

CANADA / JUDGMENT

Hamdi v. Ali

2025 BCCA 418

COURT

British Columbia Court of Appeal

DECIDED

14 November 2025

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2025 BCCA 418 Hamdi v. Ali

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Hamdi v. Ali,

2025 BCCA 418

Date: 20251114

Docket: CA50214

Between:

Safa Salah Hamdi

Appellant

(Claimant)

And

Sawsan Hussein Ali

Respondent

(Respondent)

Before:

The Honourable Chief Justice Marchand

The Honourable Mr. Justice Grauer

The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia,

dated September 23, 2024 (Hamdi v. Ali, 2024 BCSC 1753,
New Westminster Docket E65987).

Oral Reasons for Judgment

Counsel for the Appellant:

R. Choudhry

S. Choudhry, Articled Student

Counsel for the Respondent:

L. Kompa

Place and Date of Hearing:

Vancouver, British Columbia

November 14, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 14, 2025

Summary:

The appellant and respondent entered a settlement agreement to resolve issues of spousal support and division of family property. The parties filed a consent order reflecting the terms of the settlement agreement. In 2022, the appellant filed a notice of family claim seeking, among other things, to set aside the settlement agreement and consent order. The chambers judge granted the respondent's application to strike the appellant's claim on the basis it was res judicata and therefore an abuse of process. The appellant asserts the chambers judge erred in doing so. Held: appeal allowed. The chambers judge did not decide the main issue she needed to decide. The chambers judge focused on the substance of the settlement agreement and consent order rather than whether they might be set aside on the grounds raised by the appellant.

MARCHAND C.J.B.C.:

Background

- [1] This appeal arises from a family law dispute.
- [2] The appellant, Safa Salah Hamdi, and the respondent, Sawsan Hussein Ali, were married in Iraq in 1983. They have three adult children. They moved to Canada in 1999 and bought a home in Burnaby (the "Property"). They paid off the Property in 2006. They separated in 2014 and divorced in December 2022.

- [3] A trial was scheduled for January 29, 2018, to determine a variety of issues, primarily spousal support, and division of family property and debt. The parties' main asset was the Property. It was worth approximately \$1.6 million.
- [4] In January 2018, the parties and their lawyers met to negotiate a settlement. The negotiations were not successful. At the time, Mr. Hamdi had been diagnosed with advanced bladder cancer and was taking medications. Ms. Ali had been ill, unemployed, and receiving disability benefits since 2013.
- [5] Immediately before the trial, the parties met with two of their adult children and separately to discuss settlement. During this process and on the eve of trial, Mr. Hamdi dismissed his lawyer. The parties subsequently signed a settlement agreement (the "Agreement") in the presence of Ms. Ali's lawyer.
- [6] The parties then appeared before Justice Gropper on January 29, 2018, where a final order reflecting the Agreement was made by consent (the "consent order"). Under the consent order:
1. The parties each retained all assets in their possession or names as "their own separate property absolutely".
 2. Mr. Hamdi was required to sign all documents necessary to transfer the Property to Ms. Ali and the Property would then become her sole property in satisfaction of all her claims.
 3. All the parties' other claims, except the granting of a divorce, were "dismissed as if there had been a trial on their merits".
 4. The parties were to bear their own costs.
- [7] Mr. Hamdi signed transfer documents for the Property on January 31, 2018, and title was transferred solely to Ms. Ali. Mr. Hamdi alleges he only became aware that title to the Property had been transferred to Ms. Ali in the spring of 2021 when he saw utility and property tax bills in her name.
- [8] In any event, in the meantime, the parties attempted to reconcile. There is some dispute between the parties about the nature and timing of any reconciliation. There is no dispute between the parties that their efforts were ultimately unsuccessful.
- [9] On October 19, 2022, Mr. Hamdi filed a notice of family claim seeking various relief, including a divorce, setting aside the Agreement and consent order, spousal support and division of family property. The relief appears to relate, in part, to the parties' alleged period of reconciliation.

- [10] In relation to setting aside the Agreement and consent order, Mr. Hamdi claims they were significantly unfair on these grounds: he did not have independent legal advice; Ms. Ali took advantage of his vulnerability; Ms. Ali unduly influenced him; Ms. Ali did not make the necessary financial disclosure; he did not understand the nature of the Agreement and consent order; and the Agreement and consent order were unconscionable.
- [11] On May 1, 2023, Ms. Ali applied to strike Mr. Hamdi's notice of family claim under the Supreme Court Family Rules, R. 11-2(1), on the basis it was vexatious, an abuse of process, res judicata and, under s. 198(3) of the Family Law Act, S.B.C. 2011, c. 25, time-barred. On September 23, 2024, the chambers judge granted Ms. Ali's application and struck Mr. Hamdi's claim. The chambers judge's reasons for judgment are indexed as 2024 BCSC 1753.

