

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *J. Simons Management and Development  
Ltd. v. 1365651 B.C. Ltd.*,  
2025 BCSC 1355

Date: 20250526  
Docket: H230625  
Registry: Vancouver

Between:

**J. Simons Management and Development Ltd.**

Petitioner

And

**1365651 B.C. Ltd., Jaswant Dhillon, Jaswinder Dhillon,  
CIC Equities Corp., and Tenants or Occupiers of the Subject Property**

Respondents

Before: The Honourable Mr. Justice Thomas

On Judicial Review from: Supreme Court of British Columbia,  
Associate Judge Robinson, March 27, 2025

### Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner: H.L. Oreck

Counsel for the Respondents, 1365651 B.C.  
Ltd., Jaswant Dhillon and Jaswinder Dhillon: J.R. Pollard

Counsel for the Respondent, CIC Equities  
Corp.: A.E. Redford

Place and Date of Trial/Hearing: Vancouver, B.C.  
May 20 and 26, 2025

Place and Date of Judgment: Vancouver, B.C.  
May 26, 2025

## Table of Contents

### FACTS AND SYNOPSIS

### STANDARD OF REVIEW AND CONDUCT OF APPEAL

### REASONS OF THE ASSOCIATE JUDGE

### ALLEGED ERRORS

1. Accepting the Sidhu Valuation over the Volpe Valuation
2. Marketing the Property in a Businesslike Manner

### DISPOSITION

[1] **THE COURT:** This is an appeal from the final order of Associate Judge Robinson who made an order approving the sale of the property for a price of \$1,450,000.

### Facts and Synopsis

[2] The appellants, the Jaswant and Jaswinder Dhillon (collectively, the “Dhillons”), and 1365651 B.C. Ltd., are the owners of the property and three adjoining properties.

[3] The petitioner/respondent, J. Simons Management and Development Ltd. (“J. Simons”), is the holder of the first mortgage on the property.

[4] J. Simons obtained an order *nisi* of foreclosure on November 23, 2023, with a six-month redemption period. The current balance on the first mortgage is approximately \$1,360,000.

[5] The respondent, CIC Equities Corp. (“CIC”), is the holder of a second mortgage on the property. CIC commenced a separate foreclosure proceeding and obtained an order *nisi* of foreclosure on December 14, 2023, with a six-month redemption period. The current balance on this mortgage is \$260,000.

[6] Neither mortgage was redeemed. On March 28, 2024, CIC obtained an order for a conduct of sale effective April 19, 2024. The property was listed on May 16, 2024, at \$1,616,000; reduced to \$1,490,000 on June 27th; and \$1,450,000 on September 9, 2024.

[7] On June 9, 2024, an offer was made for \$1,275,000. After a number of negotiations and counteroffers, an offer of \$1,450,000 was accepted and applied for approval of sale returnable on September 19, 2024. The appellants opposed the sale on the basis that they would be able to redeem the first and second mortgages within a reasonable period.

[8] By consent on October 10, 2024, the parties agreed to dismiss the application for approval and to stay the conduct of sale order to November 28, 2024, to allow the appellants time to redeem the mortgages. The appellants were unable to redeem the mortgages and on December 20, 2024, the property was once again put up for sale.

[9] On February 24, 2025, the previous potential purchaser provided a further offer of \$1,380,000. The offer was negotiated back to the earlier offer of \$1,450,000. CIC brought a separate application for sale returnable on March 27, 2025.

[10] On March 28, 2025, Associate Justice Robinson approved the sale with a completion date of April 17, 2025. The appellants obtained a stay on April 16, 2025. The hearing of this appeal was adjourned on two occasions due to lack of judicial resources. The stay was extended to enable the appeal to be heard.

