COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Miller v. RBC Dominion Securities Inc.,*
2025 BCCA 431

Date: 20251128
Docket: CA50502; CA50503

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Between:

Raymond Miller and Tauram, Inc.

Appellants
(Plaintiffs)

And

RBC Dominion Securities and Bruce Crowle

Respondents
(Defendants)

– and –

Docket: CA50503

Between:

Raymond Miller and Tauram, Inc.

Appellants
(Plaintiffs)

And

**RBC Dominion Securities, Bruce Crowle, David Cameron, Dwane Ford,
The RBC Chief Compliance Officer (to be named), and
The RBC Ultimate Designated Person (to be named)**

Respondents
(Defendants)

Before: The Honourable Mr. Justice Groberman
The Honourable Mr. Justice Butler
The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated February 4, 2024 (*Miller v. RBC Dominion Securities Inc.*, 2025 BCSC 179, Victoria Dockets S170149 and S234354).

Oral Reasons for Judgment

The Appellant, appearing on his own behalf and on behalf of Tauram, Inc.:	R. Miller
Counsel for the Respondents (with the exception of David Cameron):	J.S. Forstrom
Place and Date of Hearing:	Victoria, British Columbia November 28, 2025
Place and Date of Judgment:	Victoria, British Columbia November 28, 2025

Summary:

In 2017, the appellants brought an action alleging negligence and breach of contract against RBC Dominion Securities and against the employee who provided them with investment advice. The action was ultimately dismissed, as, in 2023, was an appeal from the judgment. Shortly after the appeal was dismissed, the appellants brought an action to set aside the judgment in the 2017 Action on the basis of fraud. The 2023 Action also sought damages against the original defendants and other related parties on grounds closely connected to those that had been dismissed in the 2017 Action. Finally, the appellants applied to stay proceedings for costs in the 2017 Action. The chambers judge refused the stay and struck the 2023 Action. The appellants appeal both orders.

Held: Appeals dismissed. The "fraud" alleged by the appellants cannot be said to have been used to "procure" the judgment in the 2017 Action and cannot vitiate it. The 2023 Action discloses no grounds on which the judgment in the 2017 Action could be set aside. The 2023 Action was an attempt to relitigate the claim in the 2017 Action and related claims that ought to have been dealt with in that action. It was an abuse of process and was properly dismissed. As the appellants are unable to show any infirmity in the order in the 2017 Action, there was no basis for staying the costs proceedings.

[1] **GROBERMAN J.A.**: The appellants had investment accounts with RBC Dominion Securities (which I will refer to as "RBC") from July 2006 until September 2015. Between March 2010 and September 2015, Bruce Crowle was RBC's designated account representative for the appellants' accounts.

[2] The appellants' investments decreased substantially in value over the period of investment with RBC. The total investment in 2006 was $500,000. The value of the investments had dropped to $367,722.92 by 2015.

[3] Dismayed by the fall in the value of their investments, the appellants commenced an action in contract and tort against RBC and Mr. Crowle in 2017 (the "2017 Action"). They contended that the defendants provided them with unsuitable investment advice, engaged in unauthorized trading, and failed to follow instructions. In September 2020, the appellants expanded the claim, alleging that the defendants breached fiduciary duties to them by taking secret commissions, though they withdrew those allegations at trial.

[4] The action came on for trial in October 2020 and proceeded over 16 days. In September 2021, the trial judge issued his initial reasons for judgment (*Miller v. RBC Dominion Securities Inc.*, 2021 BCSC 1811), which were detailed and lengthy. In that judgment, he dismissed almost all the appellants' claims.

[5] The trial judge did find, however, that the defendants had inexplicably increased the risk rating for the appellants from "80% medium and 20% high risk investments" in 2006 to "100% high risk investments" in 2014. The increased risk rating was applied in two steps, one in 2013 and one in 2014. The trial judge found that the changes to the risk rating were made without instructions from the appellants and without gathering information about their risk tolerances.

[6] Although the trial judge also found that the appellants had been given timely notice of the changed risk ratings, he considered that the defendants had breached their duty of care to the appellants by raising their risk ratings without appropriate instructions or information. He invited submissions from the parties on the issue of

whether the breach of the defendants' duty of care had caused damage to the appellants.

