COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *1180264 B.C. Ltd. v. CCM Investment Group Ltd.,* 2026 BCCA 25

Date: 20260123
Docket: CA50874

Between:

1180264 B.C. Ltd.

Appellant
(Respondent)

And

CCM Investment Group Ltd.

Respondent
(Claimant)

Before: The Honourable Justice Riley
(In Chambers)

On appeal from: An order of an arbitrator under the *Arbitration Act*, S.B.C. 2020, c. 2, dated July 4, 2025 (*CCM Investment Group Ltd. v. 1180264 B.C. Ltd.*).

Counsel for the Appellant: N.J. Muirhead
A. Levine

Counsel for the Respondent: C.E. Chisholm
A.J.A. Fortin

Place and Date of Hearing: Vancouver, British Columbia
December 11, 2025

Place and Date of Judgment: Vancouver, British Columbia
January 23, 2026

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Summary:

The applicant seeks leave to appeal an arbitration award pursuant to s. 59 of the Arbitration Act, S.B.C. 2020, c. 2. The arbitration proceeding concerned a long-term parking lease under which the respondent property developer leased all parking stalls and bike storage areas in its strata complex to the applicant for a term of 999 years. A dispute arose over whether the lease required the applicant to execute assignments of parking stalls to specific strata units to facilitate the respondent's marketing and sale of those units. The parties submitted the dispute to arbitration. The arbitrator held in favour of the respondent's interpretation of the lease. He ordered the applicant to execute the assignments and to pay the respondent $30,000 in damages. The applicant seeks leave to appeal on four proposed grounds. Held: Application dismissed. When properly framed, none of the applicant's proposed grounds of appeal raise a question of law. There is no basis upon which to grant leave to appeal.

Reasons for Judgment of the Honourable Justice Riley:

Introduction

[1] The applicant, 1180264 B.C. Ltd. ("118 Co."), applies for leave to appeal from an arbitral award made in favour of the respondent, CCM Investment Group Ltd. ("CCM"). The arbitration proceedings related to a long-term parking lease under which CCM, the owner-developer of a strata-titled building, was the landlord and 118 Co., a company incorporated and controlled by one of CCM's directors, was the tenant.

[2] The arbitration focused on 118 Co.'s refusal to assign parking stalls to specific strata units under a particular term of the lease. 118 Co.'s refusal to execute the assignments was based on its position that under the relevant term of the lease, its obligation to assign a parking stall to a strata unit arose only where CCM had successfully sold the strata unit to a purchaser for a specified price.

[3] The arbitrator rejected 118 Co.'s position, found in favour of CCM, and made an order of specific performance requiring 118 Co. to execute a number of parking stall assignments pursuant to CCM's written demand under the lease. The arbitrator also ordered 118 Co. to pay $30,000 in damages for the loss of profit CCM incurred on the sale of a unit listed without an assigned parking stall.

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[4] 118 Co. advances four proposed grounds of appeal. It says the arbitrator erred in law by: (i) overlooking or disregarding key elements of the relevant term of the lease; (ii) effectively rewriting the lease to create a different bargain, thereby exceeding his jurisdiction; (iii) misapprehending evidence relating to causation and valuation of CCM's damages; and (iv) relying on inadmissible lay opinion evidence in valuing CCM's damages. 118 Co. submits that leave should be granted due to the significance of the result to the parties, given the magnitude of the commercial rights at stake. 118 Co. also says that some of the issues raised are of general importance to the holders of long-term parking leases in strata developments.

[5] CCM opposes leave, on the basis that none of the proposed grounds of appeal raise questions of law. CCM says that the other statutory criteria for leave to appeal are also not satisfied. CCM says the mere fact that the issues raised are important to the parties does not justify granting leave, because this is a characteristic present in almost all legal disputes. CCM submits that the case-specific nature of the arbitrator's decision and the narrow scope of appellate intervention in commercial arbitration favour denial of leave to appeal.

Factual Background

[6] CCM was the owner-developer of a strata complex called the Grand at Lansdowne, located on Cooney Road, in Richmond, British Columbia. CCM still owns a number of unsold residential strata units in the complex.