### **Standard of Review and Conduct of Appeal**

[11] The parties agreed that the standard of review from a final order of an Associate Judge is a rehearing on the merits, or trial *de novo*, on a standard of correctness. This proposition flows from *Abermin Corp. v. Granges Exploration*, 1990 CanLII 1352 (B.C.S.C.), 45 B.C.L.R. (2d) 188 [*Abermin*], as set out in *First Circle Mortgage Investment Corp. v. Movassaghi*, 2024 BCSC 2358 at paras. 22–23 [*First Circle*]:

[22] In *Tri City Capital Corp. v. 0942317 B.C. Ltd.*, 2020 BCSC 2079, the court reasoned:

[58] In foreclosure proceedings, an order approving sale is a final order: *Canadian Western Bank v. 353806 B.C. Ltd.*, 2017 BCSC 1072 at para. 13. An appeal from a master's order approving sale is, therefore, a rehearing on the merits on a standard of correctness: *Tekamar Mortgage Fund Ltd. v. Hegel*, 2018 BCSC 1369 at para. 19; *Canadian Western Bank* at para. 11.

[59] In the absence of an order permitting fresh evidence, the rehearing proceeds on the record that was before the master:

*Canadian Western Bank* at para. 11. There is no fresh evidence in this case.

[60] On the rehearing, the judge may substitute their own judgment for that of the master, however, given the expertise of masters in foreclosure proceedings, the judge should pay some deference to the master's decision: *Tekamar Mortgage Fund Ltd.* at paras. 19-20.

[23] Regarding the deference shown to the decisions of associate judges in such cases, I note that the court in *Kokanee Mortgage MIC Ltd. v. 669655 B.C. Ltd.*, 2014 BCSC 458, at para. 15, recognized that masters (and now associate judges) hear foreclosure proceedings much more frequently than do Justices of this court. As such, the court in *Kokanee* also reasoned that associate judges have acquired a level of experience and expertise "that should not be ignored or quickly discounted." I agree.

[12] Although a trial *de novo* using a standard of correctness is dictated by *Abermin*, in *First Circle*, our court recognized that despite this, some deference must be given to the findings made by the Associate Judge.

[13] At the start of the hearing, I advised the parties that I had concerns about whether a trial *de novo* and correctness was the right procedure and standard of review, respectively, given the comments of Justice Fenlon in *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holding Ltd.*, 2011 BCSC 999 at paras. 10–21 [*Ralph's Auto Supply*], and *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*]. I asked for submissions as to whether the correct standard was set out in *Housen v. Nikolaisen*, 2002 SCC 33 [*Housen*], as implied in *Ralph's Auto Supply*.

[14] The appellant indicated that he was ready to proceed with the appeal despite not expecting concerns to be raised with respect to the standard of review or hearing as opposed to trial *de novo*. He had already formulated the appeal around two errors allegedly made by the Associate Justice. The appeal was formulated in this manner to address the fact that some level of deference has to be given to the Associate Judge's findings.

[15] I invited the parties to submit written submissions on the appropriate standard of review after the hearing, but they were content to make oral submissions during the hearing.

[16] The essence of the parties' submissions on *Vavilov* was that *Vavilov* does not mention appeals and its comments were only applicable to judicial reviews

from administrative tribunals. With respect, I am unable to accept those submissions.

[17] In my view, Justice Stephens accurately set out how *Vavilov* may impact decisions subject to appeal in this court in *Zemtsova v. Shevalev Estate*, 2023 BCSC 1375:

[64] Prior to *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], the standard of review on an appeal of an arbitration award pursuant to s. 31(1) of the *Arbitration Act* was reasonableness, unless the question was one that would attract the correctness standard (such as constitutional questions or questions of law of central importance to the legal system as a whole and outside the adjudicator’s expertise): *Lekakis* at para. 20. The reasonableness standard flowed from two cases: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 102–106 [*Sattva*]; and *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32 at paras. 74–76 [*Teal*].

[65] Similarly, prior to *Vavilov*, the standard of review for family law arbitration appeals was also reasonableness: *McMillan v. McMillan*, 2015 BCSC 2177 at para. 44 [*McMillan SC*], aff’d 2016 BCCA 441.

