

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Morteq Lending Corp. v. Kashani*,
2026 BCSC 420

Date: 20260317
Docket: H254882
Registry: New Westminster

Between:

Morteq Lending Corp.

Petitioner

And

Abbas Kashani

Respondent

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for the Petitioner: S. Somers

The Respondent, appearing in person: A. Kashani

Place and Date of Hearing: New Westminster, B.C.
November 27-28, 2025; and
January 28, 2026

Place and Date of Judgment: New Westminster, B.C.
March 17, 2026

Table of Contents

OVERVIEW..... 3

EVIDENCE..... 4

ISSUE 1: NATURE OF THIS APPLICATION..... 13

ISSUE 2: SUITABILITY FOR DETERMINATION IN CHAMBERS 15

ISSUE 3: UNCONSCIONABILITY UNDER COMMON LAW 18

 Legal Principles 18

 Was there an inequality of bargaining power stemming from some weakness or vulnerability of the respondent such that he was unable to protect his interests? 19

 Was the Mortgage an improvident transaction that unduly advantaged the petitioner or unduly disadvantaged the respondent? 22

 Conclusion..... 32

ISSUE 4: UNCONSCIONABILITY UNDER THE *BPCPA* 32

 Legal Principles 32

 Did the petitioner commit or engage in an unconscionable act or practice in respect of the Mortgage? 33

ISSUE 5: POST-DEFAULT CHARGES INCLUDED IN THE REDEMPTION AMOUNT 37

ORDERS 38

Overview

[1] This is a foreclosure proceeding concerning residential property in Coquitlam (the “Property”). The petitioner loaned funds to the respondent secured by a mortgage on the Property (the “Mortgage”).

[2] The respondent alleges that the petitioner engaged in predatory lending and that the Mortgage is unconscionable under the common law and sections 8 and 9 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 [*BPCPA*]. An order *nisi* has already been granted, but a term of the order permits the bringing of this application to challenge the validity and enforceability of the Mortgage. The respondent seeks an order varying the order *nisi* by reducing the interest rate of the Mortgage.

[3] The petitioner denies all the respondent’s allegations and submits that this is a standard mortgage scenario in which the Mortgage is in default. The petitioner submits that the respondent’s allegations are designed to cause delay.

[4] The broad issues to be determined are:

- a) Issue 1: Nature of this Application. This petition has an unusual history, and the respondent has procedural complaints in addition to the substantive issues of whether the Mortgage is unconscionable.
- b) Issue 2: Suitability for Determination in Chambers. Is this matter suitable to be heard in chambers or are hybrid procedures, or a referral to the trial list required?
- c) Issue 3: Unconscionability under Common Law. Is the Mortgage unconscionable under common law? If so, what remedy is appropriate?
- d) Issue 4: Unconscionability under the *BPCPA*. Is the Mortgage unconscionable under the *BPCPA*? If so, what remedy is appropriate?

- e) Issue 5: Post-Default Charges Included in the Redemption Amount. The respondent challenges some of the post-default charges that were included in the order *nisi*.

[5] For the reasons below, I find that:

- a) this application should be treated as a hearing *de novo* as to the validity and enforceability of the Mortgage;
- b) there is no *bona fide* triable issue that requires hybrid procedures or a referral to the trial list;
- c) the Mortgage is not unconscionable under either the common law or the *BPCPA*; and
- d) the order *nisi* redemption amount is reduced by \$500 plus interest to account for a post-default charge the petitioner concedes has no contractual basis.

[6] Although the respondent's notice of application also sought to set aside or vary the redemption period, he did not pursue this in argument.

Evidence

[7] The main evidence is affidavits from Abbas Kashani the respondent, and Vick Bains, a director of the petitioner, and the senior credit manager for PHL Capital Corp. ("PHL"), the management company for the petitioner.

[8] Mr. Bains states that when the petitioner receives a loan inquiry, the communication usually comes from an independent mortgage broker rather than the borrower directly. Staff members at the petitioner and its related entities communicate only with the borrower's mortgage broker and legal professionals during the initial application, registration, and funding phases. This only changes during the administration and renewal of the mortgage, at which point there is direct contact with the borrower. Direct contact is also routine for late or missing payments.

The petitioner's interactions with the respondent followed this path. The respondent utilized Icon West Mortgage Corp. ("Icon West") as his mortgage broker.

[9] The respondent agrees that he did not have any direct contact with the petitioner when obtaining the Mortgage. He had his own mortgage broker (Steve Dhillon, the president of Icon West) and counsel (the law firm of Buckley Hogan).

[10] The first communications concerning a loan are an exchange of emails between PHL and Icon West in mid-March 2023.

[11] On March 10, 2023, Mr. Dhillon wrote to Mr. Bains stating that: the respondent is the owner/operator of a renovation and home construction business and owns the Property with an approximate value of \$2.5 million; the respondent is "looking for \$1.25 million inclusive of lender/broker fees and legal"; and there is a first mortgage on the Property for \$1.25 million "which is not looking to do an extension." Under the heading "Exit", Mr. Dhillon stated "Once taxes are filed for business and personal I can move this to a B lender."

[12] I pause to explain this comment. In the respondent's response to petition, he states that he approached Icon West and:

... disclosed that he had not declared his income properly to tax authorities and had not filed his tax returns regularly resulting in refusal of mortgage by category "A" banks, who normally charge a lower rate of interest for mortgage. Icon West was retained by [the respondent] to secure mortgage from "B" Banks or private lenders at the lowest rate and costs.

At the hearing of this application, the respondent repeated this information.