[7] 118 Co. is a company controlled by one of CCM's four directors.

[8] On 21 September 2018 — the same day it was incorporated — 118 Co. entered a 999-year lease with CCM under which 118 Co. leased all parking stalls and bike storage areas in the strata complex for a one-time rent payment of $10. (For ease of reference I will refer to the parking stalls and bike storage areas collectively as parking stalls.) Under the lease, 118 Co. had the right to rent and assign parking stalls, subject to CCM's right to demand that 118 Co. grant assignments of specific parking stalls under term 1.5(b) — a term which became the focal point of the arbitration proceedings.

[9] Term 1.5(b) reads as follows:

> … the Tenant will, as and when directed to do so by the Owner, grant partial assignments of this Lease, in respect of such Stalls and/or Bike Lockers as may be designated by the Owner, to the purchasers of strata lots within the Development in exchange for the payment of certain amounts agreed to by the Owner and such purchasers, and that such amounts will be paid to, and be the absolute property of, the Owner; …

[10] The dispute between the two companies arose when CCM demanded that 118 Co. assign parking stalls to several of CCM's unsold strata units to facilitate CCM's marketing and sale of those units.

[11] CCM issued the direction for assignments on 12 July 2024. The direction was sent to 118 Co. via letter, enclosing assignment forms for seven separate strata units. 118 Co. did not respond. CCM issued a follow-up request on 12 August 2024. It received no response.

[12] 118 Co.'s refusal to execute the assignments was based on its position that its obligation to grant an assignment for any particular strata unit under term 1.5(b) was only engaged where CCM had agreed to sell the unit to an identifiable purchaser for a specified price.

[13] On 20 September 2024, CCM initiated arbitration to resolve the dispute over the interpretation of term 1.5(b). CCM also claimed monetary damages based on alleged costs and losses it attributed to 118 Co.'s refusal to assign parking stalls for two of CCM's unsold strata units: Unit 1305 and Unit 517. During arbitration, CCM presented evidence from two real estate agents involved in marketing these units, Mr. Dong and Mr. Zheng.

[14] With respect to Unit 1305, the real estate agent was Mr. Dong. His evidence was that fair market value for this unit was between $650,000 and $700,000, but that the unit was ultimately sold for $600,000, at least in part because of CCM's inability to provide assurance of an assigned parking stall. Mr. Dong also gave evidence that an assigned parking stall usually adds $20,000 to $30,000 to the value of a condominium unit in the local market. Unit 1305 was ultimately sold on 15

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September 2024, for $600,000, inclusive of GST. The sale agreement included assignment of a parking stall. To meet its obligations under that sale agreement, CCM arranged to have the parking stall assigned to its shareholder's unit re-assigned to Unit 1305. CCM sought monetary damages for the lost profit on the sale of Unit 1305.

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[15] With respect to Unit 517, the listing agent was Mr. Zheng. He testified that he was engaged on 10 February 2025, and that he listed Unit 517 for sale at a price of $818,000. Mr. Zheng's evidence was that the absence of a parking stall was a "significant deterrent for prospective purchasers". He gave evidence that a parking stall adds $50,000 to the value of a condominium unit in the local market. As of the date of Mr. Zheng's witness statement, Unit 517 had been on the market for more than one month and had not sold. CCM took the position that this was due to the inability to assure prospective buyers that the unit would include an assigned parking stall. CCM sought monetary damages for carrying costs of the unit.

The Arbitrator's Decision

[16] In a decision given on 4 July 2025, the arbitrator found that 118 Co. breached term 1.5(b) of the lease, by failing to execute assignments for specific strata units at CCM's request (the "Decision").

