

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *1316215 BC Ltd. v. Davis*,
2026 BCCA 338

Date: 20260812
Docket: CA51156

Between:

1316215 BC Ltd.

Appellant
(Defendant)

And

Jessica Ashley Davis

Respondent
(Plaintiff)

And

**Edward Archibald, 1270943 BC Ltd., Accorde (Wilson Crescent)
Properties Ltd., 1249510 BC Ltd., Linden Street Management Inc.,
1317439 BC Ltd., Phantom Projects Ltd., Andrea Neumann,
Cloudburst Creek Property Inc., Michael Anthony Henson,
Angie Vazquez, Tanya Kong, and Gerard Biegel**

Respondents
(Defendants)

Before: The Honourable Mr. Justice Riley
The Honourable Justice MacNaughton
The Honourable Justice Brundrett

On appeal from: An order of the Supreme Court of British Columbia, dated
October 27, 2025 (*Davis v. Archibald*, 2025 BCSC 2095,
Vancouver Docket S235188).

Counsel for the Appellant:

W.J. McMillan
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Davis:

P.S. Boles

Place and Date of Hearing:

Vancouver, British Columbia
June 15, 2026

Place and Date of Judgment:

Vancouver, British Columbia
August 12, 2026

Written Reasons by:

The Honourable Mr. Justice Riley

Concurred in by:

The Honourable Justice MacNaughton

The Honourable Justice Brundrett

Summary:

1316215 BC Ltd. (“1316 Co.”) appeals from the dismissal of its application to cancel a second certificate of pending litigation (“CPL”) registered against the title to its property. 1316 Co. argued that the plaintiff (respondent) Ms. Davis’s registration of the second CPL was an abuse of process because it sought to circumvent 1316 Co.’s pending application under s. 252 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA], to cancel Ms. Davis’s first CPL, on the grounds that no step had been taken in the litigation for over a year. Instead of responding to the s. 252 application, Ms. Davis filed a duplicative action (adding new defendants) and registered the second CPL. She then discontinued her first action and discharged the first CPL, effectively frustrating the s. 252 application. The chambers judge held that this was not an abuse of process because there was a valid protective purpose for commencing the duplicative action, and 1316 Co. had no guarantee of success on its application to cancel the first CPL.

Held: Appeal allowed.

The judge erred in failing to consider whether, despite the protective purpose of the duplicative action, it was nonetheless an abuse of process for Ms. Davis to file a second CPL and discontinue the first action. It was. Having brought a protective action to preserve her claim against the additional defendants, Ms. Davis’s conduct in registering the second CPL, with knowing indifference to 1316 Co.’s crystallized right to a determination of its pending application to cancel the first CPL, was abusive. The appropriate remedy is to remit the matter to the court below, for reconsideration of 1316 Co.’s application to cancel the second CPL, applying the criteria that would normally be considered on an application to cancel a CPL under s. 252 of the LTA.

Reasons for Judgment of the Honourable Mr. Justice Riley:**Introduction**

[1] This is an appeal from a chambers judge’s decision dismissing an application to cancel a certificate of pending litigation (“CPL”) registered against title to a property in Squamish, British Columbia. The appellant, 1316215 BC Ltd. (“1316 Co.”), argued that registration of the CPL was an abuse of process because the plaintiff, Ms. Davis, did so to knowingly circumvent 1316 Co.’s pending application to cancel a prior CPL registered against the same property. The chambers judge disagreed. She found that Ms. Davis’s litigation strategy — initiating a second claim as a “protective action” and then registering a second CPL — was not an abuse of process. The judge went on to find, in the alternative, that even if Ms. Davis’s

manner of proceeding was abusive, cancellation of the second CPL would not have been an appropriate remedy in light of the equities of the case.

[2] I agree with 1316 Co. that the chambers judge erred in her assessment of Ms. Davis's conduct. Ms. Davis used a second action as a springboard to register a fresh CPL against the title to 1316 Co.'s property, with knowing indifference to the effect that this would have on 1316 Co.'s pending application to cancel the original CPL. Properly understood, the manner in which Ms. Davis proceeded was so outside the range of reasonable strategic litigation choices that it constituted an abuse of process.

[3] Because the registration of a CPL is an extraordinary pre-judgment mechanism that secures an unproven claim by tying up the property owner's title, the registering party is expected to actively pursue the claim. Where the registering party fails to take any step in the litigation for one year, s. 252 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA], provides the property owner with the right to apply for cancellation of the CPL. In this case, Ms. Davis's choice to register a fresh CPL in support of her protective action, with knowing indifference to the effect of her conduct on 1316 Co.'s crystallized right to pursue cancellation of the first CPL, was abusive. The proper remedy is to remit the matter to the court below, with a direction to consider 1316 Co.'s application to cancel the second CPL, based on the factors governing an application to cancel a CPL under s. 252 of the LTA.

Facts

[4] The underlying proceedings arise from a dispute between the plaintiff, Ms. Davis, and a total of 14 defendants, including 1316 Co. Ms. Davis was previously in a personal relationship with the defendant, Mr. Archibald. Ms. Davis alleges that many of the corporate defendants are "alter ego" companies controlled by Mr. Archibald.