[7] In March 2022, the trial judge delivered a final judgment in the matter (*Miller v. RBC Dominion Securities Inc.*, 2022 BCSC 485). After considering the submissions and the evidence, he found that the breach of the defendants' duty of care to the appellants had not resulted in any damages. Accordingly, the 2017 Action was dismissed in whole. The appellants' appeal to this Court was dismissed in August 2023 (*Miller v. RBC Dominion Securities Inc.*, 2023 BCCA 324). As no further appeal was taken, that ought to have been the end of the matter, apart from an assessment of costs.

[8] Mr. Crowle's title at RBC at material times was "financial adviser". In August 2023, the appellants came across a page on the BC Securities Commission website that allows a person to look up the registration status of individuals and companies under regulatory provisions. They determined that Mr. Crowle was registered as a "dealing representative", not as an "advising representative", as those terms are used in the regulatory framework. The appellants have concluded, with very limited analysis, that Mr. Crowle ought to have been registered as an "advising representative" to perform the functions that he did in relation to their accounts. They take the position that in characterizing himself as capable of giving financial advice, Mr. Crowle acted fraudulently.

[9] In December 2023, the appellants commenced a new action in BC Supreme Court (the "2023 Action"). Before serving the notice of civil claim on the respondents, the appellants made substantial amendments to it. The resulting notice of civil claim is a prolix and confusing document, but its focus is on precisely the same transactions as were at issue in the 2017 Action. The primary allegations of wrongdoing mirror those of the 2017 Action. The major difference in the two actions is that the 2023 Action also makes allegations that the registration status of Mr. Crowle and other RBC employees was inadequate to allow them to provide financial advice. The appellants characterize their 2023 claim as one in fraud.

[10] The 2023 Action was served on the defendants in May 2024, and they immediately filed an application to strike the action on the basis that it was an abuse of process, being *res judicata*. The application to strike was heard together with the respondents' application for costs in the 2017 Action, and an application by the appellants to stay proceedings in the 2017 Action.

[11] The judge who heard the applications refused to stay proceedings in the 2017 Action, made a costs order in that action, and struck the 2023 Action as *res judicata*. The appellants bring two appeals—one (Docket CA50502) from the denial of the stay of proceedings, and one (Docket CA50503) from the striking of the 2023 Action.

[12] The appellants' only basis for seeking a stay of the 2017 proceedings is their allegation that the final judgment in that case is vitiated by fraud. The appellants also contend that the 2023 Action should be allowed to continue because the 2017 Action was vitiated by fraud (though they also argue that the 2023 Action is, in any event, sufficiently distinct from the 2017 Action as not to be barred by the doctrine of *res judicata*).

[13] Because the allegations that the 2017 Action was vitiated by fraud lie at the heart of the most potent of the appellants' arguments, I will deal with that issue first.

Was the 2017 Action Vitiated by Fraud?

[14] The appellants contend that the 2017 Action was vitiated by fraud. Based on the appellants' interpretation of the regulatory scheme administered in British Columbia by the BC Securities Commission, they say that Mr. Crowle (among others) was holding himself out as a "financial adviser" when he was, in fact, registered as a "dealer representative".

[15] I will say at this juncture that I find the appellants' interpretation of the legislative regime dubious. I recognize, however, that the interpretation of the regime is not directly in issue on this appeal, and is, in any event, primarily a matter for the BC Securities Commission. The chambers judge did not attempt to present a

comprehensive interpretation of the administrative regime, and I also find it unnecessary to do so.

[16] The most basic problem with the appellants' position is that it goes no further than to allege that Mr. Crowle held himself out as a financial adviser when he was not properly registered as one under the regulatory scheme. If that allegation has substance, it could conceivably be a basis for an investigation and disciplinary proceedings by the BC Securities Commission. Though less likely, it might also have led to the charging of an offence under the *Securities Act*, R.S.B.C. 1996, c. 418. The allegation, however, has no connection to the trial of the 2017 Action. In particular, it does not suggest that the court was misled in the course of that action or that the judgment was obtained by fraud.

[17] In *Long v. Red Branch Investments Limited*, 2018 BCCA 115, this Court considered situations in which a judgment can be set aside on the basis that it was obtained by fraud. While the judgment in that case refers to several authorities, the basic concept can be gleaned from its citation (at para. 32) of Justice Duff's dissenting judgment in *MacDonald v. Pier*, [1923] S.C.R. 107, at 120–122. The Court notes that fraud in obtaining a judgment may be based on such things as perjury, the giving of false answers to interrogatories, and misleading production of documents. It observes that the jurisdiction to set aside a judgment that has been obtained by fraud exists, but it must not be exercised to obtain "a re-trial of an issue already determined … under the guise of impugning a judgment as procured by fraud".