[13] On the same day, Mr. Rick Orlando, a mortgage analyst at PHL, emailed Mr. Dhillon stating he would have a commitment to him the following week. Mr. Orlando stated the interest rate would be 9.75% for a first mortgage, the lender fee would be 1%, and the commitment was subject to an appraisal. Mr. Orlando inquired what Mr. Dhillon's broker fee would be, and Mr. Dhillon responded it would be another 1%.

[14] On March 13, 2023, Mr. Dhillon wrote to Mr. Orlando, apparently in response to a query regarding the existing mortgage on the Property. Mr. Dhillon stated:

I just spoke with the client. So he was placed with a private lender via his previous broker. The original lender was Pioneer MIC. At the time of his maturity, Pioneer had offered him a renewal at a lower rate which he agreed to. During this time, Pioneer [something may be cut off here] MIC. They rescinded the pioneer offer with a much higher interest rate and the client was not happy about this. He fought with them to honour the original agreement or else he would find financing else where. This is where we are now.

[15] On March 13, 2023, Mr. Orlando wrote to Mr. Dhillon and provided a commitment letter subject to conditions, including an appraisal and advice as to what the borrower's exit strategy would be. The email states that the lender fee would be 1% and the broker fee would be 1%.

[16] Later that day, Mr. Dhillon wrote to Mr. Orlando stating that at \$1.25 million, with an interest reserve, the respondent did not have enough funds to pay the existing first mortgage. He suggested either "\$1.25M without the interest reserve, and the extra funds would cover his fees, etc." or "\$1.25M Plus reserve which would be a loan of \$1.37M. The client is requesting no reserve."

[17] Mr. Orlando responded that their credit team was looking for more details concerning certain matters. One was a "mortgage from 2018 that was written off". Another was Mr. Kashani's "stated" income of \$100,000 per year. He inquired if there was other spousal income to help support the monthly payments.

[18] Mr. Dhillon responded that the respondent has only the Property and has not owned other properties, and that the respondent is not married, he is selling his vehicles, and \$100,000 is "conservatively what he makes" [something cut off] "can be much higher."

[19] Mr. Orlando pursued questioning concerning the mortgage that was reported to have been written off and said he would "chat with credit about IR once you let me know what this credit was." On March 14, 2023, Mr. Dhillon responded that he had spoken to the respondent and "he said this was paid off and not sure why its

reporting that way” and that “after chatting with him, he would like to do a 1 year reserve however is expecting a rate less than 10%.” Mr. Orlando responded, “if he is ok with the proposal, the commitment letter I provided yesterday can be signed and sent back.” That commitment letter is not in evidence, but it is not the proposal which ultimately proceeded.

[20] On March 15, 2023, Mr. Dhillon emailed Mr. Orlando stating:

How can we make this work,

At the current proposal he doesn't have enough funds:

- 1.25M
- Less \$1.2M current Lender
- Less 121K for interest reserve
- Less \$25K fees
- Less 5K legal
- = (\$101K)

Even if he doesn't net anything and can just clear out this he is willing to move forward.

[21] On March 15, 2023, Mr. Orlando replied that they would need an appraisal from someone on their approved list to consider a higher amount than in the commitment letter. He asked Mr. Dhillon to know his client's thoughts on obtaining the appraisal or proceeding with what had already been committed.

[22] There is then a gap of a month. On April 20, 2023, Mr. Dhillon wrote to Mr. Orlando and stated, “This one has circled back. Is pricing still the same as previously quoted?” Mr. Orlando replied that he required an updated appraisal and the client's exit plan. On May 1, 2023, Mr. Dhillon provided an appraisal.

[23] On May 2, 2023, Mr. Orlando wrote to Mr. Dhillon stating:

I need full clarification on the following judgements that are on the borrower's CB.

1. Neighbourhood Holdings
2. Vancity

The credit team wants to make sure that mortgage default is not a pattern. They won't proceed until I have a clear explanation to these concerns.

[24] Thereafter, there is an exchange where Mr. Dhillon stated that the respondent told him those were properties which he previously owned with his ex-wife, financial obligations were not being met during the divorce, and that the respondent “has since gotten himself back on track.”

[25] I pause here to describe the two previous mortgages the respondent had on the Property. There is no evidence of exactly what the petitioner knew of these mortgages, but the foregoing shows that it was making inquiries regarding the respondent’s credit history.

[26] On March 14, 2019, Neighbourhood Holding Company Ltd. (“Neighbourhood”) commenced a foreclosure petition against the respondent. The petition alleges that the mortgage was registered against the Property on December 6, 2017. A year later the mortgage was in default. As of February 14, 2019, the amount claimed to be due and owing was \$862,222.86 plus interest at 6.74% per annum, compounded monthly. A claim of builder’s lien was also registered against the Property. The respondent filed a response to petition, not opposing the order *nisi* but opposing other relief such as the ability to apply for conduct of sale, and alleged that the mortgagee had verbally offered to renew the mortgage but would not give him an offer in writing, and then “They increased the rate and by that time the renewal period ended so the rates went from 6% - 7% to 13% - 14%.”

[27] On August 3, 2022, National Holdings Ltd. (“National”) filed a foreclosure petition against the respondent. National was then a first mortgagee, so I conclude the Neighbourhood mortgage was paid from this funding. The petition alleges that the mortgage was granted to Pioneer West Acceptance Corporation (“Pioneer”) and registered against the Property on May 17, 2021, and transferred to National the same day. A year later the mortgage was in default. The principal sum advanced was \$1,140,000, and the amount alleged to be due and owing as of July 5, 2022, was \$1,150,268.18 plus interest at 6.7% per annum, calculated monthly. The claim of builder’s lien had apparently been discharged from title. On September 26, 2022, the respondent filed a response to the petition opposing all the orders including the

order *nisi* but agreeing to a redemption period of not less than six months. The respondent alleged that the “Petitioner has not conducted its affairs with the Respondent in a fair manner after having initially agreed to renew the subject mortgage and then changing the terms of the renewal being offered.” Further, the respondent claimed he “[was] obtaining financing in order to fully redeem” the mortgage and “hopes to be able to do so in the near future.”