[5] Ms. Davis alleges that:

- (a) Together, she and Mr. Archibald purchased a property in Squamish (the “Squamish Property”), with title registered in the name of a company incorporated by Mr. Archibald in which Ms. Davis expected to be an equal shareholder and director;
- (b) Mr. Archibald caused the company to sell the Squamish Property, without Ms. Davis’s knowledge, well below market value;
- (c) The purchaser of the Squamish Property (Cloudburst Creek Property Inc. (“Cloudburst”)) had knowledge, through its principals Ms. Vazquez and Mr. Henson, that: (i) Mr. Archibald lacked authority to sell, and (ii) the purchase price was below market value;
- (d) Mr. Archibald used the sale proceeds to purchase a property in Lake Country (the “Lake Country Property”), with the title registered in the name of one of his “alter ego” companies;
- (e) The vendor of the Lake Country Property (Phantom Projects Ltd. (“Phantom”)) had knowledge, through its principal Mr. Biegel, that the source of funds for the purchase was in dispute as between Mr. Archibald and Ms. Davis.

[6] Ms. Davis ultimately filed two separate actions in the Supreme Court of British Columbia in connection with this dispute.

[7] Ms. Davis brought the first action against Mr. Archibald, his alter ego companies, and various others involved in the impugned real estate transactions. This included the appellant, 1316 Co., who holds title to the Squamish Property as trustee for Cloudburst as beneficiary under a bare trust agreement. Ms. Davis registered CPLs against both the Squamish Property (“Squamish CPL #1”) and the Lake Country Property, which I will refer to collectively as the “First CPLs”.

[8] In the course of the first action, 1316 Co. applied twice to cancel Squamish CPL #1. Its first application to cancel, grounded on the assertion that the first action disclosed no interest in the Squamish Property, was adjourned on the basis that Ms. Davis intended to amend her notice of civil claim. Its second application, filed 15 months later, sought cancellation pursuant to s. 252 of the *LTA*, on the ground that no steps had been taken in the first action for over a year.

[9] Prior to the determination of 1316 Co.'s s. 252 application, Ms. Davis commenced the second action naming all of the defendants in the first action, along with additional defendants whose knowledge of, or involvement in, Mr. Archibald's alleged fraudulent conduct was said by Ms. Davis to have come to her attention after commencing the first action. For example, the additional defendants included a real estate agent (Ms. Vazquez) and a solicitor (Ms. Kong) involved in the conveyance of the Squamish Property, whose alleged participation in Mr. Archibald's fraudulent course of conduct is said to have come to Ms. Davis's attention only after she filed the first action.

[10] After filing the second action, Ms. Davis registered fresh CPLs against the titles to the Squamish Property (Squamish CPL #2) and the Lake Country Property (Lake Country CPL #2), which I will refer to collectively as the "Second CPLs". Ms. Davis later caused the First CPLs to be removed from the titles to the two properties, leaving in place only the Second CPLs.

[11] Several of the defendants then filed applications in the second action, seeking to cancel the Second CPLs. In particular, 1316 Co. applied to cancel Squamish CPL #2, and Phantom and Mr. Biegel applied to cancel Lake Country CPL #2.

The Chambers Judge's Decision

[12] The chambers judge's analysis addressed two issues: (i) whether the Second CPLs should be cancelled as an abuse of process, and (ii) whether Lake Country CPL #2 should be cancelled on the basis that it did not meet the legal requirements for issuance of a CPL under s. 215 of the *LTA*.

Registration of the Second CPLs Not an Abuse of Process

[13] On the first issue, the chambers judge accepted that she had the authority to cancel a CPL based upon an abuse of process, as discussed in *Reum Holdings Ltd. v. 0893178 B.C. Ltd.*, 2015 BCSC 2022 at paras. 88–89, *Aviawest Resorts Inc. v. Memory Lane Developments Inc.*, 2004 BCSC 999 at para. 8, and *Sood v. Hans*, 2023 BCCA 138 at paras. 30–31. (Note: in fact, the reasoning in *Reum Holdings* and *Aviawest Resorts* was rejected by this Court in *Bilin v. Sidhu*, 2017 BCCA 429 at para. 53, and *Berthin v. Berthin*, 2018 BCCA 57 at paras. 31, 44. However, that still leaves open the question of whether the court has jurisdiction to make a remedial order in relation to a CPL on the basis of a true abuse of process. For the reasons explained at paragraph 36 below, I would conclude that it does.)

[14] The judge went on to consider 1316 Co.’s argument that Ms. Davis’s conduct in commencing the second action and registering the Second CPLs was an abuse of process. 1316 Co. took the position that by proceeding in this manner, Ms. Davis knowingly thwarted its pending application to cancel Squamish CPL #1 under s. 252 of the *LTA*, on account of Ms. Davis’s failure to take any litigation steps in the first action for more than one year.

[15] The chambers judge recognized that the purpose of s. 252 of the *LTA* is to “ensure that claimants prosecute their claims diligently and without undue delay, as a CPL is presumptively prejudicial to a property owner”. In the case before her, 1316 Co. argued that it was improper for Ms. Davis to frustrate its s. 252 application by filing the Second Action and then registering a fresh CPL.