[18] The trial judgments in the 2017 Action were thorough reviews of the evidence, with a view to determining whether the defendants' advice or practices failed to meet the standard of care of the reasonable financial adviser or amounted to breaches of contract. The trial judge found only one instance where the standard of care was not met, and in that instance, found that the breach did not result in any damage.

[19] As the appellants have not pleaded any material facts capable of showing that the judgment in the 2017 Action was procured by fraud, they have not disclosed any reasonable cause of action for setting aside the final judgment in that matter, or any part of it.

[20] Nothing in the appellants' new allegations about improper registration can affect the validity of the judgments in the 2017 Action. The chambers judge rightly struck out the 2023 Action insofar as it sought to set aside the 2017 Action. In that regard, the 2023 Action disclosed no reasonable cause of action.

Was the Stay Properly Denied?

[21] As I understand it, the appellants' arguments in favour of a stay of the 2017 Action is premised on the proposition that the 2017 Action was vitiated by fraud. As it was not, it follows that the chambers judge was correct in dismissing the stay application.

Did the Chambers Judge Err in Striking Out the 2023 Action?

[22] The basic doctrine of *res judicata* was outlined in the seminal case of *Henderson v. Henderson* (1843), 3 Hare 100 at 115:

> [W]here 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 cases, 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.

[23] The chambers judge's view that the 2023 Action falls within the scope of the doctrine of *res judicata* is, in my view, unassailable. The 2017 Action challenged all aspects of the defendants' financial advice, including their competence to provide it. The appellants' new arguments about registration—to the extent that they add

anything to the original allegations—are arguments that could have, with reasonable diligence, been brought forth in the 2017 Action. There can be no suggestion that the appellants, had they made reasonable efforts, would have been unable to obtain registration information from the BC Securities Commission, or, indeed, from the defendants. The fact that the appellants did not look for the information and only happened upon it after trial does not assist them.

[24] The suggestion that the respondents should have disclosed documents concerning their employees' registration status in the absence of an inquiry is without merit. The registration status of RBC employees was not put in issue by the appellants in the 2017 Action.

[25] I would also comment that the appellants' contention that the scope of the criminal defence of "due diligence" is in some way relevant to the *res judicata* argument is also without merit.

[26] The appellants contend that by recharacterizing their claim as one based in fraud with respect to registration status, they are able to avoid the doctrine of *res judicata*. That is not correct as a matter of law. The doctrine is designed to ensure efficiency in court processes, and not to encourage piecemeal litigation in which different theories of liability are pursued sequentially.

[27] The appellants face at least two insurmountable hurdles in getting around the doctrine of *res judicata*. First, the case remains dependent on a demonstration that the advice provided by the respondents did not measure up to professional standards, so the definitive findings of the trial judge remain conclusive. Second, if allegations of fraud were going to be made, they "belonged to the subject of the litigation". The appellants, exercising reasonable diligence, were perfectly capable of obtaining information about Mr. Crowle's registration status at any time, and did not have to wait until they failed in their original claim.

[28] While I recognize that the appellants have added parties to the 2023 Action that were not named in the 2017 Action, they are all employees of RBC involved in the chain of command. They are proxies of the parties in the 2017 litigation. It would be an abuse of process to allow the litigation to go forward against them.

Disposition

[29] The chambers judge made no error in striking out the 2023 Action. To the extent that it sought to set aside the orders in the 2017 Action, it did not disclose any reasonable cause of action, as it is patently clear that the judgment in that action was not procured by fraud.

[30] The balance of the 2023 Action is barred as being *res judicata* and being an abuse of the process of the court through re-litigation.

[31] Finally, there was no basis for staying the costs proceedings.

[32] I would dismiss both appeals.

[33] **BUTLER J.A.**: I agree.

[34] **HORSMAN J.A.**: I agree.

[35] **GROBERMAN J.A.**: The two appeals are dismissed.

[Discussion re: costs]

[36] **GROBERMAN J.A.**: The appeals are dismissed. Costs follow the event of the appeals.

"The Honourable Mr. Justice Groberman"