[28] I return to the chronology. On May 2, 2023, Mr. Orlando forwarded to Mr. Dhillon a commitment letter for review and execution, again subject to conditions. The email states the lender fee would be 1.25%, and the broker fee 1%.

[29] The next day, the respondent signed the commitment letter. It includes the following terms: (a) the amount of the loan (\$1.3 million); (b) the interest rate (9.75% per annum, compounded monthly); (c) the term (one year); (d) the monthly interest only payments (\$10,562.50); (e) that the first six months of payments are to be made by pre-authorized debit, and the remaining six months of payments are to be made from a \$63,375 interest reserve to be held back from proceeds of the loan; (f) the fees payable, including the broker referral fee (\$29,250); and (g) the required security including a first mortgage and assignment of rents, and fire, liability, and earthquake insurance. The funding was subject to review and approval by the lender’s credit committee. The commitment letter contains other clauses I will reference later in connection with specific allegations.

[30] Mr. Bains states that the petitioner requires borrowers to receive independent legal advice before funding a mortgage. The petitioner’s documents show that the respondent initialed a borrower information form stating his lawyer was Rand Buckley at Buckley Hogan. Ms. Harjot K. Shoker, a lawyer at Buckley Hogan, is shown as witnessing the respondent’s signature on the Mortgage and a promissory note. There is no indication at her signature that no advice was given.

[31] A Conflict of Interest Disclosure Statement (“Conflict Disclosure Statement”) and Fixed Credit Disclosure Statement (“Credit Disclosure Statement”) were signed by the respondent on May 9, 2023. The Conflict Disclosure Statement states:

The Mortgage Broker and/or its associates or related parties will acquire a direct or indirect interest in the transaction described above. In particular, Morteq Lending Corp. who is a related company will be the lender in the transaction. The Mortgage Broker may (or will) also receive additional compensation (either monetary or non-monetary) from the lender which includes an administration fee from the lender. PHL Brokerage fee from this transaction from the lender is \$8,125.00.

...

Abbas Kashani are the Borrower(s) in this transaction. The Mortgage Broker, its associates or related parties have paid or will pay a fee in the amount of \$13,000.00 to Icon West Mortgage Corp. for receiving a referral or recommendation relating to the transaction. The Brokerage Fee will be paid by the borrower from borrower's own funds. Steve Dhillon of Icon West Mortgage Corp. is the other broker acting in this transaction.

[32] The Credit Disclosure Statement sets out the following in an itemized format: (a) the mortgage amount; (b) interest rate, term and maturity date; (c) amount of monthly payments; (d) a breakdown of the \$29,250 in fees, being the lender fees (\$8,125) and the broker fees (\$21,250); (e) the total cost of credit including interest, broker and lender fees (\$158,300); and (f) the effective annual percentage rate ("APR") which was 11.181%.

[33] Mr. Bains states that the respondent did not complain to the petitioner about these fees until the Mortgage was in collections. At this hearing, the respondent stated that he knew his broker would charge a 1% fee and he was told the lender would charge a 1% broker fee. He therefore expected to pay \$26,000 – not \$29,250 – but saw the increase in fees at the time and signed the form.

[34] Mr. Bains states that when the Mortgage approached maturity a year later, the context was the Bank of Canada had increased the overnight rate twice in the preceding 12 months. The renewal offer interest rate was 10.25%, which Mr. Bains states was in line with market expectations and realities. I will return to Mr. Bains' comment regarding the market later in these reasons. Neither party tendered admissible expert opinion evidence of what was available in the market for a person in the respondent's position.

[35] Mr. Bains attaches a renewal offer letter dated April 19, 2024. The letter offered renewal of the Mortgage for a one year term at 10.25% per annum, compounded monthly with interest only payments, the first six months paid by pre-authorized debit and the last six months by an interest reserve. The renewal fee was \$26,000 which included the broker referral fee which was to be paid by the respondent by bank draft or pre-authorized debit.

[36] On April 22, 2024, Sarah Powell, a mortgage analyst with PHL, emailed Mr. Dhillon the renewal documents for him “to go over and sign” with the respondent. The documents stated to be enclosed included the renewal offer letter, a conflict disclosure statement, and a credit disclosure statement. This email was not sent directly to the respondent. The respondent states he did not receive this email.

[37] On June 10 and 20, and July 3, 2024, Ms. Powell emailed the respondent and stated that she and Mr. Dhillon had been trying to reach him regarding the Mortgage renewal, the loan was past its maturity date, and the interest reserve was depleted as of June 1, 2024. She advised that fees would be charged if the loan went into default. On July 4, 2024, Ms. Powell wrote to the respondent by letter making similar statements and advising that if he did not complete and return the renewal documents by July 15, the file would be sent to foreclosure.

[38] On July 9, 2024, the respondent wrote to Ms. Powell denying that several attempts had been made to contact him. He denied receiving any renewal documents. He also asked “[H]ow did the offer of financing changed into first and second mortgage with higher interest at the Lawyer signing date?” I will discuss this issue later. The respondent alleges there was an undisclosed second mortgage.

