bar, it has generally been accepted that for either *res judicata* or issue estoppel to apply, the prior judgment must have been made by a court of competent jurisdiction. The classic statement of this principle, adopted by Binnie J. in *Danyluk* at para. 24, is found in the judgment of Middleton, J.A. in *McIntosh v. Parent*, [1924] 4 D.L.R. 420 at 422 (Ont. C.A.):

> When a question is litigated, the judgment of the Court is a final determination as between the parties and their privies. Any right, question, or fact distinctly put in issue and directly determined by a Court of competent jurisdiction as a ground of recovery, or as an answer to a claim set up, cannot be re-tried in a subsequent suit between the same parties or their privies, though for a different cause of action. The right, question, or fact, once determined, must, as between them, be taken to be conclusively established so long as the judgment remains.

[50] To the extent that the master "directly determined" the question of s. 215 in his 2018 judgment, the determination cannot be said to have been made by a court of competent jurisdiction on that issue. Accordingly, I would not give effect to the common law defences of *res judicata* or issue estoppel as a bar to considering compliance with s. 215 at this late date.

Abuse of Process and Collateral Attack

[51] In my view, the most appropriate analytical framework to assess this appeal is the doctrine of collateral attack, which is an application of the flexible doctrine of abuse of process.

[52] A court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. Such an order may not be attacked collaterally. A collateral attack is an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment: *C.U.P.E.* at para. 33, citing *Wilson v. The Queen*, [1983] 2 S.C.R. 594 at 599.

[53] The utility of this principle for this appeal is that it focuses on the order that was made by the master under s. 257, which was well within his jurisdiction, and does not require consideration of the implications of the jurisdictional issue concerning s. 215 compliance.

[54] The principles concerning collateral attack were recently reviewed by this Court in *M.K. v. British Columbia (Attorney General)*, 2020 BCCA 261 [*M.K.*]. The appellant in *M.K.* had unsuccessfully sought an order for child support retroactive to her daughter's birthdate. After the Supreme Court of Canada denied her leave application she commenced a new action challenging the constitutional validity of the federal and provincial child support regimes, claiming that under the *Charter*, child support awards should always be retroactive to a child's birthdate. The action was dismissed as a collateral attack on the earlier order.

[55] In explaining that the new action was a collateral attack on the previous order, Justice Dickson pointed out that to determine whether a claim constitutes a collateral attack, the court should ask whether the claim, or any part of it, amounts in effect to an appeal of an existing order: *M.K.* at para. 33; *Krist v. British Columbia*, 2017 BCCA 78 at para. 47. A claim will amount "in effect" to an appeal of an existing order if it seeks to invalidate, or otherwise challenge the legal force of, the order: *M.K.* at para. 33; *Lamb v. Canada (Attorney General)*, 2018 BCCA 266 at para. 94.

[56] In this case, while the appellants disclaim any intention of impugning the master's order, the effect of the order they seek challenges the legal force of that order. The master ordered cancellation of the CPL on condition that the appellants post security. The appellants now seek an order that the condition be removed, so that the cancellation remains without the need for security. That is an impermissible collateral attack on the master's order.

[57] The chambers judge did not frame her judgment in terms of collateral attack, but held that since the appellants had not appealed the master's order, it was not open to them now to seek an order based on s. 215. That approach reflects the same concern as animates the collateral attack doctrine.

[58] The master's order, not having been appealed, is final and conclusive on the points determined by that order, namely, that the appellants were required to post security as the condition for cancellation of the CPL. It is too late now to argue that the order cancelling the CPL could have been made on a different legal basis in order to avoid the need for security.

[59] For these reasons, I would dismiss the appeal.

"The Honourable Mr. Justice Hunter"

I AGREE:

"The Honourable Mr. Justice Grauer"

I AGREE:

"The Honourable Mr. Justice Marchand"