[16] Relying on *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4 at para. 38 [*Métis Nation*], the chambers judge accepted the proposition that “a multiplicity of proceedings which engage the same issues can amount to an abuse of process” (emphasis added by chambers judge). As the Court explained in *Métis Nation* at para. 40, an abuse of process may be found where “multiple or similar proceedings exist”, and “allowing the litigation to proceed would violate such

principles as judicial economy, consistency, finality and the integrity of the administration of justice”.

[17] The chambers judge next considered case law addressing situations in which a second claim has been filed as a “protective action”. She cited *Taherkhani v. Este*, 2021 BCSC 1745 at para. 19, for the proposition that it is not abusive to file a protective action containing duplicative claims where the plaintiff does so out of an “abundance of caution” and has “no intention to pursue both actions”. In such circumstances, the plaintiff may properly “file a second action and thereafter consolidate the actions or discontinue one of them”, as discussed in *Bell Davidson Insurance Brokers Ltd. v. Beaton*, 2013 ABQB 219 at paras. 12, 18.

[18] The chambers judge took guidance from *Urban Landmarks Master Builder Inc. v. Lloyd’s Underwriters*, 2012 ABQB 224, in which a plaintiff reacted to a comment made at a case management conference about the narrowness of its claim by commencing a second action. Upon learning of the new action, the defendant applied to strike it as an abuse of process. The court acknowledged that the plaintiff’s choice between commencing a second claim or seeking to amend the existing claim was “to some extent a judgment call and a matter of strategy for counsel”: *Urban Landmarks* at para. 50. In the court’s view, the plaintiff was free to proceed in the manner that it saw fit so long as its conduct of the litigation was not “so outside the range of reasonable strategic choices available to counsel as to make it an abuse of process”: *Urban Landmarks* at para. 50.

[19] The court went on to hold that in the circumstances of that case, the plaintiff’s decision to proceed with a second action, rather than seeking to amend its pleadings in the first action, did not cross the line: *Urban Landmarks* at paras. 51–52. Although the plaintiff’s delay in serving notice of the second action was inappropriate, any prejudice to the defendant arising from the plaintiff’s manner of proceeding could be remedied in costs: *Urban Landmarks* at para. 57. At the time of the abuse of process application, both actions were still pending, and the court ordered that they be tried

together, facilitating the use of document production and discovery from the first action in the second action: *Urban Landmarks* at paras. 61, 65–67.

[20] Returning to the facts of this case, the chambers judge reasoned that Ms. Davis's course of conduct did not involve any impermissible use of duplicative proceedings because, by the time of the abuse of process application, Ms. Davis had discontinued the first action and cancelled the First CPLs. Further, the judge was satisfied that there was evidence to support Ms. Davis's position that "she did not discover the identity and information about the role of the additional defendants" until the first action was well underway. In the judge's view, this development, and the accompanying concern about a looming limitation period in relation to the new defendants explained Ms. Davis's choice to file a second claim as a "protective action", and thereafter discontinuing the first action.

[21] The chambers judge considered and rejected 1316 Co.'s argument that Ms. Davis chose to proceed as she did "because she was exposed to a s. 252(1) application due to not having taken steps in the [first action] for over a year". In the judge's view, this position incorrectly assumed 1316 Co. would have been successful in its application to cancel Squamish CPL #1, when cancellation of a CPL under s. 252(1) is discretionary.

[22] The judge concluded that Ms. Davis's registration of the Second CPLs in these circumstances was not an abuse of process. She went on to reason that even if the registration of the Second CPLs was abusive, it was "nonetheless improper to cancel a CPL where there are complex triable issues which need to be decided and a specific interest not easily cured by way of damages, as the prejudice to the losing party far outweighs the prejudice to the party who may experience an inability to complete a sale".

Second Lake Country CPL Not Valid

[23] The chambers judge went on to consider whether Lake Country CPL #2 ought to be cancelled on the basis that it did not meet the requirements in s. 215 of the *LTA* for a valid CPL. She concluded, in effect, that Lake Country CPL #2 had to

be cancelled because the pleadings did not disclose an interest in land. It is unnecessary to discuss this aspect of the judge's ruling in any further detail, because it is not in issue on appeal.

Discussion

Nature and Effect of a CPL

[24] Part 14, Division 3 of the *LTA* governs CPLs. Section 215 allows anyone who has commenced a proceeding, or is a party to a proceeding, and who claims an estate or interest in land, or has a statutory right to an action in respect of land, to register a CPL against title to the land (along with a copy of the petition, pleading, or other document in which the CPL is claimed).

[25] Section 216(1) provides that once a CPL is registered against the title to a property, the registrar must not make any entry in the register that has the effect of charging, transferring or otherwise affecting the property until the CPL is cancelled in accordance with the *LTA*.

[26] The effect of these provisions is to create what has been described as an “extraordinary pre-judgment mechanism” which effectively freezes title to land that is the subject of pending litigation: *Berthin* at para. 32; *GMC Properties Inc. v. Rampart Estates Ltd.*, 2023 BCCA 172 at para. 37. The CPL allows the party whose pleadings claim an interest in land to prevent the frustration of its claim until it can be determined on the merits. The preservation of the subject matter of the claim comes at the expense of the property owner, who is precluded from transferring or otherwise altering title to its property unless and until the moving party's claim is determined or the CPL is cancelled.