[39] Between July 15 and 22, 2024 there was further correspondence between Ms. Powell and the respondent where she followed up on the renewal documents, the outstanding monthly interest payment, and NSF fees. The respondent told her he was listing the Property for sale. The respondent requested the loan documents for his review and Ms. Powell responded to him.

[40] On July 22, 2024, the respondent emailed Ms. Powell alleging that there were “discrepancies or changes in mortgage terms from what was originally agreed upon last year.” He stated:

Further to our recent discussions regarding the renewal offer, I would like to formally request the mortgage documents for my property. As per our previous commitment with PHL, the financing was agreed upon for \$1.3 million at 9.75%, without any mention of a second mortgage.

However, I have observed changes in the mortgage terms that were implemented by PHL last year, including the registration of a first mortgage for the total amount. Despite your role in collecting payments and overseeing the distribution for a second mortgage, there seems to be uncertainty about the identity of the second mortgagee.

To proceed with signing the renewal offer, it is crucial for me to understand the exact conditions and specifics outlined in these mortgage documents. Therefore, I kindly request that you provide me with all relevant mortgage documentation at your earliest convenience. This will enable me to review the terms thoroughly before making any decisions.

[41] On July 23, 2024, Ms. Powell advised the respondent that he could request the documents from his lawyer. She offered to speak to him about his options moving forward.

[42] The parties next discussed a forbearance agreement. On July 24, 2024, Mr. Bains emailed the respondent stating:

As discussed here are the high level terms of the forbearance agreement.

- expiry date of October 31, 2024
- this allows you time to sell the property without having to make monthly payments
- 1% forbearance fee (can be paid from sale proceeds)
- Legal fees in preparation of Forbearance Agreement (can be paid from sale proceeds)
- If the agreement lapses, shortened redemption period of 1 day to allow us to sell the property at market value

If you are agreeable to the above, I will ask our lawyer to commence preparing the agreement.

[43] Mr. Bains states that the respondent appeared to want to renew the Mortgage with the petitioner. On about August 13, 2024, he and the respondent met at the petitioner’s office. Mr. Bains informed the respondent that after the initial renewal

letter was sent out, the Bank of Canada had decreased the prime rate, and the renewal rate could be decreased to the original interest rate of 9.75%. The respondent demanded a lower rate, and Mr. Bains was authorized to offer an interest rate of 9.25%. The respondent refused the Mortgage renewal offer, and insisted on an interest rate of 4% or 5%, which in Mr. Bains' view was unreasonable. The respondent does not dispute Mr. Bains' evidence of what took place at this meeting. The respondent did not accept the renewal offer or forbearance proposal.

[44] Mr. Bains states that the Mortgage is capable of being paid at any time without penalty. I agree the Mortgage has this term.

[45] On August 20, 2024, the petitioner through its solicitors, demanded that the respondent repay to the petitioner the full amount owing pursuant to the terms of the Mortgage. The respondent did not make any payment, and on September 10, 2024, the petitioner filed this petition.

Issue 1: Nature of this Application

[46] The order *nisi* was granted on December 10, 2024, with a redemption period ending June 30, 2025. The amount ordered to be paid to redeem the Property as of that date was \$1,380,656.59 with interest thereafter at 9.75% per annum compounded monthly. That total included other charges which the respondent disputed at the hearing of this application.

[47] Normally, an order *nisi* contains a term, as it does here, that the Mortgage charges the Property in priority to the right, title, or interest of the respondent owner (i.e. a valid mortgage). However, the order *nisi* in this case also contains a term that the respondent has leave to challenge the validity and enforceability of the Mortgage. The last term of the order *nisi* contains a handwritten term which states:

10. The foregoing terms are granted subject to the Respondent Abbas Kashani having the right to bring on a long chambers application before May 31, 2025, for review of the validity and enforceability of the subject mortgage, as to all terms including the interest rate.

[48] At this hearing, counsel for the petitioner (who was not counsel at the order *nisi*) advised that the order *nisi* was presented to the Associate Judge hearing the application as a consent order. The petitioner was represented by counsel. The respondent attended the application and was self-represented. The respondent states that he wanted to make submissions, but the petitioner’s counsel proposed the terms of the order to which he agreed. The hearing took only a few minutes, and the Associate Judge remarked that it was an unusual order.

[49] The petitioner alleges that following the order *nisi*, the respondent did not take steps to secure a long chambers date until April 2025. The respondent states that he was unable to secure a long chambers date prior to May 31, 2025. A notice of appeal of the order *nisi* was filed to this court in June 2025, but the respondent is not proceeding with that. In the meantime, the petitioner filed an application for conduct of sale to be heard in early July 2025 after the expiry of the redemption period. All of this resulted in half a dozen applications in chambers between May 13 and September 29, 2025. The eventual result of all these applications were orders that the May 31, 2025, deadline in the order *nisi* was extended at least twice to November 24, 2025, and that the petitioner was not permitted to have its application for conduct of sale heard before then.

[50] At this hearing, the respondent argued that he did not understand the ramifications of what he had agreed to when the order *nisi* was granted. He argued that counsel at the order *nisi* must have known that it would be difficult to obtain a long chambers date prior to May 31, 2025. He states that he was under pressure, and he had wanted to raise his objections to the Mortgage at the hearing of the order *nisi*. He was frustrated by the many applications he feels he had to bring in the meantime to try to get a long chambers date and to stop the petitioner’s attempt to obtain an order for conduct of sale before he had his application heard.