[66] In *Vavilov*, the Supreme Court of Canada established new governing principles to judicial review of “administrative decision[s]”: para. 2. One of them is that where the legislature “has provided a statutory appeal mechanism from an administrative decision to a court”, that signals “intent that appellate standards apply”, which rebuts the presumption of reasonableness: para. 17. Where the legislature has provided for an appeal to a court, this indicates the legislature intends there to be “appellate oversight and ... that it expects the court to scrutinize such administrative decisions on an appellate basis” and that “intention should be given effect”: *Vavilov* at para. 36. This means review for correctness on questions of law and palpable and overriding error for questions of fact and mixed law and fact: *Lekakis* at para. 21, citing *Vavilov* at para. 37.

[67] *Vavilov* dealt with review of “administrative decision[s]”, not arbitration awards, and did not refer to *Sattva* or *Teal*. So, it left unresolved the question of whether *Vavilov* principles of judicial review of administrative action extend to arbitration appeals: *Lekakis* at para. 22. In *Wastech*, a majority of the Supreme Court of Canada found it unnecessary to decide this question (para. 45), while a minority of the Court stated that *Vavilov* has displaced the reasoning in *Sattva* and *Teal*, and that appellate standards should apply on an appeal from a commercial arbitration award under s.31 of the *Arbitration Act* (paras. 118–121).

[68] In several other post-*Vavilov* decisions, this Court and the Court of Appeal have declined to decide the question of the standard of review under the *Arbitration Act* because determination of the issue would not have altered the result:

- a) *Nolin v. Ramirez*, 2020 BCCA 274 at paras. 32–39;
- b) *Johnston v. Octaform Inc.*, 2021 BCSC 536 at paras. 46–49;

- c) *J.E.A. v. V.J.A.*, 2022 BCSC 171 at paras. 46–47, aff'd *Anins v. Anins*, 2022 BCCA 441, leave to appeal to SCC ref'd, 40612 (20 July 2023);
- d) *Escape 101 Ventures Inc. v. March of Dimes Canada*, 2022 BCCA 294 at paras. 97–101, leave to appeal to SCC ref'd, 40439 (13 April 2023);
- e) *A.E.E. v. M.T.E.*, 2022 BCSC 1534 at paras. 13–19;
- f) *Spirit Bay Developments Limited Partnership v. Scala Developments Consultants Ltd.*, 2022 BCCA 407 at paras. 52–55 (left the determination of this question to a case where the outcome of the appeal will be affected, despite the chambers judges' determination) [*Spirit Bay CA*], aff'g 2021 BCSC 1415 at paras. 58–59, 121 [*Spirit Bay SC*];
- g) *Mann v. Grewal*, 2023 BCCA 88 at paras. 34–37, aff'g *Grewal v. Mann*, 2022 BCSC 555 at paras. 10–13; and
- h) *1550 Alberni Limited Partnership v. Northwest Community Enterprises Ltd.*, 2023 BCCA 141 at para. 77 (declined to decide the standard of review because it was not at issue), aff'g 2021 BCSC 2053 [*1550 Alberni*].

See also *Ontario First Nations (2008) Limited Partnership v. Ontario Lottery and Gaming Corporation*, 2021 ONCA 592 at para. 37 (referred to in *Escape 101 Ventures Inc.* at para. 99).

[69] Determining the applicable standard of review at times has been found to be not necessary. However, in different arbitral contexts and different jurisdictions, courts have, post-*Vavilov*, opined on the issue:

- a) *Northland Utilities (NWT) Limited v. Hay River (Town of)*, 2021 NWTCA 1 at paras. 36–44 (appellate standards apply to a contractual arbitration: correctness for questions of law; palpable and overriding error for questions of mixed fact and law) [*Northland Utilities*];
- b) *Iululemon* at paras. 34–47 (correctness applies in international commercial arbitration appeals), rev'g 2021 BCSC 15 at paras. 20–27 (chambers judge erred in relying on *Vavilov* and *Sattva*); and
- c) *Christie Building Holding Company, Limited v. Shelter Canadian Properties Limited*, 2022 MBKB 239 at paras. 80–95 (reasonableness, pursuant to *Sattva* and *Teal*, still applies despite *Vavilov* and *Wastech*).

