COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *VM Agritech Limited v. Smith,*
2026 BCCA 101

Date: 20260311
Docket: CA50525

Between:

VM Agritech Limited (formerly MyCo Sciences Limited)
and Christopher J. Wightman

Appellants
(Defendants)

And

Alan Gilbert Smith

Respondent
(Plaintiff)

Before: The Honourable Mr. Justice Harris
The Honourable Justice Warren
The Honourable Justice Francis

On appeal from: An order of the Supreme Court of British Columbia, dated February 10, 2025 (*Smith v. VM Agritech Limited*, 2025 BCSC 206, Vancouver Docket S230800).

Counsel for the Appellants:	M.L. Ross N.D. Galanopoulos (via videoconference)
Counsel for the Respondent:	S. Lin
Place and Date of Hearing:	Vancouver, British Columbia January 28, 2026
Place and Date of Judgment:	Vancouver, British Columbia March 11, 2026

Written Reasons by:
The Honourable Mr. Justice Harris

Concurred in by:
The Honourable Justice Warren
The Honourable Justice Francis

Summary:

Appeal from a chambers judgment upholding the decision of an associate judge who refused to set aside a default judgment. The appellants argue that an associate judge has no jurisdiction to decide a set aside application, and that the chambers judge violated vertical stare decisis in concluding they did, because this Court has previously ruled that would violate s. 96 of the Constitution Act, 1867. In the alternative, the appellants say the chambers judge misapprehended evidence regarding the delay in filing their response to civil claim.

Held: Appeal dismissed. An associate judge has jurisdiction to decide applications to set aside a default judgment. The prior decision of this Court saying they do not was decided per incuriam. Further, the s. 96 jurisprudence has evolved sufficiently since this Court decided that case to reconsider the issue. Finally, the chambers judge did not misapprehend the evidence and the conclusions she drew were open to her.

Reasons for Judgment of the Honourable Mr. Justice Harris:

Introduction

[1] This appeal raises two issues. First, whether an associate judge has the jurisdiction to decide to refuse to set aside a default judgment. This issue arises because this Court in *Euro Ceramics Tile Ltd. v. T & C Ceramic Tile Contractors* (1991), 60 B.C.L.R. (2d) 86, 1991 CanLII 1463, (C.A.) [*Euro Ceramics*], decided that an associate judge lacks that jurisdiction because it violates s. 96 of the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5. The chambers judge below, in reasons indexed as *Smith v. VM Agritech Limited*, 2025 BCSC 206, concluded that that decision was no longer good law and that an associate judge has the jurisdiction to decide to refuse to set aside a default judgment. The appellants say she erred in finding she was not bound by vertical *stare decisis* to follow *Euro Ceramics*. Second, the appellants contend that, in any event, the court below misapprehended critical evidence. On either ground, the appeal should be dismissed.

[2] For the reasons that follow, I would dismiss the appeal. Throughout these reasons, I will refer to associate judges and masters, as they were formerly called, interchangeably when discussing cases which used the former name.

Does an Associate Judge Have the Jurisdiction to Refuse to Set Aside a Default Judgment?

[3] The only material facts pertinent to this ground of appeal are that judgment was taken in default on a debt claim and an associate judge, applying the principles in *Miracle Feeds v. D. & H. Enterprises Ltd.* (1979), 10 B.C.L.R. 58 (Co. Ct.), [1979] B.C.J. No. 1965, refused to set it aside. An appeal was taken from that order to a Supreme Court justice who dismissed the appeal. The jurisdiction issue was raised for the first time on the appeal to the Supreme Court justice.

[4] The critical jurisdictional issue for the Supreme Court justice was whether she was bound to follow this Court's decision in *Euro Ceramics*. She concluded that she was not bound by that decision because, since it was rendered, the jurisprudence relating to when jurisdiction may be conferred on an inferior tribunal without violating s. 96 had evolved materially, as had the legal regime governing appeals from decisions of associate judges. She concluded that s. 11.3(2) of the *Supreme Court Act*, R.S.B.C. 1996, c. 443 [*SC Act*], and the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], conferred jurisdiction on associate judges to refuse to set aside default judgments, and that the conferral of that jurisdiction was not unconstitutional.