[51] Given that the order *nisi* refers to a “review” and contemplates the respondent being able to raise his arguments at a later application, I treat the issue of the validity and enforceability of the Mortgage as to all terms, including the interest rate, as a

hearing *de novo*. The petitioner is agreeable to this. I discussed with the respondent that while I understood he was frustrated, he now had the hearing he sought, and an opportunity to fully raise all the arguments he wished to make regarding the validity and enforceability of the Mortgage. I therefore do not need to address the respondent's procedural complaints further.

[52] Finally, the respondent is self-represented and there were several applications filed by him. The respondent identified his May 22, 2025, application as the operative notice of application although as noted previously, he did not argue that the redemption period should be set aside or varied. The materials filed on this application included: (a) that application, the petitioner's response, and supporting affidavits; (b) the petition, the respondent's response, and supporting affidavits; (c) the respondent's May 6, 2025, application, the petitioner's response, and supporting affidavits; and (d) the respondent's further affidavit filed October 29, 2025.

Issue 2: Suitability for Determination in Chambers

[53] Rule 21-7(5)(k) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR] states that in considering a foreclosure petition, the court may make an order under Rule 22-1(7) of the SCCR. Rule 22-1(7)(d) provides that a court may:

(d) order a trial of the chambers proceeding, either generally or on an issue, and order pleadings to be filed and, in that event, give directions for the conduct of the trial and of pre-trial proceedings and for the disposition of the chambers proceeding.

[54] In *HGE Administrative Services Ltd. v. Perrick*, 2011 BCCA 308 at para. 17, the Court held that an order *nisi* will not be granted in chambers unless it is "manifestly clear" that there is no *bona fide* triable issue. On the then existing law, if a triable issue was found, the application for order *nisi* was referred to the trial list.

[55] A decade later, in *Cepuran v. Carlton*, 2022 BCCA 76, the Court held that the existence of a triable issue does not necessarily mean a petition must be referred to the trial list. A chambers judge "has discretion to do so or to use hybrid procedures within the petition proceeding itself to assist in determining the issues", such as for

example cross-examination on affidavits: at para. 160. A chambers judge should be mindful of the object of the *SCCR*, as set out in Rule 1-3, to secure the just, speedy and inexpensive determination of every proceeding on its merits, and to the extent practicable, in ways that are proportionate to the amount involved, the importance of the issues, and the complexity of the proceeding.

[56] A *bona fide* triable issue is an issue of fact or law that is not bound to fail: *Beedie (Keefer Street) Holdings Ltd. v. Vancouver (City)*, 2021 BCCA 160 at para. 80. In the context of a foreclosure petition, it has been described as an issue which “cannot be determined by reference to the documents and which would affect the outcome of the proceeding”: *Griffin v. 0904713 B.C. Ltd.*, 2013 BCSC 273 at para. 30, citing *Boffo Developments (Jewel 2) Ltd. v. Pinnacle International (Wilson) Plaza Inc.*, 2009 BCSC 1701.

[57] In a foreclosure, a triable issue is also one that “goes to the root or foundation of the foreclosure action.” This is an issue that “must call into question the validity of the mortgage, the ability of the mortgagee to claim foreclosure under the mortgage, or some other real question as to the amount owing under the mortgage”: *Coast Capital Savings Federal Credit Union v. Arbutus Bay Estates Ltd.*, 2021 BCCA 185 at para. 33.

[58] In *Freshwest Equities Trading Corp. v. Dosanjh*, 2015 BCSC 952 at paras. 37-39, Justice Fitzpatrick discussed that generally, a party alleging a *bona fide* defence must establish some evidentiary basis for that defence. Bald assertions are rarely sufficient. The court may engage in a limited weighing of the evidence to determine whether a *bona fide* triable issue exists:

[37] A person alleging a *bona fide* defence must establish some evidentiary basis for that defence. The corollary to this is that bald assertions will rarely be sufficient to raise such a defence. Further, some assessment of that evidence is necessary in order for the court to determine whether or not a *bona fide* triable issue has been raised and whether or not it is bound to fail. In *Pacifica Mortgage Investment Corporation v. Laus Holdings Ltd.* 2010 BCSC 1904 at para. 17, aff'd 2013 BCCA 95, I stated:

[17] The cases suggest that some weighing of the evidence is necessary in order for the court to determine whether or not a *bona fide* triable issue has been raised. Depending upon the

circumstances, a bold assertion may not be enough: see *Southeast Toyota Distributors Inc. v. Branch*, [1997] B.C.J. No. 1426 (S.C.) at paras. 60 to 63. At paras. 69 and 74 of *Branch*, the court found that when faced with issues concerning the interpretation of documents, the court was in a position to review the matter to determine whether there were any disputed facts or legal issues and whether a valid defence had been raised.

[38] There are numerous cases where the court was able to interpret documentation in order to assess whether a *bona fide* triable issue exists: *Gupta v. 0856716 B.C. Ltd.*, 2012 BCSC 1407 at para. 41. Such documentation has included ordinary commercial documentation such as loan documentation and security such as guarantees and mortgages. *Laus* involved a consideration of a mortgage and commitment letter.

[39] In *South East Toyota Distributors Inc. v. Branch*, [1997] B.C.J. No. 1426 (S.C.), *aff'd* (1998), 47 B.C.L.R. (3d) 1, the court was considering a guarantee and mortgage. In both cases, the documentation was sufficiently clear and unambiguous that the court was not required to send the matter to the trial list for determination. In this Court, Mr. Justice Hood stated:

[69] ... [I]t seems to me that where the issue to be determined is substantially the interpretation to give to a document or documents, the issue need not be referred to the trial list for trial. The issue can be resolved by reference to the documents before the court and further evidence is not necessary.