[17] The arbitrator began his analysis by instructing himself that the terms of the lease had to be interpreted "through the lens" of "commercial reasonableness", "business efficacy", and the "objective intentions" of the parties: Decision at para. 111. Undefined terms in a contract "should be given their plain and ordinary meaning, interpreted in light of the entire agreement and the commercial context in which it was made": Decision at para. 111, citing *Group Eight Investments Ltd. v. Taddei*, 2005 BCCA 489. He also acknowledged 118 Co.'s submission that an agreement cannot be read to create "obligations or entitlements not expressly bargained for", because it is not the role of a court or tribunal to "rewrite" a contract or to "relieve a party from the consequences of a commercially improvident

agreement”: Decision at para. 112, citing *Pacific National Investments Ltd. v. Victoria (City)*, 2004 SCC 75.

[18] With those general principles in mind, the arbitrator turned his attention to interpreting term 1.5(b) of the lease. He instructed himself to consider not only the text of the agreement, but also the factual matrix and the surrounding commercial context, in order to ascertain the objective intentions of the parties at the time of contracting: Decision at para. 120, citing *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*].

[19] The arbitrator reasoned that the text of term 1.5(b) could support either party’s interpretation. On the one hand, it could be read as providing that CCM could only demand assignment of a parking stall once the purchaser was identified. On the other hand, the phrase “as and when directed” could be read as requiring 118 Co. to effect an assignment “when directed, and not only after certain preconditions are met”. The arbitrator took the view that it was the direction from CCM that triggered 118 Co.’s obligation to make an assignment, and the phrase “to the purchasers of strata lots” was properly read “as describing the intended beneficiary, rather than a precondition to execution”: Decision at para. 121.

[20] The arbitrator drew further support for this interpretation from the form of assignment, attached as a schedule to the lease, expressly stating that the assignment would “not become effective unless and until the assignee completed the purchase of the relevant strata lot”: Decision at para. 122. In the arbitrator’s view, requiring execution of the assignment prior to a sale would not subject 118 Co. to any “premature divestment of its leasehold rights” because, if the purchase did not go through, the related assignment would not take effect: Decision at para. 123.

[21] The arbitrator reasoned that this interpretation was consistent with the factual matrix and the commercial context in which the lease was negotiated. He observed that developers often structure parking arrangements through long-term leases to related entities as a way of retaining flexibility to assign parking rights during unit sales, as opposed to designating parking stalls as limited common property in the

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strata plan for the benefit of designated strata units: Decision at para. 125. The arbitrator inferred that CCM had opted for a “lease-based” arrangement for greater flexibility, rather than designating parking stalls as limited common property in the strata plan, which would tie them “irrevocably to particular strata units”. In the arbitrator’s view, interpreting term 1.5(b) to require the execution of a purchase agreement before a parking stall assignment could be obtained would unreasonably limit the intended flexibility of the arrangement: Decision at para. 126.

[22] On this reasoning, the arbitrator reached the following conclusion with respect to the interpretation of term 1.5(b):

> [128] In summary, I find that the better interpretation of section 1.5(b) is that [118 Co.] is required to execute partial assignments of the Lease when directed by [CCM], even if a purchase agreement has not yet been finalized, provided the assignment form is in accordance with Schedule “B”, which stipulates that it will only take effect upon completion of the sale of the relevant strata lot. This reading is supported by the text of the Lease, the limited factual matrix, and the surrounding commercial context. It also gives the provision a commercially reasonable meaning that accords with the Lease as a whole.

[23] The arbitrator went on to find that 118 Co. breached its obligation under term 1.5(b) by failing to execute the assignments when CCM directed it to do so: Decision at paras. 129–134.

[24] By way of remedy, the arbitrator made an order of specific performance, requiring 118 Co. to execute and deliver the assignment forms that accompanied CCM’s formal direction dated 12 July 2024: Decision at paras. 136–138.

[25] The arbitrator also awarded CCM damages of $30,000, for the loss of profit on the sale of Unit 1305: Decision at paras. 139–141.