[5] The appellants contend that the judge erred in not following *Euro Ceramics*. They say it was binding on her and none of the circumstances that permit a judge not to follow an otherwise binding precedent apply in this case.

[6] I disagree for two reasons. First, in my opinion, *Euro Ceramics* was decided *per incuriam*. As I shall explain, the Court relied on a Supreme Court of Canada case, *Attorney-General for Ontario and Display Service Co. v. Victoria Medical Building et al.*, [1960] S.C.R. 32, 1959 CanLII 20 [*Victoria Medical Building*], for the proposition that an associate judge lacked the jurisdiction to set aside a default judgment. But when *Victoria Medical Building* is examined closely, it does not stand for that proposition. It dealt with a different kind of jurisdiction conferred on a master. Moreover, the Supreme Court of Canada, in that case, endorsed a decision of the

Chief Justice of Alberta confirming that masters had the jurisdiction to strike defences and pronounce judgments in circumstances where a master concluded there was no real issue to be tried (a merits related consideration). This is a jurisdiction similar in principle to the jurisdiction to refuse to set aside a default judgment, which requires an associate judge to assess whether there is a defence worthy of investigation. This Court appears to have been unaware that the Supreme Court of Canada had endorsed the Alberta decision. I observe that this Court expressly noted that it had not received the benefit of considered submissions from counsel on the jurisdiction issue. It follows that we are not bound by horizontal *stare decisis* to follow *Euro Ceramics* and I would not do so. Accordingly, I would not disturb the order under appeal.

[7] Secondly, even if *Euro Ceramics* had correctly followed the Supreme Court of Canada decision, I agree with the chambers judge that the jurisprudence has evolved sufficiently since it was decided to warrant its reconsideration. *Euro Ceramics* was decided in 1991. Age, standing alone, does not undermine the authority of binding precedent, but in this case there have been material developments in the jurisprudence articulating when a grant of authority to an inferior tribunal violates the constitutional principles embedded in s. 96 of the *Constitution Act, 1867*. This is most importantly so in relation to the development of the law about the role of s. 96 in protecting a superior court's core jurisdiction. Further, the legal regime governing appeals from decisions of an associate judge has changed materially in recent years. It is no longer possible to appeal an order of an associate judge directly to the Court of Appeal. Rather, appeals are taken in the first instance exclusively to a justice of the Supreme Court. The role of Supreme Court justices in supervising decisions delegated to and made by provincially appointed associate judges has been enhanced since the introduction of the new *Court of Appeal Act*, S.B.C. 2021, c. 6, and *Court of Appeal Rules*, B.C. Reg. 120/2022. This enhancement of supervision is material to whether conferring jurisdiction on a provincially appointed judicial officer violates s. 96.

Was *Euro Ceramics* Decided *Per Incuriam*?

[8] If an associate judge has the jurisdiction to set aside a default judgment, it is found in s. 11.3(2) of the *SC Act*. The section reads:

> Subject to the limitations of section 96 of the *Constitution Act, 1867*, an associate judge 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 an associate judge is not to exercise that jurisdiction.

[9] The Chief Justice has not given a direction that an associate judge is not to exercise the jurisdiction to set aside a default judgment. The only potential limitation on the jurisdiction of an associate judge to set aside a default judgment is a constitutional limitation under s. 96 of the *Constitution Act, 1867*. The specific authority to set aside a default judgment is found in R. 3-8(11) which provides that the "*court* may set aside or vary any judgment granted under [R. 3-8]" (emphasis added).

[10] I turn now to *Euro Ceramics*. That case involved an appeal of an order made by a master dismissing an application to set aside a default judgment. The jurisdiction of a master was defined in the same terms as is currently applicable. This Court commented that the refusal to set aside the default judgment was a final order in the sense that it disposed of the defendant's defence and the appeal to this Court was taken as from a final order. The Court went on to note that no consideration had been given to whether the master had jurisdiction to make the order, at 88:

> … As this point was brought to their attention only very shortly before this hearing they were understandably unable to provide the court with reasoned assistance and no criticism can be attached to them in that respect. However, I note this as the Court has not had the assistance of argument.