[70] *Vavilov*, *Sattva*, and *Teal* did not deal with the standard of review of a family law arbitration appeal under s. 31(3.1).

[71] *Nolin* articulates the two potential post-*Vavilov* standard of review outcomes to a s. 31(3.1) family law arbitration appeal—either reasonableness or appellate standards (correctness on legal issues, deference on mixed law and fact):

[37] ... if the statutory appeal mechanism contemplated in *Vavilov* captures s. 31(3.1) of the *Arbitration Act*, the standard of review is palpable and overriding error for questions of mixed fact and law where the legal principle is not readily extricable: *Housen v.*

*Nikolaisen*, 2002 SCC 33 at paras. 26–37. If *Vavilov* does not apply, the standard of review is reasonableness: see *McMillan v. McMillan*, 2015 BCSC 2177, aff'd 2016 BCCA 441, where Punnett J. relies on *Sattva*.

[72] In *McMillan SC*—pre-*Vavilov*—Justice Punnett had held that the reasonableness standard applied to a family law arbitration appeal pursuant to s. 31(3.1) of the *Arbitration Act*: paras. 38–44. But *Nolin* calls into question whether *McMillan SC* is displaced by *Vavilov*, noting that the issue remains “percolating in courts across the country”: *Nolin* at paras. 35–37. *Nolin* signals that whether *McMillan SC* is currently governing authority for the standard of review in s. 31(3.1) appeals remains an open question.

[18] Justice Stephens' comments, although directed towards an appeal from an arbitration agreement, are directly applicable to an appeal from an Associate Judge set out in R. 23 of the *Supreme Court Civil Rules*.

[19] I find the principles put forward for a *Housen* standard of review governing an appeal from final orders of an Associate Justice set out in *Ralph's Auto Supply* to be compelling.

[20] I note the principles of vertical *stare decisis* governing Justice Fenlon's decision in *Ralph's Auto Supply* have somewhat loosened since 2011 given *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 42–44; *Canada (Attorney General) v. Confédération des syndicats nationaux*, 2014 SCC 49 at para. 24; and *R. v. Comeau*, 2018 SCC 15 at paras. 34–37.

[21] In applying the principles set out in *Vavilov*, I note the following:

1. The legislator provided a specific right of appeal to this court in R. 23 of the *Supreme Court Civil Rules*. In my view, this signals a statutory right of appeal to this court, which indicates that the legislator clearly intended that the appellate standard should apply to these decisions.
2. The review of the role of the Associate Judge set out in *Ralph's Auto Supply* equally apply to this situation; and
3. The common law has evolved prior to that law to impact the test in *Abermin* such that some deference to Associate Judge's findings must be made in these types of appeals, that is, the approval of sales.

[22] In my view, the law governing appeals from an order of an Associate Judge has been significantly changed by *Vavilov*. As such, I am of the view that the *Housen* standard of review should apply and that a trial *de novo* is no longer necessary.

[23] If I am wrong, I fail to see how a standard of correctness which incorporates providing appropriate deference to the findings of an Associate Judge results in a practical difference from the *Housen* standard of review. This is reflected in the approach taken by the appellant, which focussed on the specific errors made by the Associate Judge and why he argued that the Associate Judge's decision was in error, as opposed to conducting a true trial *de novo*.

[24] The standard of review on appeal was summarized in *R. v. Carey*, 2023 BCSC 1477:

[11] The standard of review on appeal varies depending on the nature of the question under appeal. *Housen v. Nikolaisen*, 2002 SCC 33, identifies four types of questions on appeal and provides a summary of the standards of review relevant to each. I will summarize the principles from *Housen*:

- a) Questions of law are reviewed on the standard of correctness giving the appeal court broad scope to review matters of law;
- b) Questions of fact are reviewed on a deferential standard.

The appeal court may not reverse findings of fact unless the trial judge made a "palpable and overriding error".