[26] Earlier in his reasons, the arbitrator rejected 118 Co.’s argument (advanced in closing submissions) that Mr. Dong’s testimony concerning fair market value of Unit 1305 was inadmissible opinion evidence. The arbitrator noted that 118 Co. did not object to the evidence when it was tendered, as contemplated in the rules of procedure agreed to by the parties, such that CCM was deprived of the ability to

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obtain and present other evidence on the valuation issue. The arbitrator reasoned that Mr. Dong testified "in his capacity as the realtor involved in the transaction at issue", providing "factual evidence" as a "participant in the events". The arbitrator also observed that the strict rules of evidence are not binding in arbitrations, and the rule against opinion evidence from lay witnesses was "less compelling" in the context of arbitration proceedings: Decision at paras. 93–101.

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[27] In his analysis of the evidence, the arbitrator took into account Mr. Dong's testimony that (i) Unit 1305 was sold some $50,000 to $100,000 below what he assessed to be its fair market value, due at least in part to the uncertainty over parking; and (ii) a parking stall adds between $20,000 and $30,000 to the value of a condominium unit. In the end, the arbitrator found that "the price reduction was likely driven primarily by market conditions, but that the lack of an assigned stall provided the purchaser with leverage to negotiate a better deal": Decision at paras. 102–103. The arbitrator concluded that 118 Co.'s failure to execute the assignment for Unit 1305 resulted in a loss of $30,000 to CCM; he ordered 118 Co. to pay damages in that amount: Decision at paras. 103, 140.

[28] The arbitrator declined to award damages for the carrying costs of Unit 517. After weighing and assessing the evidence on this issue, the arbitrator was "unable to conclude on the balance of probabilities that the lack of an assigned parking stall" delayed the sale of this particular unit: Decision at paras. 107, 141.

Legal Principles Governing Leave Applications under the *Arbitration Act*

[29] A party to an arbitration may appeal to the Court of Appeal on any question of law arising out of an arbitral award, if a justice of the Court grants leave under s. 59 of the *Arbitration Act*, S.B.C. 2020, c. 2. The relevant part reads as follows:

> (2) A party to an arbitration may appeal to the Court of Appeal on any question of law arising out of an arbitral award if
>
> (a) all the parties to the arbitration consent, or
>
> (b) subject to subsection (3), a justice of that court grants leave to appeal under subsection (4).

> (3) A party to an arbitration may seek leave to appeal to the Court of Appeal on any question of law arising out of an arbitral award unless the arbitration agreement expressly states that the parties to the agreement may not appeal any question of law arising out of an arbitral award.
>
> (4) On an application for leave under subsection (3), a justice of the Court of Appeal may grant leave if the justice determines that
>
> > (a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,
> >
> > (b) the point of law is of importance to some class or body of persons of which the applicant is a member, or
> >
> > (c) the point of law is of general or public importance.
>
> [Emphasis added.]

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[30] As explained in *MSI Methylation Sciences, Inc. v. Quark Venture Inc.*, 2019 BCCA 448 at para. 54, there are three independent requirements that must be met to obtain leave to appeal an arbitrator's decision. First, the appeal must be based on one or more questions of law. Second, the justice must be satisfied that one of the circumstances identified in s. 59(4)(a) through (c) of the *Arbitration Act* are present. In very basic terms, these circumstances are concerned with the importance of the issues raised on appeal to the parties, to a particular group or class of which the appellant is a member, or to the public at large. Third, the justice must be prepared to exercise the residual discretion implicit in the phrase "may grant leave" as set out in s. 59(4).

[31] The threshold question on this application is therefore whether a question of law "can be clearly perceived and identified": *Grewal v. Mann*, 2022 BCCA 30 at para. 32. Absent an extricable question of law, issues of contractual interpretation are questions of mixed fact and law that are beyond the reach of an appeal under s. 59 of the *Arbitration Act*: *Sattva* at paras. 50, 53–55; *Escape 101 Ventures Inc. v. March of Dimes Canada*, 2021 BCCA 313 at para. 20 (Chambers).

[32] An extricable error of law arises where the arbitrator applies an incorrect legal principle, fails to consider an element of a legal test, fails to consider a relevant factor, or forgets, ignores or misconceives evidence in a material way: *Escape 101*

at para. 21, citing *Sattva* at para. 53; *Sharbern Holding Inc. v. Vancouver Airport Center Ltd.*, 2011 SCC 23 at para. 71.