[11] The Court went on to examine the issue in light of the decision of the Supreme Court of Canada in *Victoria Medical Building*, which dealt with masters trying mechanics lien cases. This Court quoted Mr. Justice Judson, as follows, at 42:

> … What is happening is that work is being redistributed within the s.96 court itself and new work assigned to a provincially appointed judicial officer. In a

> sense it is not even an exclusive assignment when a judge of the court, on motion by one of the parties, has the power of removal under s.31(2).
>
> Nevertheless, it is my opinion that the judgment under appeal is well founded and that this legislation is in conflict with the appointing power under s.96 of the *British North America Act*, and I reach this conclusion for two reasons -- the nature of the jurisdiction which is conferred upon the Master and the fact that he is given the power of final adjudication in these matters, subject to the usual right of appeal to the Court of Appeal as from a single judge.

[12] This Court focused on the second rationale: namely that the power conferred was of final adjudication subject to a right of appeal and the appeal was allowed on the basis that the master lacked jurisdiction.

[13] The first point to note about *Victoria Medical Building* is the nature and scope of the jurisdiction conferred on a master. The Ontario Legislature passed legislation requiring mechanics lien actions in the County of York to be tried by masters. Section 32(1) of that legislation conferred on a master all the jurisdiction, powers and authority of the Supreme Court to try and completely dispose of the action. Justice Judson, for the majority, commented on this jurisdiction, at 42:

> The nature of the jurisdiction is clearly defined by s. 32(1) of the Act … This is a very wide departure from the work usually assigned to the Master. This legislation makes him a judge in this particular type of action, which is essentially one for the enforcement of a statutory charge on the interest in the land of the person who is defined as the owner. The constituent elements of the jurisdiction are fully analysed in the reasons of the Court of Appeal. In addition to the matters mentioned in s. 32(1) and the enforcement of the charge itself, they comprise unlimited monetary claims, the power to appoint an interim receiver of the rents and profits of the land or a trustee to manage and sell the property and the power to make a vesting order in the purchaser and an order for possession. All these functions are exercised in an original way and constitute a new type of jurisdiction for the Master which in many aspects is not merely analogous to that exercised by a s. 96 judge but is, in fact, that very jurisdiction, limited only to one particular field of litigation. …

[14] It is, I think, clear that a central problem with the jurisdiction this legislation conferred on a master was that it allowed a master to act as a judge of a particular kind of case with all of the powers necessary to try the action, hear witnesses, resolve credibility issues, find facts and reach a final judgment determining the rights of the parties based on an analysis of the substantive merits of the action. This is the very work of a judge.

[15] In the passages I have cited, a contrast is drawn with the usual work of a master. Justice Judson goes on immediately after the passage just quoted to say:

> While it is true that the Master's jurisdiction is very varied in character, it is, I think, largely concerned with preliminary matters and proceedings in an action, necessary to enable the case to be heard, and with matters that are referred to that office under a judge's order. There is no inherent jurisdiction in the office as there is in the office of a Superior Court judge. I am content to adopt the judgment of Harvey C.J.A. in *Polson Iron Works v. Munns*, for its account of the historical origins of the office and the broad outlines of the jurisdiction, and it is sufficient to say that everything the Master does must be authorized by the *Rules of Practice*, …
>
> …
>
> But I am satisfied, as was the Court of Appeal, that the assignment of the power of final adjudication to the Master goes beyond procedure and amounts to an appointment of a judge under s. 96 of the *British North America Act*. The position of the Master as a referee acting under a judge's order and reporting back to the Court is fundamentally different from his position under the impugned legislation as an independent trier of fact and I think that the Court of Appeal was right in rejecting any analogy between the two positions.