[27] Once a CPL has been registered, the property owner can only remove it by having it cancelled in accordance with the *LTA*: s. 216(1). The property owner can apply to have a CPL cancelled:

- (i) pursuant to the inherent jurisdiction of the court, where the underlying claim does not meet the threshold requirements for registration of a CPL in s. 215

- of the *LTA*, as discussed in *Bilin* at paras. 54–55, 62, and *Sood* at paras. 28–31;
- (ii) pursuant to s. 252 of the *LTA*, where the plaintiff fails to diligently pursue the claim, as discussed in *GMC Properties* at paras. 44–46, 65–67;
 - (iii) pursuant to s. 253 of the *LTA*, where the underlying claim to an interest in the property is discontinued;
 - (iv) pursuant to s. 254 of the *LTA*, where the underlying claim to an interest in the property is finally dismissed, as discussed in *Berthin* at paras. 40–41; and
 - (v) pursuant to s. 256 of the *LTA*, where the CPL is causing hardship or inconvenience, as discussed in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388 at paras. 29–39.

[28] A property owner can also achieve removal of a CPL by securing some form of settlement or consent arrangement with the CPL claimant, leading the claimant to seek its cancellation under s. 255 of the *LTA*.

[29] The issues raised in this appeal engage two avenues for cancellation of a CPL. One is under s. 252 of the *LTA* based on failure to take a litigation step for more than one year; and the other is pursuant to the court’s inherent jurisdiction. To properly address 1316 Co.’s arguments, it is necessary to briefly expand upon each.

Cancellation of a CPL Under s. 252 of the *LTA*

[30] Section 252(1) provides that if “no step has been taken in the proceeding for one year”, the owner of the property, or any other person with an interest in it, may apply to cancel the CPL. Justice Dickson described the object and purpose of this provision in *GMC Properties*:

[43] The continued presence of a validly registered CPL is presumptively prejudicial to a property owner. For this reason, a claimant is obliged to prosecute their claim diligently. Section 252 of the *Land Title Act* is intended to ensure that claimants do so without undue delay: *Kultak Financial Inc. v. Grewal*, 2018 BCCA 94 at paras. 34–35; *Motz v. McKean*, 2009 BCSC 1133 at paras. 7–8. Its underlying purpose “is to keep property from being

tied up in dormant litigation”: [S.W. v. J.D.M. et al.], 2004 BCSC 882 at para. 15.

[31] The test for cancelling a CPL under s. 252(1) was articulated in *S.W. v. J.D.M.*, 2005 BCSC 1626 at paras. 12–13 and was recently affirmed by this Court in *GMC Properties*. It is “less onerous” than the test for dismissal of a claim for want of prosecution: *GMC Properties* at para. 46. The court will presume the CPL prejudices the property owner where the applicant demonstrates that no step has been taken in the proceeding for a year or more. However, the court retains discretion to refuse to cancel the CPL where the party seeking to preserve the CPL proves that the presumed prejudice is not serious or is outweighed by other factors which would make it unjust to cancel the CPL. In deciding whether to exercise this discretion, the court will consider factors including:

- (a) whether the party seeking to preserve the CPL has given an acceptable explanation for the delay in prosecuting the claim;
- (b) whether, despite the presumed prejudice, no actual prejudice would be suffered by the applicant if the CPL was not cancelled; and
- (c) whether the claim for an interest in the land has at least a reasonable prospect of succeeding.

[32] A “step” is some act in the litigation that is either “required or permitted by the *Supreme Court Civil Rules* that moves the action forward towards trial or resolution”: *Lawn Genius Manufacturing (Canada) Inc. (Drainmaster) v. 0856810 B.C. Ltd. Inc.*, 2016 BCSC 1915 at paras. 11–12. The “one year” in s. 252(1) refers to “the year immediately preceding” service of the notice of application to cancel the CPL: *Lawn Genius* at paras. 11–12. This means that where no step has been taken for a period of one year, a party’s right to seek cancellation under s. 252(1) crystallizes upon filing the application to cancel and cannot be overcome or undone by the party seeking to preserve the CPL subsequently taking a step in the litigation.

[33] In this case, it is common ground that no step had been taken in the first action for more than one year preceding 1316 Co.'s application to cancel the Squamish CPL #1. 1316 Co. had a right to seek cancellation under s. 252(1). Before the chambers judge, 1316 Co.'s argument was that Ms. Davis's conduct in filing a second action, registering a second CPL, and then discontinuing the first action and cancelling Squamish CPL #1 effectively deprived 1316 Co. of its crystallized right to a determination of its s. 252 application. While the chambers judge was correct in observing that cancellation of Squamish CPL #1 under s. 252 was discretionary, the judge overlooked the effect of Ms. Davis's litigation conduct in depriving 1316 Co. of the right to even argue for that remedy.