[40] In *Javorsky v. Winch*, [1983] A.J. No. 200 (Q.B.), the court found that the defendant's argument "flies in the face of the loan agreement and his correspondence": para. 4.

[Emphasis added.]

[59] As will be discussed below, I find that the respondent's evidence and arguments do not raise *bona fide* triable issues requiring hybrid procedures or a referral to the trial list. This is either because: (i) there is no evidentiary basis for the respondent's argument and it is a bald assertion; or (ii) in most cases, the issue can be determined by the objective contemporaneous documentary evidence which shows that the defence is bound to fail. The issues do not require an assessment of credibility of witnesses. Almost none of the facts are in issue because the events are well documented and the Mortgage documents are clear. The few facts which are disputed are not material to a determination of the issues.

Issue 3: Unconscionability under Common Law

Legal Principles

[60] In *Pearce v. 4 Pillars Consulting Group Inc.*, 2021 BCCA 198 [*Pillars*] at paras. 195-207, Justice Griffin for the Court summarized the doctrine of unconscionability as discussed in *Uber Technologies Inc. v. Heller*, 2020 SCC 16 [*Uber*]. The doctrine is used to set aside unfair agreements that were made due to an inequality of bargaining power. As described in *Pillars*:

[200] The doctrine of unconscionability has two elements. First, the party claiming unconscionability must prove there was inequality of bargaining power between the parties. Second, the party must show the contractual term at issue is improvident: *Uber* at paras. 62–65.

[201] Inequality of bargaining power exists where one party is unable to protect their interests in the contracting process: *Uber* at para. 66. Although differences in wealth, knowledge or experience can be relevant, there is no set class of inequities that will result in a finding of inequality. Importantly, the inequities do not need to be so serious as to negate the party's capacity to enter a valid contract: *Uber* at para. 67.

[202] Examples of inequality are seen in “necessity” cases, where the weaker contracting party is dependent on the stronger party and would accept almost any terms. Other examples include “where a party is vulnerable due to financial desperation” or where there is a “special relationship of trust and confidence”. Unconscionability may be established even where the circumstances of duress or undue influence are absent: *Uber* at paras. 69–70.

[203] Another common example of inequality in bargaining power is where only one party could understand and appreciate the importance of the contractual term at issue. For example, the contract may contain dense or difficult to understand terms, which a layperson would have difficulty understanding (so-called “cognitive asymmetry”): *Uber* at 71.

[204] The second element of unconscionability, an improvident bargain, requires either an undue advantage to the stronger party or an undue disadvantage to the weaker party. This is measured at the time the contract was entered into—if some subsequent development renders a previously fair contract unfair, the disadvantaged party will not be able to escape it through the doctrine of unconscionability: *Uber* at para. 74.

[205] Assessing whether a bargain is improvident is determined in the context of all surrounding circumstances at the time the contract is entered into, including the flaw in the bargaining process: *Uber* at paras. 75, 79. The question for the court is “whether the potential for undue advantage or disadvantage created by the inequality of bargaining power has been realized.” For example, where a person is in desperate circumstances (and thus almost certain to benefit from a contract, even an unfair one), the inquiry focuses on whether the stronger party has been unduly enriched, such as

where the contract price significantly departs from the market price: *Uber* at paras. 75–76.

[206] Where the weaker party did not understand or appreciate the significance of the contractual term, the focus is on whether they have been unduly disadvantaged: *Uber* at para. 77.

[207] It is not necessary to establish that the stronger bargaining party knowingly took advantage of the weaker in order for the doctrine to apply: *Uber* at para. 84. Parenthetically, the concurring judgment of Brown J. considered the elimination of at least constructive knowledge on the part of the strong party as an element of the doctrine to be an expansion of the scope of unconscionability: at paras. 164 and following.

[61] I turn to the two elements that the respondent must establish.

Was there an inequality of bargaining power stemming from some weakness or vulnerability of the respondent such that he was unable to protect his interests?

[62] A non-exhaustive list of factors that have been identified as being relevant to this inquiry were itemized in *Vanguard Mortgage Investment Corporation v. Dietterle*, 2022 BCSC 1512 at para. 97 [*Vanguard BCSC*] (aff'd 2022 BCSC 1512), citing *Murray v. Affordable Homes*, 2007 BCSC 1428 at para. 31:

- a) the relative intelligence and sophistication of the plaintiff;
- b) whether the defendant was aggressive in the negotiation;
- c) whether the plaintiff sought or was advised to seek legal advice; and
- d) Whether the plaintiff was in necessitous circumstances which compelled them to enter the bargain:

[63] No other relevant factors were identified by the parties.

The relative intelligence and sophistication of the respondent

[64] There is no evidence to support, or argument by the respondent, that he was hampered by a lack of intelligence, sophistication, knowledge or understanding when agreeing to the terms of the Mortgage. The commitment letter and Credit Disclosure Statement clearly set out the terms of the Mortgage, including its interest rate, amount, term, and the fees that would be charged, including the APR. In the respondent's letter to Ms. Powell on July 22, 2024, he states that financing was agreed upon for \$1.3 million at 9.75%. At this hearing, the respondent stated that

when his broker initially approached the petitioner, the respondent knew he would have to pay his broker a 1% fee and the lender a 1% fee on top of the interest charged, which would be \$26,000. When the second offer for funding was made a month later, he saw that the total had increased to \$29,250.

Whether the petitioner was aggressive in the negotiation

[65] The respondent did not have any direct contact with the petitioner during the loan application and negotiation. There is nothing in the documented correspondence between the respondent's broker and petitioner to support that the petitioner was aggressive or pressured the respondent, nor did the respondent suggest this in argument. The petitioner did not pursue the respondent. It was the respondent's broker who twice approached the petitioner for funding.