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Analysis

[33] I will first address the threshold question of whether the proposed grounds of appeal raise questions of law. If I find that any of the proposed grounds of appeal raise questions of law, I will go on to consider their potential significance to the parties, to a particular class or group that includes the applicant, or to the public in general. If any of the grounds of appeal have sufficient significance to the parties, to a class of individuals, or the public, I will go on to consider whether, in light of all the foregoing, this is an appropriate case to grant leave to appeal.

(1) Whether the Proposed Appeal Raises Questions of Law

(i) Failing to Read the Terms of the Contract as a Whole

[34] 118 Co.'s first proposed ground of appeal is that the arbitrator erred in law by ignoring key phrases in term 1.5(b) of the lease. 118 Co. cites *Sattva* at paras. 47, 63, and 64 for the proposition that the requirement to construe a contract "as a whole" is a question of law. Applying that reasoning in this case, 118 Co. says the arbitrator erred by failing to consider and give effect to the requirement in term 1.5(b) that assignments can only be made to "purchasers" of strata lots "in exchange for" "certain amounts" agreed to between CCM and the purchasers.

[35] As I read Justice Rothstein's reasoning in *Sattva*, the failure to read the contract as a whole can be an error of law within the meaning of what is now s. 59 of the *Arbitration Act*, where the error is "extricable". An extricable error of law arises where it is clear from the whole of the reasons that the arbitrator ignored or disregarded a specific and relevant provision of the contract. That is different from the situation where the reasons reflect that the arbitrator considered all the relevant terms and arrived at an interpretation which an aggrieved party simply does not accept and wishes to revisit on appeal. In the latter situation, the arbitrator's interpretation of the relevant contractual terms is a matter of mixed fact and law beyond the reach of appeal under the *Arbitration Act*: *Sattva* at paras. 63–65.

[36] Applying that reasoning in the case at bar, it is apparent that the arbitrator considered the whole of term 1.5(b), and, after considering its text, read in conjunction with the factual matrix and the commercial reality in which it was negotiated, arrived at an interpretation with which 118 Co. disagrees and seeks to challenge on appeal.

[37] The arbitrator noted that under term 1.5(b), CCM could direct 118 Co. to assign parking stalls "to the <u>purchasers</u> of strata lots within the Development <u>in exchange for</u> the payment of <u>certain amounts</u> agreed to by [CCM] and such purchasers" (emphasis added). The arbitrator focused his reasons on the phrase "purchasers" rather than on the phrases "in exchange for" and "certain amounts", however his analysis took into account the thrust of those terms and the point that 118 Co. sought to extract from them: namely 118 Co's submission that by its express language, term 1.5(b) required CCM to enter into formal purchase agreements for specified consideration before CCM could issue a demand for assignment of parking. The arbitrator reasoned that the concern raised by 118 Co. — that it could not be expected to grant assignments for unknown purchasers — would never materialize, because the assignment forms would not take effect until an actual purchase was completed. The arbitrator's interpretation therefore accounted for the terms in the contract 118 Co. alleges he overlooked.

[38] The arbitrator did not adopt an interpretation that failed to give meaning to the text. Rather, the arbitrator accepted that certain elements of the text could support 118 Co.'s interpretation but ultimately preferred a different interpretation in light of the entire text of the contract, the factual matrix and the commercial reality. In my view, although 118 Co. has artfully framed its argument as a question of law, in reality this ground of appeal raises a question of mixed fact and law that is not amenable to appeal under the *Arbitration Act*.

(ii) Rewriting the Contract to Create a Different Bargain

[39] 118 Co.'s second proposed ground of appeal is that the arbitrator adopted an interpretation of term 1.5(b) that effectively rewrote the contract to create a different

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bargain than the one agreed upon by the parties. 118 Co. relies on *Pacific National Investments* at para. 31 for the proposition that "it is not the function of the court to rewrite a contract", or to "relieve one of the parties" from the consequences of an improvident bargain. Further support for this approach can be found in *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32 at para. 62, wherein Justice Gascon explained that where an arbitrator allows the factual matrix to overwhelm the words of the contract to effectively "create a new agreement", this raises a question of law within the meaning of what is now s. 59 of the *Arbitration Act*.