Inherent Jurisdiction to Cancel a CPL

[34] The case law also recognizes the Supreme Court of British Columbia's authority to cancel a CPL under the common law, as an exercise of its inherent jurisdiction. This jurisdiction is most commonly invoked where the court is satisfied that the pleadings are incapable of supporting a claim to an "estate or interest in land" such that the CPL did not meet the statutory requirements in s. 215 of the *LTA* at the time of its registration: *Bilin* at paras. 51, 55; *Berthin* at para. 40. In other words, where the claim "could not give rise to an interest in land", the court has authority to cancel it "because, essentially, it was improperly registered from the start": *GMC Properties* at para. 40, citing *Bajwa v. Singh*, 2016 BCSC 916 at para. 20. In *Sood* at paras. 30–31, Justice Hunter explained that the court's jurisdiction to discharge a CPL on this basis derives from its inherent jurisdiction to fill the gap in its statutorily granted powers under Part 16 of the *LTA* which, unfilled, could lead to abuse of the CPL procedure.

[35] In this case, 1316 Co. urged the chambers judge to exercise the court's inherent jurisdiction on a different basis. Rather than arguing for cancellation of the Squamish CPL #2 on the basis that the pleadings did not disclose an interest in land, 1316 Co. argued that Ms. Davis's conduct in registering the second CPL was a form of improper duplicative litigation that warranted a remedy under the abuse of process doctrine. The chambers judge accepted that she had jurisdiction to cancel

or set aside a CPL to remedy an abuse of process in this context, and there has been no suggestion on appeal that the judge was wrong in this regard.

[36] Given the breadth and flexibility of the abuse of process doctrine, I accept that the court has jurisdiction to grant a remedy for the improper registration of a duplicative CPL, where the conduct in issue involves an abuse of process as described below. However, I would add that this jurisdiction ought not to be used to expand or circumvent the conventional avenues for cancellation of a CPL as set out in the *LTA* and discussed in cases such as *GMC Properties* at paras. 37–50, *Berthin* at paras. 31–44, and *Bilin* at paras. 35–62. The court’s inherent jurisdiction to remedy an abuse of its process is not a basis for re-writing or altering the strictures of the statute.

[37] An abuse of process remedy is appropriate only where a litigant makes improper use of a second CPL to effectively thwart an opposing party’s pending s. 252 application. As explained below, this manifestation of the abuse of process doctrine is focused on the improper use of a CPL in abusive re-litigation or duplicative litigation. It should be regarded as a possible remedial response to an abuse of process under the test articulated in *Métis Nation*.

Standard of Review Governing Abuse of Process Determinations

[38] Whether the pleadings or litigation conduct as found by the court of first instance amounts to an abuse of process is a question of law, reviewable on a standard of correctness: *Métis Nation* at para. 31; *Anoroc Holdings Ltd. v. 585582 B.C. Ltd.*, 2026 BCCA 76 at para. 60. However, the determination of a just and appropriate remedy for an abuse of process is a discretionary matter for the court of first instance and is subject to deference on appeal. The appeal court can only revisit the choice of remedy where it rests on an error in principle, a material misapprehension of the evidence, or where the court of first instance failed to exercise its discretion judicially: *Métis Nation* at para. 32; *Anoroc Holdings* at para. 63.

Duplicative Proceedings as an Abuse of Process

[39] In *Métis Nation*, Justice Rowe, writing for the Court, affirmed the well-known proposition that improper “relitigation” can constitute an abuse of process. The attempt to “relitigate” a “claim which the court has already determined” will amount to an abuse of process where it violates principles such as “judicial economy, consistency, finality and the integrity of the administration of justice”: *Métis Nation* at para. 35, citing *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 37; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at para. 41.

[40] Justice Rowe went on to consider abuse of process in the context of a “multiplicity” of ongoing proceedings, accepting the premise that it is “*prima facie* vexatious to bring two actions where one will do”: *Métis Nation* at para. 38, citing *McHenry v. Lewis* (1882), 22 Ch. D. 397 at 400. Justice Rowe explained that the mere existence of multiple ongoing proceedings involving the same parties or legal issues is not abusive *per se*, because “there may be instances where parties have a valid reason for bringing separate, but related, proceedings”, in which case a multiplicity of proceedings may serve the interests of justice: *Métis Nation* at para. 39. For this reason, the abuse of process analysis must focus on whether allowing potentially duplicative litigation to proceed would offend basic notions of “judicial economy, consistency, finality and the integrity of the administration of justice”: *Métis Nation* at para. 40.

[41] One common context in which this analysis plays out is where a plaintiff applies to add new parties to an existing action, and simultaneously commences a parallel second action against the same parties, with the intention of protecting its claim against those parties if the joinder application in the first action fails. In this context, this Court has reasoned that while it is generally offensive for a plaintiff to pursue two actions claiming the same relief against the same defendant, the doctrine of abuse of process may not preclude a plaintiff from commencing a second action for the limited purpose of preserving its right to bring a claim against the new defendant, in the event that the joinder application in the first action is ultimately

unsuccessful: *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329 at paras. 28–35 [*John A. Neilson Architects*].