Whether the respondent received advice from his broker and lawyer

[66] The respondent retained a mortgage broker and a lawyer. There is no evidence to indicate that the advice from them was limited or did not explain the Mortgage to the respondent, nor did the respondent suggest this in evidence or argument. In his response to petition, the respondent complains that the broker did not get him a better deal. That is not the responsibility of the petitioner. To the extent the respondent pleads that he did not know of fees, this is contradicted by the respondent's admission at this hearing and the documents.

[67] The respondent also alleges that "every commitment letter provided to me was later revised a superseding letter delivered just before signing, which nullified earlier terms and prevented me from obtaining meaningful legal or financial review." The respondent is referring to a clause in the commitment letter that states:

This Commitment supersedes all prior correspondence, commitments, and oral and other communications relating to financing arrangements between the Borrower and Lender.

[68] This argument is bound to fail. The documents show that this is not a correct assertion and no earlier terms were nullified. The essential terms remained the same. Further, the respondent signed and returned the commitment letter the same

day he received it. He did not sign the Mortgage until a week later when he attended his lawyers, Buckley Hogan.

Whether the respondent was in necessitous circumstances

[69] The respondent states that at the time of entering into the Mortgage, the Property was in foreclosure by National. The respondent refers to a letter dated May 9, 2023, from counsel for National to his counsel Sean Hogan at Buckley Hogan. This is the same day the respondent signed the Mortgage. It appears from this letter that National and the respondent had come to an agreement to pay out the National mortgage by May 15, 2023.

[70] As stated by MacNaughton J., (then of this Court), in *Vanguard BCSC* at para. 132, “Inherent in the relationship between a lender and a borrower is an imbalance of power. The borrower requires money for a purpose and the lender has it to lend.” The fact that the National mortgage was in foreclosure was simply the financial situation of the respondent. It was not brought about by the petitioner. Merely needing to borrow money does not mean the respondent was “unable to protect his interests”. The evidence establishes that the respondent had choices. He could have completed his financial statements and properly declared his income and filed his tax returns so that he could approach more conventional lenders. He could have sold the Property as he pleaded that he was in the process of doing in the National foreclosure proceedings. Or, he could have sought financing elsewhere if he thought he could get better terms. The respondent had dealt with banks and mortgage brokers before. He had had two previous mortgages with private lenders.

Conclusion

[71] In summary, I find that the respondent has not raised a *bona fide* triable issue that there was an inequality of bargaining power stemming from some weakness or vulnerability affecting him such that he was unable to protect his interests. There is no evidence which would support an unfair bargaining process, and the allegation is bound to fail. By his own admission, the respondent understood the essential terms,

and they were clearly stated in the documents he signed. He had other choices available to him. He had a mortgage broker and lawyer to advise him.

[72] The doctrine of unconscionability is not available in cases where an alleged unfair bargain is the result of a fair bargaining process: *Pillars* at para. 199. However, I go on to discuss the next element.

Was the Mortgage an improvident transaction that unduly advantaged the petitioner or unduly disadvantaged the respondent?

[73] The respondent makes several factual allegations as to why the transaction unduly advantaged the petitioner or unduly disadvantaged him, leading to an unfair bargain. I address each below.

Did the petitioner unilaterally inflate the principal amount requested?

[74] The respondent argues that he only requested and needed a mortgage of \$1,218,518.94 to pay the National mortgage, and that the petitioner “unilaterally increased this to 1.3 million.” The respondent asserts this is predatory lending and part of a plan by the petitioner to keep him in a cycle of debt to take his Property.

[75] There is no evidentiary basis for the respondent’s allegation, and it is bound to fail. The uncontradicted documentary evidence establishes that the petitioner did not unilaterally inflate the principal amount, and that the respondent needed, requested, was aware of, and agreed to this principal amount. The email correspondence between Mr. Dhillon and Mr. Orlando from March 13 to 15, 2023 shows that the respondent needed more than \$1.25 million. On March 13, 2023, Mr. Dhillon wrote that at \$1.25 million, with an interest reserve, the respondent did not have enough money to pay the existing first mortgage. Mr. Dhillon suggested either \$1.25 million without an interest reserve, or \$1.25 million plus an interest reserve, for a total loan of \$1.37 million. The next day, Mr. Dhillon wrote that the respondent would like a one year interest reserve. On March 15, 2023, Mr. Dhillon demonstrated by calculations in his email, that with a mortgage of \$1.25 million and an interest reserve there was an over \$100,000 shortfall. That proposal did not proceed. A month later, Mr. Dhillon approached the petitioner again. The petitioner

offered financing of \$1.3 million with an interest reserve of only six months. Even then, the order to pay signed by the respondent shows that he had to pay \$26,675.71 on the transaction date to pay the National mortgage and all other expenses and fees. Finally, the Mortgage amount is plainly set out in the commitment letter, Credit Disclosure Statement, and Mortgage/promissory note, and the respondent admitted in his July 22, 2024 email that he knew the principal amount and had agreed to it.

Did the petitioner add undisclosed brokerage fees?

[76] The respondent alleges that the petitioner added undisclosed fees. The respondent argues that “he was put in a situation to sign on the dotted lines. In doing so [he] was made to agree on paying \$29,500 toward broker and discount fee.” In his response to petition, the respondent argued that the broker fee was charged twice: once by PHL and once by Icon West. He only had dealings with Icon West, and therefore “they alone were entitled to any broker fee.” Any arrangement between Icon West and PHL was “never disclosed to [the respondent] and he did not have any knowledge of it, till the date of signing the mortgage agreement. This agreement was non transparent and is unconscionable.”