Reasons of the Chambers Judge

- [12] Rule 11-2(1) permits the court to strike out or amend the whole or any part of a family pleading on various grounds, including that the pleading is unnecessary, scandalous, frivolous, vexatious, or otherwise an abuse of process.
- [13] After setting out the background, the chambers judge canvassed a number of relevant authorities regarding abuse of process. She noted abuse of process is a doctrine that reflects the inherent power of the court to prevent the misuse of its procedure in a way that would bring the administration of justice into disrepute: at para. 44, citing *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 37. She cited *Willow v. Chong*, 2013 BCSC 1083, for the principle that a claim may be struck as an abuse of process where it is an attempt to relitigate an issue that has already been decided: at para. 46.
- [14] The chambers judge then reviewed the law on res judicata and when a court can set aside a final order: at paras. 47-50. After citing various leading authorities, including *C.U.P.E., Ahmed v. Canna Clinic Medicinal Society*, 2018 BCCA 319, and *Pond v. Pond*, 2017 BCCA 243, she summarized her understanding as follows:
- [51] To summarize, the general rule is that once the parties have entered a final agreement recorded as a final order, the matter becomes res judicata and areas for varying or setting it aside are very limited including common law arguments related to fraud, collusion or perjury, duress, lack of disclosure, and procedural unfairness.
- [15] Finally, the chambers judge referenced the jurisprudence relied on by Mr. Hamdi outlining the "very limited circumstances" in which a resolved matter may be re-opened. In the specific context of separation agreements (including where the terms were incorporated into court orders), these circumstances include fraud, unconscionability, undue influence, duress and coercion: at paras. 52-54, citing *P.N.(W.) v. J.N.(B.)*, 2002 BCSC 53 at paras. 55-56, *Murray v. Harrison*, 2023 BCSC 2014 at paras. 8-13, and *Chan-Henry v. Liu*, 2021 BCCA 318 at paras. 48-49.

- [16] In her analysis, the chambers judge noted the parties had entered a final order. That order provided "All the claims of the Claimant and the Respondent, pursuant to the Family Law Act and to the Divorce Act, except for the granting of a divorce order, will be dismissed as if there had been a trial on their merits": at para. 57.
- [17] The chambers judge then granted Ms. Ali's application to strike the pleadings, without leave to amend. She was satisfied Mr. Hamdi's claim amounted to an abuse of process as an attempt to relitigate a matter that was long-settled and the subject of a final order: at para. 60. The final order was made as if the matter had been litigated on its merits: at para. 61. Mr. Hamdi was in court when the final order was granted. He signed documents that gave effect to it. He did not appeal it. Instead, the order was implemented and the Property was transferred: at para. 62. The chambers judge was satisfied that allowing Mr. Hamdi's claim to proceed would be contrary to the proper administration of justice: at para. 63.

On Appeal

- [18] On appeal, Mr. Hamdi submits the chambers judge erred in finding his claim was an attempt to relitigate settled matters and an abuse of process. Ms. Ali maintains the chambers judge committed no reviewable error.

Discussion

- [19] Respectfully, in my view, the chambers judge erred in law.
- [20] Fundamentally, the chambers judge did not decide the main issue she needed to decide, namely whether Mr. Hamdi's application to set aside the consent order was vexatious, an abuse of process, res judicata and/or time-barred.
- [21] After correctly citing a number of legal principles regarding res judicata and abuse of process, the chambers judge applied them to matters not in issue on Ms. Ali's application to strike. She focused on the substance of the Agreement and consent order rather than whether they might be set aside on the grounds Mr. Hamdi raised. Essentially, the judge applied the law to the wrong question. Failing to apply a legal test correctly is an error of law: *Ding v. Canam Super Vacation Inc.*, 2024 BCCA 102 at para. 38.
- [22] There is no dispute that, subject to certain exceptions, the Agreement and consent order were a final and binding resolution of all the parties' claims arising out of their long-term marriage, except their divorce. Had Mr. Hamdi's notice of family claim simply aimed to re-open and re-try those issues in hopes of a different outcome, the judge would have been quite right to strike it out on the basis it was an abuse of process. But that was not the nature of Mr. Hamdi's claim.

- [23] Rather, Mr. Hamdi's claim sought to set aside the Agreement and consent order on the basis they were unconscionable and had been obtained by Ms. Ali in an exploitative fashion. It also appears to seek remedies in relation to a period of alleged reconciliation. Those issues were not the subject of the Agreement or consent order and had not been previously litigated or resolved.
- [24] The law is well-established that the Supreme Court of British Columbia has inherent jurisdiction to set aside a final order on the same basis as the agreement underlying it. As this Court recently held in *Esteghamat-Ardakani v. Taherkhani*, 2023 BCCA 290, leave to appeal to SCC ref'd, 40928 (21 March 2024):
- [114] [A] consent judgment is a formal expression of an agreement between the parties. It is not a judicial determination on the merits. That is why a consent judgment may be set aside or varied by the court "in circumstances which justify the same treatment to the underlying contract": *Shackleton* at para. 12; see also *Racz* at para. 8 and *Rick* at para. 64.
- [25] Here, the grounds raised by Mr. Hamdi for setting aside the Agreement and consent order were among the possible grounds for doing so. In addition, Mr. Hamdi has raised new issues relating to a period of alleged reconciliation arising after the parties entered the Agreement and consent order.
- [26] As a result of the chambers judge setting her mind to the wrong question, Mr. Hamdi has not had the opportunity to have the issues he has raised determined on the merits.
- [27] For the reasons I have stated, the chambers judge erred in law and, I would therefore allow the appeal.
- [28] GRAUER J.A.: I agree.
- [29] MAYER J.A.: I agree.
- [30] MARCHAND C.J.B.C.: The appeal is allowed, and the order of the chambers judge is set aside.

"The Honourable Chief Justice Marchand"

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