- c) Inferences of fact are reviewed on the deferential standard of "palpable and overriding error". However, the appellate review may involve a review of the underlying facts supporting the inference as well as the inference drawing process itself; and
- d) Questions of mixed law and fact involve the application of a legal standard to a set of facts. Where an error is attributed to the application of an incorrect legal standard or a failure to consider an element of a legal test, the error may be characterized as an error of law to which the standard of correctness applies. However, where the error involves an interpretation of the evidence it is a question of fact and should be reversed only if the trial judge made a palpable and overriding error.

### **Reasons of the Associate Judge**

[25] The following are the reasons given by the Associate Judge:

[1] THE COURT: This is an application that has been brought by CIC Equities Corp. ("CIC") in the context of a foreclosure proceeding in which CIC is a respondent.

[2] CIC brings this application seeking an order approving an offer for purchase of the property which is the subject of the foreclosure. The offer for was received pursuant to an order made on March 28, 2024, giving CIC conduct of sale with respect to the subject property.

[3] The offer would have the property acquired for a purchase price of \$1.45 million and was made by Chetan Sharma and Princejeet Singh Rooprai on February 24, 2025.

[4] The respondents, Jaswant Dhillon and Jaswinder Dhillon, did not appear at the hearing of this application, but their interests were represented by their son. Despite not having filed any Response, I nevertheless allowed him to make submissions during which time he made clear that they oppose the order sought. The opposition was premised on the assertion that Mr. and Mrs. Dhillon disagree that \$1.45 million reflects fair market value for this property and also on the basis that that offer was not the product of reasonable, provident marketing efforts.

[5] Mr. and Mrs. Dhillon relied on an appraisal dated October 6, 2024 prepared by John Volpe from Pacific West Appraisals. That appraisal suggests the value of this property is \$2.4 million. That is to be compared against an appraisal on which the applicant relies. The Applicant's appraisal was prepared by Amandeep Singh Sidhu and dated February 27, 2025. Mr. Sidhu opines that the value of the property is \$1.45 million, which aligns perfectly with the amount of the offer received in respect of this property.

[6] Mr. and Mrs. Dhillon argue that the appraisal of Mr. Volpe should be preferred since, it was argued, the appraisal report of Amandeep Singh Sidhu does not factor in "the highest and best use" for the property and is limited to the value of this property simply as a standalone residential unit. On the other hand, Mr. Volpe's appraisal is premised on the property's highest and best use as part of potential redevelopment or an assembly with other lots in proximity to it.

[7] Mr. and Mrs. Dhillon, through their son, represented to the court that there is an intention to seek redevelopment of the property. Intentions are great, but until those intentions manifest into action, they are not a basis on which to ascribe value to a property. Significant time has passed in this proceeding, including roughly one year since the order for conduct for sale has been granted. Despite that, no steps have been taken in furtherance of this proposed redevelopment of the property.

[8] I am left with a property that has been exposed to the market for a significant period of time and left with an offer of \$1.45 million being the best offer in respect of the property.

[9] Moreover, there is an appraisal which indicates the value of this property as being \$1.45 million. I am not going to regard that as merely a coincidence. It appears that the appraisal accurately assessed the value of the property in the opinion of the person conducting the appraisal.

[10] Appraisals are ultimately helpful and valuable to the court, but they are secondary in terms of their value when measured against what persons are prepared to pay for the property. Here, having regard for the length of time the property has been exposed to the market and the marketing efforts undertaken to sell the property, I am satisfied \$1.45 million reflects fair market value as of this date as a result of provident marketing efforts.

[11] The sale should be approved and will be approved, to the purchasers Chetan Sharma and Princejeet Singh Roprai in the amount of \$1.45 million in accordance with the contract attached to the affidavit of Kim Lin and filed as part of this application as Exhibit B.

### **Alleged Errors**

[26] In order to obtain approval for sale, the mortgagee must go about finding a buyer in a businesslike manner and the court must be satisfied that the proposed sale is provident in all circumstances: *Mission Creek Mortgage Ltd. v. Angleland Holdings Inc.*, 2013 BCCA 281 at para. 40.