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[40] However, Justice Gascon also explained in *Teal Cedar* that because the focus of the exercise is on ascertaining the objective intentions of the parties, taking into account the factual matrix of the case, issues of contract interpretation are generally questions of mixed fact and law. In the arbitration context, an aggrieved litigant may be motivated to "strategically frame" a question of mixed fact and law as an extricable question of law to gain a foothold for appeal.

[41] In this regard, I find the words of Justice Bennett in *1550 Alberni Limited Partnership v. Northwest Community Enterprises Ltd.*, 2023 BCCA 141 apposite:

> [65] The instructions in *Sattva* are clear. The Arbitrator in this case was asked to interpret the contract, and that required ascertaining the objective intentions of the parties. In order to do that, the Arbitrator was required to consider the factual matrix or surrounding circumstances. That process is "inherently fact specific": *Sattva* at para. 55. As noted in *Sattva*, "the close relationship between the selection and application of principles of contractual interpretation and the construction ultimately given to the instrument means that the circumstances in which a question of law can be extricated from the interpretation process will be rare": *Sattva* at para. 55.

[42] In my view, Justice Bennett's description of the interpretive process represents a fair description of the arbitrator's approach in this case. The arbitrator considered the text of term 1.5(b), finding that some of its elements supported 118 Co.'s interpretation, while other elements supported CCM's interpretation. Reading all of the elements together, and considering them in light of the factual matrix and commercial reality, he ultimately accepted CCM's interpretation.

[43] Although 118 Co. has packaged this ground of appeal in a way that supports its characterization as a question of law, the applicant's framing of the question cannot be dispositive: *Ecoasis Resort and Golf LLP v. Bear Mountain Resort & Spa Ltd.*, 2021 BCCA 285 at para. 45; *Richmont Mines Inc. v. Teck Resources Limited*, 2018 BCCA 452 at paras. 63, 69–73. 118 Co.'s real complaint is not with the arbitrator's identification of the relevant principles of contract interpretation, but rather with his application of the governing principles in the particular circumstances before him. I conclude that this ground of appeal does not involve a question of law that can be extricated from the arbitrator's interpretation of the contract, which was fundamentally an issue of mixed fact and law.

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(iii) Misapprehending the Evidence

[44] 118 Co.'s third proposed ground of appeal is that the arbitrator committed an error of law by misapprehending the evidence bearing on both causation and quantification of CCM's damages. Although the case law recognizes that misapprehension of evidence can constitute an extricable error of law, such a misapprehension only arises where there is a reasoned basis for saying that the arbitrator may have "forgotten, ignored or misconceived the evidence": *Sharbern Holding* at para. 71. This is distinguished from a situation where the arbitrator considered and weighed the evidence, and the appellant merely takes issue with the soundness of the arbitrator's conclusion, which is properly classified as a question of fact or mixed fact and law: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 28.

[45] In my view, 118 Co.'s complaints about the arbitrator's findings on causation and valuation of damages fall into the latter category. It is a challenge to the arbitrator's weighing of the evidence. Read as a whole, the arbitrator's reasons reflect that he considered all of the evidence bearing on both causation and quantification of damages.

[46] Regarding causation, 118 Co. submits that that arbitrator found that market conditions were the primary driver of Unit 1305's reduced sale price, but then went on to find that the absence of an assigned parking stall caused CCM to suffer a loss

of $30,000 on the sale. However, accepting the arbitrator's conclusion that the reduced sale price was attributable primarily to market forces, there was also evidence that the absence of an assigned parking stall affected the value of the unit. Thus, there was evidence to ground the arbitrator's finding that the absence of an assigned parking stall diminished the value (and sale price) of the unit. The substance of 118 Co.'s complaint is not that the arbitrator overlooked or ignored any of the relevant evidence, but rather with the arbitrator's weighing of the evidence.

