

# In the Court of Appeal of Alberta

**Citation: Williams v ATB Financial, 2025 ABCA 207**

**Date:** 20250613  
**Docket:** 2403-0041AC  
**Registry:** Edmonton

**Between:**

**Randy B. Williams**

Appellant

- and -

**ATB Financial**

Respondent

---

**The Court:**

**The Honourable Justice Kevin Feehan  
The Honourable Justice Jane Fagnan  
The Honourable Justice Alice Woolley**

---

## **Memorandum of Judgment**

Appeal from the Order by  
The Honourable Justice W. Renke  
Dated the 22nd day of February, 2024  
Filed on the 8th day of March, 2024  
(Docket: 2203 01160)

---

## Memorandum of Judgment

---

### The Court:

### Introduction

[1] The appellant Randy Williams appeals the summary dismissal of his action against the respondent ATB Financial. The chambers judge affirmed the decision of an applications judge summarily dismissing the action. The chambers judge determined that the action had no legal merit: it was a collateral attack on a December 14, 2021 consent foreclosure order entered into by the parties and subsequent decisions upholding that order, as well as being *res judicata* and an abuse of process.

[2] For the reasons that follow, the appeal is dismissed.

### Background

[3] On December 14, 2021, an applications judge granted the respondent a consent foreclosure order for a property the appellant owned jointly with his brother. The appellant and his brother consented to the order. The appellant's then counsel advised the court he had instructions to consent on the basis there would be no deficiency or further costs owed by the appellant.

[4] The appellant, now self-represented, appealed the consent foreclosure order to a Court of King's Bench justice, claiming his consent had been induced by fraudulent misrepresentations made by the respondent. His appeal was dismissed on March 21, 2022. The appellant then sought permission to appeal the dismissal to this Court, again relying on the respondent's alleged fraudulent misrepresentations. Permission to appeal was denied because the appeal lacked any reasonable prospect of success; the "allegations that the consent foreclosure order was induced by fraud are unsupported by the record": *ATB Financial v Williams*, 2022 ABCA 175 at paras 28-29, 31-34.

[5] The appellant commenced an action against the respondent in relation to its foreclosure of the property and treatment of the appellant. He sought return of the foreclosed property, along with other relief, and alleged various types of misconduct by the respondent in relation to the property and proceedings, including abuse of process, unconscionability in relation to the consent order, and fraudulent misrepresentation.

[6] On September 27, 2022, an applications judge summarily dismissed the appellant's action, holding the claims advanced by the appellant were either an improper collateral attack on the decisions made in the foreclosure proceedings or were extinguished by the doctrine of *res judicata*.

[7] The appellant appealed that decision and sought a stay of the summary dismissal decision pending the appeal. The stay was refused, with a chambers judge stating the appeal “was certainly unmeritorious” and “bordered on the frivolous”. The appellant then sought to have a different King’s Bench justice review the decision not to grant a stay, which was denied on the basis that one King’s Bench justice cannot review another’s decision. An appeal of the refusal to review the decision was dismissed: *Williams v ATB Financial*, 2023 ABCA 341. The appellant also sought permission to extend time to appeal the original decision refusing the stay, which was denied: *Williams v ATB Financial*, 2023 ABCA 113 at para 17.

[8] On February 22, 2024, the appellant’s appeal of the application judge’s summary dismissal decision proceeded before a King’s Bench chambers judge. The appellant argued his prior appeals in the foreclosure proceedings did not preclude the new action because they were incomplete – they were “without any context and without any witnesses and without any evidence”. As a result, he should be permitted to argue fraud and misrepresentation again in the new action.

[9] The chambers judge disagreed. He concluded the issues raised in the appellant’s action had been addressed in the foreclosure proceedings and, if there were any new elements raised in the appellant’s action, they should have been raised in the foreclosure proceedings, because they related to the granting of the foreclosure order. The chambers judge determined the doctrines of *res judicata* and collateral attack applied, such that the appellant’s action was without merit. In his view, “it would be an abuse of process to permit Mr. Williams to relitigate in this second action... issues that he’s already litigated in the first action”. The chambers judge summarily dismissed the action in its entirety.

## Analysis

[10] The appellant appeals the dismissal of his action, relying largely on the allegations set out in his statement of claim. The appellant does not identify errors of law or fact made by the chambers judge.