[27] The appellant says that Associate Judge Robinson made the following errors:

1. Accepting the Sidhu valuation of the property over the other appraisals, including relying on the efforts made by the appellant in attempting to develop the property as being determinative of the potential development of the property; and
2. Determining that the property had been marketed in a businesslike manner.

#### **1. Accepting the Sidhu Valuation over the Volpe Valuation**

[28] The property currently has residential premises that utilizes less than 2.0 Floor Area Ratio ("FAR"). The community plan for the area says that the City council was looking to develop properties with a higher FAR. The property has a 2.0 FAR for residential use, and a 2.2 FAR for mixed residential and commercial use, and even higher if it were to be combined with adjacent properties.

[29] The Volpe valuation examines nine comparable properties and concludes that the estimated market value for the subject property is \$2,400,000 based on the highest and best use of plotting property with neighbouring lots and rezoning the sites for multi-family use.

[30] However, only two of the comparables in the Volpe valuation have an FAR of 2.0 or less, indicating that the appraisal was primarily based on property being used in a land assembly development. If one were to base the appraisal value on properties with similar FAR for the individual properties, the estimated value in the

Volpe valuation would be approximately \$1,690,600, which is close to the initial asking price of \$1,616,000.

[31] The Sidhu valuation excludes the possibility of a multi-property development and values the property at \$1,450,000. The issue is whether the possibility of a multi-property development is speculative or more than speculative: see *Kumagai v. Campbell Estate*, 2018 BCCA 24 at paras. 61–62.

[32] In this case, the adjoining properties were not for sale with the subject property. In fact, the owners of the adjacent properties, the Dhillons, have been unable to develop the property with the three adjacent properties. Although there was the ability to theoretically obtain zoning for a multi-unit property, this was not a certainty and would require an application and approval by the City.

[33] The appellant says that the Associate Judge erred in considering the inability of the Dhillons to move forward the development of the property with the group of adjacent properties, as evidenced in the circumstances of this case, that developing the property in a land amalgamation with other properties was speculative. He says that *Kumagai* at para. 65 stands for the proposition that this is an error of law.

[34] I reject that *Kumagai* sets out a rigid legal principle prohibiting the use of this type of evidence. In my view, this is a question of mixed fact and law requiring interpretation of the evidence. Therefore, it is reversible only if the Associate Judge makes a palpable and overriding error.

[35] The facts of this case are much different than those of *Kumagai*. In this case, the Dhillons were strongly motivated to develop the property as part of an amalgamation but were unable to do so over a period of time.

[36] In my view, accepting the Dhillons' efforts to develop a property in conjunction with the adjacent properties was an appropriate fact in the circumstances of this case in supporting an inference that the development of the property in conjunction with the other adjacent properties was speculative.

[37] The appellant says the judge erred in relying on the Sidhu valuation because it assumed no development potential for the building. The only appraisal

which accounted for developmental potential was the Volpe valuation. They rely on *Lanyard Investments Inc. v. 3771 No. 3 Road Inc.*, 2024 BCSC 1664 [*Lanyard*]:

[22] The court is not an expert on property valuation. As such, it is not in a position to determine if one comparable is a more accurate comparable than another, or whether or not the appraiser has applied the proper discount or gross up to that comparable to bring it in line with the subject property. That is precisely the role of the appraiser. It would be the exceptional case in which the court could adequately critique a report based on a preference over comparables or adjustments to such comparables that one or another appraiser has used, using their skill and expertise, to form their opinions as to value.

[38] In my view, para. 22 of *Lanyard* must be read in conjunction with paras. 32-35, which provide appropriate context for the comments set out in para. 22.

[32] Thus, other than the inclusion of the holding value of the lease, there is no obvious difference in the assumptions. I think it goes without saying that reasonable minds may differ, and certainly appraisers can often differ in their views as to value with, as noted, the determination as to value ultimately being made by the market.