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[47] The same can be said of 118 Co.'s argument about quantification of damages. 118 Co. submits that the arbitrator acknowledged some internal inconsistency in the evidence of Mr. Dong, who testified that Unit 1305 sold for $50,000 to $100,000 less than its fair market value and yet also testified that the absence of a parking stall would reduce the value of a strata unit by $20,000 to $30,000. 118 Co.'s complaint is that, despite this inconsistency, the arbitrator appeared to accept Mr. Dong's testimony by valuing CCM's loss at $30,000, which is at the "upper end" of the estimate offered by Mr. Dong in his testimony. Once again, the substance of 118 Co.'s argument is not that the arbitrator forgot, overlooked, or disregarded relevant evidence. Rather, 118 Co.'s complaint has to do with the arbitrator's weighing of the evidence. The alleged error involves a question of fact, or at best a question of mixed fact and law.

(iv) Reliance on Inadmissible Evidence

[48] 118 Co.'s fourth proposed ground of appeal is that the arbitrator erred in law by relying on inadmissible evidence. The focus of this submission is on the arbitrator's decision to admit, and ultimately rely upon, the "lay opinion" of Mr. Dong that the absence of a parking stall diminished the value of the strata unit by $20,000 to $30,000.

[49] The arbitrator addressed this argument in his reasons, noting that 118 Co. did not make a timely objection to this evidence, prior to its admission, which prejudiced CCM's ability to respond to the objection or to seek to supplement its evidence. The arbitrator went on to reason that even if a timely objection had been made, he would

not have acceded to it, noting that under s. 28(2) of the *Arbitration Act*, he was not bound to apply the rules of evidence (aside from privilege). He held that Mr. Dong gave evidence as a fact witness involved in the transactions that were the subject of the proceedings.

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[50] In my respectful view, this ground of appeal does not raise a question of law within the meaning of s. 59 of the *Arbitration Act*.

[51] It seems to me that the arbitrator's refusal to accede to 118 Co.'s untimely objection to the admissibility of the evidence does not raise a question of law. I find support for this conclusion in the following comments from *InterLink Business Management Inc. v. Bennett Environmental Inc.*, 2008 BCCA 104:

> [41] In summary, I think the appeal judge erred in reviewing the admissibility of evidence before the arbitrator, which had been received by him without objection, and in overturning the arbitrator's interpretation after excluding that evidence. In my opinion, there was no reviewable question of law that would permit the arbitrator's interpretation of the Agreement to be disturbed on appeal.

[52] In my view, the arbitrator's ruling that 118 Co. failed to raise a timely objection to the impugned evidence is at best a question of mixed fact and law. This ruling carried with it an implied finding of prejudice to CCM, in that the failure to make a timely objection prevented CCM from presenting other admissible evidence concerning the value of a parking stall in connection with the sale of a strata unit in the local real estate market.

[53] I conclude that this ground of appeal does not raise a question of law.

(v) Conclusion: The Proposed Appeal Does not Raise any Questions of Law

[54] Having found that none of the proposed grounds of appeal raises a question of law, I am required to dismiss 118 Co.'s application for leave to appeal. However, for the sake of completeness, I will briefly review the other relevant considerations.

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(2) The Significance of the Proposed Appeal

[55] The first two grounds of appeal relate to the arbitrator's interpretation of the lease, which led directly to the arbitrator's conclusion that 118 Co. was in breach of its terms. Accordingly, if I had concluded that these first two grounds of appeal raised questions of law, I would have been further satisfied that the points in issue were sufficiently material to the arbitrator's analysis to affect the outcome of the arbitral award.

[56] More specifically, I have no difficulty accepting that if the arbitrator made a reviewable error on either the first or the second proposed grounds of appeal, any such error would have materially impacted the arbitrator's decision to order 118 Co. to execute the assignments.

[57] The second two grounds of appeal relate to the arbitrator's decision to award damages of $30,000 to 118 Co. Once again, if I had concluded that either the third or fourth grounds of appeal raised a question of law, I would have been further satisfied that the points in issue were sufficiently material that they would have affected the arbitrator's damages award.