[42] A similar result accrued in *Esteghamat-Ardakani v. Taherkhani*, 2023 BCCA 290. There, the wife in a divorce proceeding led the husband to believe that, despite title registered in her name, certain properties that would otherwise qualify as family property belonged to her mother. A final consent order was signed on that basis. The husband later applied to vary the final consent order, alleging that the wife perpetrated a fraud by falsely asserting that the properties belonged to her mother. At the same time, the husband brought a civil action seeking damages as a result of the wife's alleged fraud in the family proceedings, to stop the running of any applicable limitation periods, pending the determination of his application to re-open the family proceedings. The Court held that even though the husband was raising the same issues, involving the same parties, in two separate proceedings, there was no abuse of process because the husband's intent was always to proceed with an application to re-open the family proceeding "unless and until" that course of action "[became] unavailable to him". As in *John A. Neilson Architects*, the second proceeding was not an abuse of process, but "merely a protective parallel action": *Esteghamat-Ardakani* at para. 162.

[43] A litigant who chooses to initiate a potentially duplicative proceeding would be wise to "take steps as and when necessary to prevent a proper protective action from becoming abusive": *Esteghamat-Ardakani* at para. 65 (citing Justice Giaschi's comments in *Taherkhani v. Este*, 2021 BCSC 1745 at para. 38, relying in turn on *Loy-English v. Fournier*, 2018 ONSC 6212). A party who fails to proceed with appropriate caution faces a greater risk that a court might later reject the characterization of the second action as truly "protective" or find that the party's manner of proceeding was otherwise abusive of the court's process.

[44] In *John A. Neilson Architects*, the plaintiff proceeded prudently by formally advising the opposing party that the second action: (i) was filed "in an excess of caution"; (ii) would only proceed if the joinder application failed; and (iii) did not

require the filing of a responding pleading in the interim: at para. 20. Similarly, in *Esteghamat-Ardakani*, the husband took a measured approach by advising the opposing parties that: (i) the second action was filed “out of an abundance of caution”; (ii) no immediate response to the new claim was expected; and (iii) formal notice would be given if it became necessary for the husband to proceed with the second action: at para. 59.

Analysis of the Chambers Judge’s Decision

Whether Ms. Davis’s Conduct Amounted to an Abuse of Process

[45] Ms. Davis did not take a particularly cautious or restrained approach in this case. It does not appear that she formally notified the opposing parties that the second action was filed on a “protective” basis. Rather than proceeding with a second action only against the additional parties, Ms. Davis brought the second action against all of the original defendants, together with the new defendants. And, unlike the moving parties in the cases mentioned above, Ms. Davis did not seek to advance her interests through a joinder application in the first action with the express intent to fall back on the second action only if it became necessary to do so.

[46] Rather, after filing the second action, Ms. Davis discontinued the first. Viewed in this context, it may well have been open to the chambers judge to characterize the second action as a “replacement action”, rather than a “protective action”.

[47] However, even though the standard of review for an abuse of process determination is correctness, in my view, the Court is required to show deference to the findings of fact underlying the chambers judge’s decision. In the court below, 1316 Co. argued that Ms. Davis’s true purpose in filing a second claim and then registering the second CPLs was not to pursue a “protective action”, but rather to thwart 1316 Co.’s application to cancel Squamish CPL #1 under s. 252 of the *LTA*. The chambers judge considered and rejected 1316 Co.’s position, finding that Ms. Davis’s intent was for the second claim to be a “protective action”. In my view, this was a finding of fact, or mixed fact and law, which can only be revisited where palpable or overriding error is established.

[48] In 1316 Co.'s submission, the chambers judge's finding that Ms. Davis intended the second claim to be a protective action is palpably wrong. 1316 Co. says the facts demonstrate beyond peradventure that Ms. Davis filed the second action for an ulterior purpose of frustrating its pending s. 252 application. I do not agree. The chambers judge found that there was evidence in the record to support Ms. Davis's position that she had only learned of the additional defendants after filing the first action, and that she filed the second claim as a "protective action" with the intent to avoid any looming limitation argument. The issue is not what finding this Court would make with respect to Ms. Davis's intent, but whether the chambers judge's finding on intent was palpably wrong. I cannot say that it was.

[49] 1316 Co. goes on to argue that, even if one accepts the chambers judge's conclusion that the second action was not an abuse of process *per se*, the judge nonetheless erred in failing to consider whether registration of the second CPL, followed by the withdrawal of the first, amounted to an abuse of process. I find merit in this submission. The judge's finding that the second claim was filed as a "protective action" is not enough to insulate all of Ms. Davis's subsequent litigation conduct from scrutiny.

[50] In my view, three legal principles emerge from the case law discussed above that are relevant to the assessment of Ms. Davis's manner of proceeding. The first is that an abuse of process will arise where a party's resort to multiple proceedings would violate principles such as "judicial economy, consistency, finality and the integrity of the administration of justice": *Métis Nation* at para. 40. The second is that a party who initiates a potentially duplicative proceeding for a protective purpose may be expected to "take steps as and when necessary to prevent a proper protective action from becoming abusive": *Taherkhani* at para. 18. The third is that it is generally open to a party to make strategic litigation decisions, so long as that party's litigation conduct is not "so outside the range of reasonable strategic choices" as to constitute an abuse of process: *Urban Landmarks* at para. 50.