[33] In this case, the swing is considerable. The difference between \$120 and \$160 as the price of per-billable area is significant and largely unexplained. The Colliers report, as commissioned by Amber, appears to be the one that essentially splits the difference at \$145.

[34] In this case, where there are not assumptions being made which can be established on the evidence to be obviously erroneous, the court must achieve a form of rough justice in assessing the evidence of risk, having regard to the “rule of thumb” that Amber should seek conduct of sale in the *Lanyard Proceedings* at this point, but that the redemption period in its own proceedings should be six months absent evidence risk.

[35] Although not in any way a scientific method, using a mid way point of the various parameters used by the experts is appropriate in the circumstances of this case. Given that the appraisals are all educated predictors of future value based on assumptions, none of which are obviously erroneously (except as to the addition of the leave value) it is reasonable to proceed on the basis that the final reality will be somewhere in the middle of those conclusions.

[39] Based on para. 22, the appellant says the court should not independently assess the appropriateness of the comparables in the Volpe valuation but should defer to the discretion exercised by the expert appraiser in selecting appropriate comparables.

[40] In my view, the court retains a discretion to review and assess expert opinion evidence based on assumptions, logic, the factual basis of the opinion,

and the facts in the case.

[41] Therefore, the determination of which appraisal is superior is a determination of fact, or at best, of mixed fact and law requiring an interpretation of the evidence. It is reversible only if the Associate Judge made a palpable and overriding error.

[42] The essential implicit finding made by the Associate Judge is that the development of the property and amalgamation of the adjacent properties was speculative and therefore not the highest and best use of the property.

[43] There are numerous facts supporting this finding including: (1) the failure of the Dhillons to develop the property as an amalgamation; (2) the fact the property was sold on its own, not with adjacent properties; and (3) the fact that the development of the property as an amalgamated group would require municipal approval.

[44] Therefore, I find the Associate Judge created no palpable and overriding error on the issues. Given the facts of this case, it was open to him to analyze the factual basis underlying the Volpe valuation and prefer the Sidhu valuation.

## **2. Marketing the Property in a Businesslike Manner**

[45] The appellant says marketing in a businesslike manner requires that the marketing focus on the best and highest use of the property. They rely on *Kokanee Mortgage MIC Ltd. v. 669655 B.C. Ltd.*, 2014 BCSC 458 at paras. 24–27; and *366671 British Columbia Ltd. v. Arbutus Bay Estates Ltd.*, 2021 BCSC 884 at para. 25.

[46] I have already upheld the Associate Judge's implicit determination that the property's development in an amalgamation with the adjacent properties was speculative. The appellant says the property was marketed as a residential property and did not specifically market the property to developers who might develop the property to the highest and best single use as an individual property.

[47] It does not appear that specialized marketing to developers for a property that could be individually developed was specifically argued before the Associate Judge, that is, the individual development potential of the property outside of the

development potential of the property in a land amalgamation with adjacent properties (which form the basis of the Volpe valuation), needed to be specifically marketed to developers outside of the general marketing for people interested in purchasing residential property.

[48] The realtor marketed the property on the MLS and a full network. It received considerable exposure, yet produced only one potential buyer. The market sales in the area indicate that there was not a large demand for similar properties. There was no evidence that specific marketing efforts needed to be made to developers outside of these channels for this type of individual property. It is unclear to me on this evidence why it would be necessary to do so.

[49] Although the lenders have the onus of proof in this application, in my view, in these circumstances it was not a palpable and overriding error for the Associate Judge to conclude that the realtor's marketing of the property to anyone looking to purchase individual residential properties through the MLS and other marketing networks was performed in a businesslike manner. I see no basis to conclude that there were efforts needed to individually market this property to specific developers.

### **Disposition**

[50] Having rejected the appellant's submission that the Associate Judge committed two errors in his assessment of the property, in my view, the Associate Judge was correct in ordering the sale of the property. The appeal is dismissed. The stay is set aside.

“Thomas J.”