[16] The scope of the constitutional authority of a master was, as Justice Judson noted, explored in *Polson Iron Works v. Munns* (1915), 24 D.L.R. 18, 1915 CanLII 340 (Alta. S.C.). This is important because that case dealt with the power of a master to strike out a defence leading to a final judgment. Without descending to unnecessary detail, Harvey C.J. described the role of masters in superior courts at the time of Confederation to demonstrate the nature of the procedural work undertaken by masters. He recognized that much of the work of masters is to some extent judicial in character. However, in England and elsewhere, masters were authorized to transact the business transacted by judges in chambers not affecting the liberty of the subject, at 21. The Chief Justice explained further, at 22:

> … The Judge's chief duty is to determine the rights of parties in the first instance by trial, and subsequently on appeal. The practice and procedure is for the purpose of accomplishing these results advantageously and expeditiously. The work in Chambers is practically all leading up to trial and appeal. It is to this subsidiary work that the Master's jurisdiction is confined. The order under consideration is perhaps the nearest approach to determining the rights of parties by trial that the rules authorize the Master to make. <u>But in reality he is not trying the rights of the parties. He is determining that there is no real issue to be tried</u>. It is only when such a situation is found to exist that the Master is authorized to give a judgment in favour of the

> plaintiff. When he gives a judgment in favour of the defendant apparently all he does is to give effect to and enforce some rule of practice, e.g., for failure to prosecute the action as required by the rules.
>
> The Master has no jurisdiction in trials or in appeals and all of his acts are subject to review by a Judge.
>
> His office is essentially that of an officer preparing litigation for its legitimate purpose, *viz.*, a trial of the rights of the parties which is exclusively reserved for the Judges to whom it essentially belongs. His duties, therefore, while largely judicial in their character do not constitute him a Judge, since from them are reserved the essential duties of a Judge. [Emphasis added.]

[17] If the *Polson Iron Works* decision is correct, there cannot be a s. 96 problem in a province conferring on a provincially appointed judicial officer, such as an associate judge, the jurisdiction to set aside a default judgment. In *Polson Iron Works*, the *Rules* provided that, where a statement of claim included a claim of a debt or a liquidated demand and any defendant had filed a defence, the plaintiff, on filing an affidavit verifying the claim and stating that in their belief there was no defence, could make an application to a master for leave to enter final judgment. To permit judgment to be filed, the master had to conclude that there was no real issue to be tried. This is essentially the same test as an associate judge applies in deciding whether to set aside a default judgment, namely, whether there is defence worthy of investigation.

[18] In my view, setting aside a default judgment falls squarely within the scope of jurisdiction elaborated in *Polson Iron Works*. First, taking a default judgment is, in the first instance, administrative and procedural. In substance, the default judgment is the final judgment. Second, the criteria engaged in deciding whether to set aside a default judgment engage procedural and administrative issues, such as the length and reasons for the delay. The only substantive question involved in the decision is whether there is a defence worthy of investigation. This is effectively the same substantive question that was not sufficient to create a s. 96 problem in *Polson Iron Works*. Third, while an order refusing to set aside a default judgment may have been viewed as a final order in *Euro Ceramics*, clearly an order setting a default judgment aside is not final. In my view, the better view is to regard the default judgment as the

final order and a decision whether or not to set it aside as procedural and administrative, since its focus is on whether or not to leave a final order in place.

[19] For these reasons, in my view, *Euro Ceramics* was decided *per incuriam*. Not only did the Court not receive considered submissions, *Victoria Medical Building* does not support the result. The jurisdiction conferred on an associate judge to hear an application to set aside a default judgment is not analogous to the jurisdiction conferred on a master to hear a trial of the merits of an action as if the master were a judge. Moreover, the result in *Euro Ceramics* is inconsistent with the Supreme Court of Canada's approval of *Polson Iron Works*, and its conclusion that a master's jurisdiction to decide whether there was no real issue to be tried as a precondition of making an order did not infringe on s. 96. In *Polson Iron Works*, the Court confirmed a master could order a final judgment in absence of a genuine issue to be tried.

[20] For these reasons, I conclude that an associate judge's jurisdiction to consider whether to set aside a default judgment is not inconsistent with s. 96.

Has the s. 96 jurisprudence overtaken *Euro Ceramics* in any event?