[51] Accepting the chambers judge's finding that Ms. Davis filed the second action for a protective purpose, the judge failed to consider whether it was nonetheless an abuse of process for Ms. Davis to register a second CPL against the Squamish Property and then discontinue the first action. The judge was required to consider this given that Ms. Davis's litigation strategy eliminated 1316 Co.'s crystallized right to a determination by the court of the application to cancel Squamish CPL #1.

[52] Ms. Davis points out that, to be registered against the title to a property under s. 215 of the *LTA*, a CPL must attach a copy of the petition or claim to which it relates. In her submission, this made it necessary to register Squamish CPL #2 (attaching a copy of the second claim) before discontinuing the first action and removing Squamish CPL #1.

[53] However, in my view, it was neither necessary — nor, in the circumstances of this case, appropriate — for Ms. Davis to proceed in this manner. Having protected her position by filing the second action before the passage of any looming limitation period, there was nothing compelling Ms. Davis to immediately discontinue the first action. Indeed, under the cautious approach urged by the case law, Ms. Davis could have applied to amend the pleadings in the first action to add new defendants. It would only have been necessary to fall back on the second action if the joinder application failed. There is no protective basis for a second CPL in these circumstances. Ms. Davis's claim would continue to be secured by Squamish CPL #1. In any event, there was certainly nothing compelling Ms. Davis to immediately discontinue the first action, register Squamish CPL #2, and then remove Squamish CPL #1, all prior to the determination of 1316 Co.'s pending application to cancel Squamish CPL #1 under s. 252 of the *LTA*.

[54] At the hearing of the appeal, counsel for Ms. Davis maintained that, upon filing the second action for a *bona fide* "protective" purpose, she had a right to proceed as she did thereafter, regardless of the effect of her actions on 1316 Co.'s pending s. 252(1) application. I do not agree. I find that the manner in which Ms. Davis conducted the multiple proceedings in this case disregarded and

effectively thwarted 1316 Co.'s crystallized right to a hearing on the merits of its application to cancel Squamish CPL #1, thereby offending the interests of consistency and justice described in *Métis Nation*. By choosing to proceed in the manner that she did, with intentional disregard for the opposing party's right to have its s. 252 application determined on its merits, Ms. Davis failed to take the steps required to prevent a proper protective action from becoming abusive. The manner in which Ms. Davis chose to proceed was so outside the range of reasonable strategic choices to qualify as an abuse of process.

Remedy

[55] This brings me to the question of remedy. The chambers judge concluded that even if she had found an abuse of process, cancellation of Squamish CPL #1 would not have been an appropriate and just remedy:

[40] If the registrations were an abuse of process, it is nonetheless improper to cancel a CPL where there are complex triable issues which need to be decided and a specific interest not easily cured by way of damages, as the prejudice to the losing party far outweighs the prejudice to the party who may experience an inability to complete a sale: *Grewal v. Grewal*, 2022 BCSC 784.

[41] Here, like in *Grewal*, the plaintiff alleges that one of the properties is irreplaceable and holds special interest for her. The plaintiff has provided evidence of the unique characteristics of the Squamish Property which prompted her to purchase it for development purposes. If the CPL were cancelled and the property subsequently disposed of, she would be left with a claim for damages. [1316 Co.] does not allege any prejudice other than the inherent prejudice associated with a CPL.

[42] Accordingly, I decline to exercise my discretion to cancel [Squamish CPL #2].

[Emphasis added.]

[56] It is trite law that judges have discretion to determine the appropriate remedy for an abuse of process. This includes discretion to decline to remedy an established abuse of process, where the judge finds it appropriate in all the circumstances of the case: *Anoroc Holdings* at paras. 61, 63. The chambers judge's alternative conclusion — that even if registration of Squamish CPL #2 was an abuse of process, it was not appropriate to cancel it — was an exercise of discretion to decline to remedy an abuse of process. The judge did not consider any other remedies. On

appeal, this conclusion will only be disturbed where the appellant demonstrates that it rests on an error in principle, misapprehension of the evidence, or a failure to exercise discretion judicially: *Métis Nation* at para. 32.

[57] The doctrine of abuse of process is focused on preserving the integrity of the adjudicative functions of courts, both to ensure that justice is done between the parties to a particular proceeding and to uphold and foster public confidence in the administration of justice: *Toronto (City)* at paras. 43–44. In other words, “the true concerns of abuse of process are with ‘the integrity and the coherence of the administration of justice’”: *Gonzalez v. Gonzalez*, 2016 BCCA 376 at para. 21, citing *Toronto (City)* at para. 37.

[58] In deciding whether and how to remedy an abuse of process, a judge should consider the interests underlying the doctrine, which in the case of abusive relitigation or multiple proceedings include judicial economy, consistency, finality, and the integrity of the justice system: *Elizabeth Casey Cooke Family Trust v. Dioguardi*, 2026 ONCA 85 at paras. 31–32. The court must consider these interests from the perspective of the parties to the proceeding and must also have regard to the proper administration of justice more generally.

[59] 1316 Co. argues that the judge erred in principle by failing to consider the relevant interests through the proper lens. The only case the judge cited in her remedy analysis was *Grewal v. Grewal*, 2022 BCSC 784, which was a ruling on an application to cancel a CPL based on “hardship and inconvenience” under ss. 256 to 257 of the *LTA*. On appeal, 1316 Co. submits that it was an error in principle for the judge to consult the test for cancellation of a CPL under ss. 256 to 257, instead of focusing on the interests at stake in connection with 1316 Co.’s lost opportunity to argue for cancellation based on failure to diligently pursue the claim under s. 252 of the *LTA*.

