

CANADA / JUDGMENT

Hartin (Re)

2024 BCSC 2588

COURT

Supreme Court of British Columbia

DECIDED

1 October 2024

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2025 BCSC 2588 Hartin Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hartin Estate (Re),

2024 BCSC 2588

Date: 20241001

Docket: P193552

Registry: Vancouver

In the Matter of the Estate of Robert Llewellyn Hartin, Deceased

Before Associate Judge Vos

Oral Reasons for Judgment

In Chambers

Counsel for the Applicant, Ruth Robertson:

A.S. Pearl

Counsel for the Executor, Deana Hartin:

M.S. Kerwin

A. McDougall, Articling Student

Place and Date of Hearing:

Vancouver, B.C.

October 1, 2024

Place and Date of Judgment:

Vancouver, B.C.

October 1, 2024

- [1] THE COURT: Ruth Iris Robertson applies for an order that would require Deana Rejeanne Hartin, the executor of the estate that is the subject of this proceeding (the "Executor"), to make an interim distribution of the assets of the estate. Ms. Robertson also seeks orders that would require the Executor to pass her accounts with respect to her actions as Executor, and provide specified documents. The Executor opposes the applications.
- [2] At the outset of the hearing, counsel raised a concern as to whether the application for an interim distribution of the estate is within the jurisdiction of an associate judge of the Supreme Court of BC. On considering the submissions and case authorities provided on that issue, I am of the view that this application for an interim distribution is not within the jurisdiction of an associate judge.
- [3] This case concerns the estate of Robert Llewellyn Hartin (the "Deceased"; the "Estate"). He died on September 3, 2019, leaving a will dated November 1, 2018 (the "Will"). The validity of the Will has not been challenged. The Will appointed the Deceased's daughter, Deana Hartin, as Executor of the Will and trustee of the Deceased's Estate.
- [4] The Deceased was survived by three children, Duane Hartin, Deana Hartin and Greg Hartin. Under the terms of the Will, the residue of the Deceased's Estate is to be divided equally between four individuals; the Deceased's three children and the Deceased's sister, Ruth Robertson.
- [5] Ms. Robertson's application seeks an interim distribution totalling 85% of the determined assets of the Estate, to be provided to the four residual beneficiaries.
- [6] The application for the proposed interim distribution is not made pursuant to a statutory provision or a rule of court. Counsel for Ms. Robertson characterizes the order sought as an equitable remedy and submits that an associate judge would have jurisdiction to make such an order pursuant to the general jurisdiction of the court. Counsel for the Executor contends that the interim distribution order sought could only be made pursuant to the court's inherent jurisdiction.
- [7] The distinction between the court's general jurisdiction and its inherent jurisdiction is discussed in *Reznik v. Matty*, 2013 BCSC 1346:
- [18] With due respect to respondent's counsel, I think the phrase "inherent jurisdiction" may have created confusion. "Inherent jurisdiction" and "general jurisdiction" are often used interchangeably to describe the Court's jurisdiction. I.H. Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 Curr. Leg. Prob. 23. disentangles matters at 23:

To understand the nature of the inherent jurisdiction of the court, it is necessary to distinguish it first from the general jurisdiction of the court, and next from its statutory jurisdiction.

The term "inherent jurisdiction of the court" does not mean the same thing as "the jurisdiction of the court" used without qualification or description: the two terms are not interchangeable, for the "inherent" jurisdiction of the court is only a part or an aspect of its general jurisdiction. The general jurisdiction of the High Court as a superior court of record is, broadly speaking, unrestricted and unlimited in all matters of substantive law, both civil and criminal, except in so far as that has been taken away in unequivocal terms by statutory enactment. The High Court [our provincial superior courts] is not subject to supervisory control by any other court except by due process of appeal, and it exercises the full plenitude of judicial power in all matters concerning the general administration of justice within its area. Its general jurisdiction thus includes the exercise of an inherent jurisdiction.

Moreover, the term "inherent jurisdiction of the court" is not used in contradistinction to the jurisdiction conferred on the court by statute. The contrast is not between the common law jurisdiction of the court on the one hand and its statutory jurisdiction on the other, for the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or by rule of court, so long as it can do so without contravening any statutory provision. There is, nevertheless, an important difference between the nature of the inherent jurisdiction of the court and its statutory jurisdiction. The source of the statutory jurisdiction of the court is of course the statute itself, which will define the limits within which such jurisdiction is to be exercised, whereas the source of the inherent jurisdiction of the court is derived from its nature as a court of law, so that the limits of such jurisdiction are not easy to define, and indeed appear to elude definition.

- [8] The doctrine of inherent jurisdiction and matters relating to the jurisdiction of a master (now an associate judge) were recently considered by our court of appeal in *Sood v. Hans*, 2023 BCCA 138:
- [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.

[Emphasis added in original]

- [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.
- [9] As indicated in the passage from I.H. Jacob's article quoted in Reznik, the general jurisdiction of the court includes its statutory jurisdiction and its exercise of an inherent jurisdiction. The source of the statutory jurisdiction of the court is the statute or rule of court, which will define the limits of the jurisdiction to be exercised. The source of the inherent jurisdiction of the court is derived from its nature as a court of law. The limits of inherent jurisdiction are not easy to define, but would include the power to regulate proceedings to prevent abuse of its process and the ability to fill gaps in statutorily granted powers.
- [10] The jurisdiction of an associate judge in British Columbia is limited to the statutory jurisdiction of the court exercised by a Supreme Court justice in chambers, including jurisdiction conferred by the rules of court. That jurisdiction is subject to restrictions imposed by the Chief Justice's Practice Direction. An associate judge is not authorized to exercise the court's inherent jurisdiction.
- [11] Ms. Robertson's application for an interim distribution from the Estate is not under a statutory provision or a rule of court. The order she seeks would have to be made pursuant to the inherent jurisdiction of the court. The application therefore is not within the jurisdiction of an associate judge. The application should be heard by a justice of the supreme court.

"Associate Judge Vos"

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