[21] Although not strictly necessary to decide the appeal, I propose to comment briefly on the question of whether *Euro Ceramics* has been overtaken by developments in the law. The judge concluded that it has been and that, therefore, she did not need to follow it. I agree with the judge's analysis. She did not err in concluding that she could revisit the decision in *Euro Ceramics*, nor in her analysis of developments in the law, including the fact that appeals from associate judges must now be taken first to a Supreme Court justice. *Euro Ceramics* was decided in 1991. Since then, the Supreme Court of Canada has explained and expanded the way in which s. 96 operates to protect the jurisdiction of s. 96 courts and judges. Most recently, it canvassed these issues in *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27 [*Quebec Reference*], the principal case relied on by the judge. This Court has also canvassed, explained and applied the Supreme Court of Canada jurisprudence in *Trial Lawyers Association of British Columbia v. British*

Columbia (Attorney General), 2022 BCCA 163, and *British Columbia (Attorney General) v. Le*, 2023 BCCA 200.

[22] I wish to add only a few additional comments. First, the case before us does not involve an attempt by the province to create a parallel or shadow court system, as has been analysed extensively in the case law including the *Quebec Reference* and the *Trial Lawyers* decisions, although the principles discussed in those cases are relevant to the analysis here. There has, however, here, been no attempted transfer of jurisdiction away from a s. 96 court so as to undermine the ability of s. 96 courts to fulfil their function as national courts creating a unitary judicial system to protect the rule of law.

[23] In my view, the key question in this case is whether a jurisdiction to set aside a default judgment infringes on the core jurisdiction which ensures that superior courts are not impaired in such a way that they are unable to play their role under s. 96. The content of the core jurisdiction includes the inherent jurisdiction and inherent powers of a superior court recognized in *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725, 1995 CanLII 57: namely, review of the legality and constitutional validity of laws, enforcement of its orders, control over its own process, and its residual jurisdiction as a court of original general jurisdiction. The notion that the core jurisdiction of superior courts is protected by s. 96 has been explained and established in cases that post date *Euro Ceramics*.

[24] I can see no merit in any suggestion that an associate judge's jurisdiction to decide whether to set aside a default judgment touches, let alone infringes, the core jurisdiction of a s. 96 court. Associate judges or masters have, since before Confederation, facilitated the work of s. 96 judges by addressing procedural, administrative and other preparatory work necessary to prepare matters for trial or final adjudication on the merits. A decision whether to set aside a default judgment taken because a defendant has failed to comply with the procedural requirements in the *Rules*, even where it requires an assessment of whether there is a defence worthy of investigation, is different from the core work of trial judges. Moreover, the

jurisdiction of s. 96 Supreme Court judges is protected because they exercise a supervisory authority over the work of associate judges.

[25] The Supreme Court of Canada, and other courts, have recognized that the constitutionally protected jurisdiction of superior courts is not frozen in time, and provincial authority over the administration of justice encompasses the ability to reform practice and procedure to make the work of the courts more efficient and to enhance access to justice. Limiting the jurisdiction of associate judges to decide whether to set aside a default judgment would frustrate those objectives.

[26] I would not accede to the argument that the judge erred in not following *Euro Ceramics*, or in her analysis of the jurisdiction of an associate judge.

Was There any Fundamental Misapprehension of the Evidence in the Courts Below?

[27] It is not necessary to canvass this point in any detail. The procedural jockeying by the appellants has been extensive. They brought applications to set aside service and dispute the court's jurisdiction over the claim, which led to disagreement between the parties about the deadline to file a response to civil claim. The appellants point to their correspondence questioning when time began to run for the filing of a response. What is obvious is that they did not file a response within any possible cut off date, and, still, none has been filed. Now they appear to say that the courts below misapprehended whether they had wilfully delayed in filing a response.

[28] This argument has no merit. Neither the associate judge nor the Supreme Court justice misapprehended the facts. The conclusions they drew from the facts were open to them. There is no basis to interfere with their decisions.

Disposition

[29] I would dismiss the appeal.

"The Honourable Mr. Justice Harris"

I AGREE:

"The Honourable Justice Warren"

I AGREE:

"The Honourable Justice Francis"