[58] However, despite all of this, I question whether it can be credibly argued that correction of any of these alleged errors would prevent a miscarriage of justice within the meaning of s. 59(4)(a) of the *Arbitration Act*. I say that because, in my respectful view, the remedies ordered by the arbitrator were not particularly onerous, such that failure to correct them could not be said to result in any miscarriage of justice, even in the mildest sense of the term.

[59] The remedy of specific performance does not impose a particularly onerous burden on 118 Co. It merely requires the execution and delivery of assignment forms for prospective purchasers of specific strata units.

[60] 118 Co. makes the point that the arbitrator's interpretation of this 999-year lease could have significant, continuing, long-term implications for these parties. In 118 Co.'s submission, the arbitrator's interpretation of term 1.5(b) of the lease

compels 118 Co. to execute assignment forms that are effectively “blank”, without knowing the identity of the purchasers, such that 118 Co. will not know if or when the assignments actually take effect. This, in turn, will undermine 118 Co.’s ability to exercise its contractual right to rent or assign specific parking stalls to non-purchasers as contemplated in term 5.1 of the lease.

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[61] I have considered 118 Co.’s argument on this point, but I am not convinced by it. Rather, I accept CCM’s explanation that any assignment of parking stalls to specific strata units will only take effect upon delivery of an executed assignment to the strata corporation, with a written copy delivered to 118 Co., as provided for in term 4.1(c) of the lease. By this means, 118 Co. will know and be able to keep track of when and to whom parking stalls have been formally assigned.

[62] I reach the same conclusion with respect to the $30,000 damages award. The financial prejudice associated with that award is, in my view, minimal for a commercial entity such as 118 Co., particularly when compared with the costs of advancing an appeal before a division of this Court.

[63] In the context of this particular dispute, I am driven to the conclusion that 118 Co. seeks leave to appeal as a matter of principle. I am therefore not convinced that the arguments 118 Co. wishes to pursue on appeal, even if resolved in its favour, would prevent any miscarriage of justice as contemplated in s. 59(4)(a) of the *Arbitration Act*.

[64] I also conclude, with much less difficulty, that the proposed grounds of appeal are not matters of importance to any class to which 118 Co. belongs as contemplated in s. 59(4)(b), or to the public at large as contemplated in s. 59(4)(c). 118 Co. argues that some of its arguments about the interpretation of term 1.5(b) could be of interest to others who have negotiated long-term parking leases for strata complexes. I do not agree. The point in issue in this case is so narrow and case specific that I consider it extremely unlikely to be of interest to anyone who is not a party to this particular arbitration proceeding.

[65] I conclude that even if one or more of the grounds of appeal advanced by 118 Co. raise questions of law within the meaning of s. 59(2), those grounds of appeal do not engage any of the circumstances contemplated in s. 59(4).

(3) Residual Discretion

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[66] Assuming I am wrong in my conclusions that (i) 118 Co.'s grounds of appeal do not raise any questions of law, and (ii) none of the circumstances in s. 59(4)(a) through (c) are present in this case, the remaining question would be whether this is an appropriate case to exercise the discretion to grant leave to appeal. In my view, it would not.

[67] I acknowledge that where all of the statutory criteria for grating leave to appeal are met, the residual discretion to refuse leave under s. 59(4) ought to be exercised with "caution": *Sattva* at para. 92. However, in my view, this is a case where it is appropriate to exercise that discretion. The arbitration proceedings involved a dispute over a relatively straightforward matter, namely 118 Co.'s obligation to execute parking stall assignment forms at CCM's direction. The forms can easily be executed, with no apparent detriment to the interests of 118 Co. The damages award, though not entirely inconsequential, is not on its own a matter of sufficient importance to justify a hearing before a division of the Court. Although 118 Co. had a right to challenge CCM's interpretation of the lease in the arbitration proceedings, it does not have a right to a further review to this Court, without first obtaining leave. In all of these circumstances, this is not a case where it would be in the interests of justice to grant leave.

<u>**Conclusion**</u>

[68] The application for leave to appeal is dismissed.

"The Honourable Justice Riley"