[11] The question before the chambers judge was one of law, whether the appellant’s action lacked a proper legal foundation. The answer to that question is reviewable for correctness: *Okeke v MacNeil*, 2025 ABCA 176 at paras 14-15; *Enmax Corporation v Independent System Operator (Alberta Electric System Operator)*, 2024 ABCA 83 at para 22; *Housen v Nikolaisen*, 2002 SCC 33 at paras 8 and 10. Applying a correctness standard, we are satisfied that the trial judge made no error in deciding that the appellant’s action had no merit.

[12] The allegations set out in the appellant’s statement of claim can be grouped generally into two categories. First, he asserts that the respondent was not entitled to rely on the mortgage agreement to foreclose on the property, primarily because the respondent was not a mortgagee, the foreclosure proceedings were an abuse of process, the respondent had breached the mortgage agreement, and the respondent perpetrated a fraud. Second, he claims the consent order was of no effect, primarily because of the respondent’s fraudulent misrepresentations.

[13] The doctrine of *res judicata*, and in particular issue estoppel, properly operates to bar the relitigation of both issues.

[14] The preconditions to the operation of issue estoppel are that: (1) the same question has been decided; (2) the judicial decision which is said to create the estoppel was final; and (3) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies. If the preconditions are established, the court determines whether, as a matter of discretion, issue estoppel ought to be applied. In the context of court proceedings, such discretion is limited: *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at paras 25, 33, 62 [*Danyluk*]; *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 23; *Ernst & Young Inc v Central Guaranty Trust Company*, 2006 ABCA 337 at paras 30-41 [*Ernst & Young*].

[15] It is well accepted that consent orders can give rise to *res judicata*: *Twinn v Alberta (Office of the Public Trustee)*, 2022 ABCA 368 at para 68; *Goodswimmer v Canada (Attorney General)*, 2017 ABCA 365 at paras 52-53; *R v Dieckmann*, 2017 ONCA 575 at para 35; *Arslan v Şekerbank TAŞ*, 2016 SKCA 77 at paras 99-101; *Moses v Lower Nicola Indian Band*, 2015 BCCA 61 at para 49.

[16] The consent order granted in the foreclosure proceedings was final; both the appellant and respondent were parties to that proceeding; and, fundamentally, the order determined the mortgage was valid and enforceable by the respondent for the full value of the property. Therefore, issue estoppel defeats the appellant's various assertions that the respondent was not entitled to rely on the mortgage agreement to foreclose on the property. That issue has been decided, and there is no reason the appellant should be allowed to relitigate it. The appellant's identification of witnesses whose evidence he believes would elucidate the issue does not change the fact that the issue has already been adjudicated nor make relitigation of it appropriate.

[17] It is also well accepted that a consent order may be set aside where it has been obtained by fraud or duress: *Macdonald v King*, 2021 ABCA 149 at para 10; *Rozinsky v Rozinsky*, 2013 ABCA 113 at para 6. The appellant appealed the consent foreclosure order on that basis. The Court of King's Bench decision dismissing that appeal, and the decision of this Court refusing permission to appeal were final; both the appellant and the respondent were parties; and those decisions determined there was no basis to set aside the consent order.

[18] Issue estoppel thus defeats as well the appellant's argument that his consent to the foreclosure order was of no effect. That issue has been decided, and there is no reason the appellant should be allowed to relitigate it.

[19] The underlying action is also a collateral attack on the consent foreclosure order and the decisions refusing to set it aside. Central to the underlying action is the assertion that the respondent did not have the right to foreclose on the subject property. That is an attack on the consent foreclosure order and the appeal decisions "made in proceedings other than those whose

specific object is [their] reversal, variation, or nullification”: *Wilson v The Queen*, [1983] 2 SCR 594 at 599; *Ernst & Young* at paras 47-51; *Danyluk* at para 20.

[20] The appeal is dismissed.

[21] Rule 9.4(2)(c) is invoked. Counsel for the respondent will prepare the resulting judgment.

Appeal heard on June 5, 2025

Memorandum filed at Edmonton, Alberta  
this 13th day of June, 2025

---

Authorized to sign for: Feehan J.A.

---

Authorized to sign for: Fagnan J.A.

---

Woolley J.A.

**Appearances:**

Appellant R. Williams

W.M. Pedruski KC

B. Thronson

for the Respondent