[60] I agree with 1316 Co. that the judge erred by failing to consider the prejudicial effect of Ms. Davis’s conduct through the appropriate lens. The judge’s previous error — failing to appreciate that it was an abuse of process for Ms. Davis to use her

protective action to thwart 1316 Co.'s s. 252 application by refreshing her CPL — infected the analysis of the appropriate remedy. The judge erred in principle in failing to consider the effect of Ms. Davis's abuse of process on the specific interests that s. 252 of the *LTA* is meant to protect, and the broader concerns about abusive relitigation or duplicative litigation discussed in *Métis Nation*.

[61] The judge was obliged to consider the effect of Ms. Davis's abusive conduct in depriving 1316 Co. of its right to a determination of its s. 252 application. In deciding whether to grant the relief sought by 1316 Co., the judge ought to have given serious consideration to 1316 Co.'s case for cancellation of the first CPL under s. 252. However, beyond her observation that a s. 252 application is discretionary, the judge did not undertake that analysis.

[62] Ms. Davis submits that the relevant considerations in determining whether to cancel a CPL under ss. 256 to 257 of the *LTA* are effectively the same as the considerations bearing upon the discretion to cancel a CPL under s. 252 of the *LTA*. Accordingly, Ms. Davis submits, there is no material error in the chambers judge's reliance on case law discussing the test under ss. 256 and 257. I do not agree. The two sets of provisions describe two different avenues for CPL cancellation, with distinct rationales.

[63] The determination of whether to cancel Squamish CPL #2 as a remedy to the abuse of process must be assessed through the lens of inaction in the underlying proceedings. As I have explained, on a s. 252 application, once the applicant shows that no step has been taken in the proceeding for one year, prejudice is "presumed", and the party seeking to preserve the CPL must show that "the prejudice is not serious" or is "outweighed by other factors" which would make it "unjust" to cancel it: *GMC Properties* at para. 46. In my view, the judge erred in principle in relying on the fact that 1316 Co. did not "allege any prejudice other than the inherent prejudice associated with a CPL". Where a party has a crystallized right to bring a s. 252 application, as 1316 Co. had prior to the abuse of process, the CPL is presumptively prejudicial. Thus, the judge failed to properly consider the effect of Ms. Davis's

abuse of process on the interests that s. 252 of the *LTA* was meant to protect, both from the perspective of the litigants in this case, and from the perspective of the public interest in the proper functioning of the CPL regime.

[64] I accept the chambers judge's finding that Ms. Davis's purpose in filing a second claim was to bring a *bona fide* "protective action", and not to intentionally thwart 1316 Co.'s pending s. 252 application. However, counsel for Ms. Davis confirmed in this Court that the subsequent steps of discontinuing the first action, registering Squamish CPL #2, and then causing Squamish CPL #1 to be removed from the title were all done with the full knowledge of the effect that these steps would have on 1316 Co.'s pending application to cancel Squamish CPL #1 under s. 252. I conclude that Ms. Davis proceeded in a manner that knowingly frustrated the purpose of s. 252, to the prejudice of the opposing party and the integrity of the CPL regime established under the *LTA*.

[65] I am of the view that the appropriate and just remedy is to remit the matter to the Supreme Court for reconsideration of 1316 Co.'s application to cancel Squamish CPL #2, applying the criteria that would normally be considered on an application to cancel a CPL under s. 252 of the *LTA*. If the judge hearing this application determines, on a proper application of the s. 252 framework and the merits assessment therein, that Squamish CPL #1 should have been cancelled under s. 252 of the *LTA*, then Squamish CPL #2 should accordingly be cancelled.

[66] This remedy is, in my view, a just and proportionate response, which is necessary to do justice between the parties to this particular proceeding, and to protect the integrity of the CPL regime.

Costs

[67] 1316 Co. seeks special costs of its Supreme Court application to cancel Squamish CPL #2, and of the appeal. However, in my view, the positions of the parties as set out in their factums and in oral submissions at the hearing do not leave the Court in a position to make a proper decision on costs.

[68] If 1316 Co. wishes to pursue its argument for special costs, I would direct that the parties file supplementary written submissions as follows: (i) 1316 Co. to file a supplementary submission, not to exceed eight pages, within 21 days of the release of these reasons; (ii) Ms. Davis to file a supplementary submission, not to exceed eight pages, within 14 days of the delivery of 1316 Co.'s submissions; and (iii) 1316 Co. has leave to file a reply submission, not to exceed three pages, within seven days of the delivery of Ms. Davis's submissions.

Conclusion

[69] I would allow the appeal and remit the matter to the Supreme Court, with a direction to consider 1316 Co.'s application to cancel Squamish CPL #2, as if it were an application to cancel Squamish CPL #1 under s. 252 of the *LTA*.

"The Honourable Mr. Justice Riley"

I AGREE:

"The Honourable Justice MacNaughton"

I AGREE:

"The Honourable Justice Brundrett"