[77] This allegation is bound to fail. The uncontradicted documentary evidence establishes that the petitioner did not add undisclosed fees and that the respondent was aware of and agreed to those fees. The May 2, 2023, email between Mr. Orlando and Mr. Dhillon states plainly that the lender fee would be 1.25% and Mr. Dhillon’s fee would be 1%. Those percentages are consistent with the commitment letter the respondent signed the next day on May 3, 2023, which plainly shows total fees of \$29,250, and the Credit Disclosure Statement of May 9, 2023. Further, at this hearing, contrary this allegation, the respondent stated that he knew his broker would charge 1% and that the lender would charge 1%. In his mind, the fees initially were \$26,000, but when he went to sign on the Mortgage on May 9, 2023, he saw they were \$29,250. In fact, the respondent signed the commitment letter six days earlier that disclosed the \$29,250 in fees.

[78] The respondent also complains that there was a \$500 fee payable to the lawyer for the execution of the commitment letter. The respondent submits that “this is purely unethical and one sided.”

[79] This allegation is bound to fail. The respondent has misread the commitment letter. The commitment letter states:

Processing Fee: \$500 non-refundable fee payable to RDM Lawyers LLP in Trust, upon the execution of this Commitment Letter by the Borrower(s). This Processing Fee will be used to cover legal fees in the event the borrower does not proceed with the financing. In the event the Borrower does proceed and the loan is funded, the Processing Fee will be credited towards the Placement Fee upon funding.

[80] The respondent did not provide any evidence that he paid this fee or any evidentiary basis to support that this is an excessive amount.

[81] The respondent also complains that he was required to obtain earthquake insurance costing over \$1,000 annually, which he states is not typically required by institutional lenders and which only served to inflate his financial obligations.

[82] This allegation is bound to fail. The commitment letter plainly states that a condition of funding was “Satisfactory fire, liability & earthquake insurance with extended coverage, showing the Lender as first loss payee”. There is no evidentiary basis for the respondent’s assertions that this is unreasonable and not typically required by institutional lenders. Mortgagees want to protect their security, and requiring insurance is a reasonable term.

Did the petitioner charge interest on the interest reserve of six months of interest payments?

[83] The respondent alleges that the petitioner “withheld six months of payments in advance and charged interest on the full inflated amount, artificially increasing [his] debt.”

[84] I find that the petitioner did charge interest on the interest reserve, but there is no evidence to support the respondent’s assertions that this “artificially increased his debt.” The allegation is bound to fail. The interest reserve was agreed to by the

parties. It was plainly disclosed in the commitment letter and was the subject of negotiation. In the March 2023 emails, the respondent agreed to one year of an interest reserve when they were discussing a mortgage, but then the principal amount was insufficient to pay the National mortgage. When the respondent approached the petitioner again in April, the term offered was now six months of an interest reserve.

Did the petitioner obtain an unregistered second mortgage without the knowledge or consent of the respondent?

[85] The respondent alleges that at the time he signed the Mortgage, he discovered that “another entity had been added into the contract” and that the petitioner placed a second mortgage in favour of a company by the name of Oakhill Lending Corp. (“Oakhill”) without his knowledge and consent. He also alleges that this is a company under the control of Mr. Steve Ponte, who is one of the principals of PHL. He alleges that this is an undisclosed transaction that “raises questions about conflicts of interest and transparency.” In his response to petition, the respondent alleges that he:

... was charged “\$6,050 by Morteq as discount fee and another \$2,075 by Oakhill as discount fee. This is just a garb to extract money from [the respondent] by using vague terminology of discount fee. There was no mention of discount fee in the commitment letter.

[86] The respondent argues that without his approval he has been charged for interest and a discount fee on \$200,000 obtained from Oakhill. Since Oakhill has not registered a charge on the Property, the respondent argues that this is a mere shell name used to charge him additional fees. He alleges that Oakhill and the petitioner are sister companies and different names are being used to charge him twice.

[87] There is no evidentiary basis for the respondent’s allegations, and they are bound to fail. The documentary evidence establishes that the petitioner did not place a second mortgage on the Property, and that it did not charge the respondent a greater fee than what had been agreed. The state of title shows that there is no second mortgage on title, nor was any document produced showing an unregistered

mortgage to Oakhill. The source of the respondent's argument is the Authority to Pay which shows the disbursement of the \$1.3 million, and arises from how the line items are described. The 1.25% lender fee, which the respondent agreed to pay, is broken down into a broker fee of \$8,125 and a "discount fee" of \$8,125, the latter of which is broken down between the petitioner (who funded \$1.1 million of the mortgage) and Oakhill (who funded \$200,000 of the mortgage). Mr. Bains states that to access capital, the petitioner has relationships with other lending entities, including Oakhill, which is a related company. PHL is the managing broker for both. The petitioner assigned part of the capital requirement of this loan to Oakhill, as it was entitled to do. The commitment letter which the respondent signed on May 3, 2023, contains a clause which states:

The Borrower hereby authorizes the Lender to assign all or a portion of this mortgage to a co-lender(s).

[88] The petitioner's assignment of a portion of the Mortgage to Oakhill does not affect the respondent. The "discount fee" is part of the total 1.25% lender fee which the respondent agreed to pay to the petitioner, although the fees are not always consistently described. The respondent has not been charged twice or any extra funds beyond what he agreed. The right to make an assignment is clearly stated in the commitment letter which the respondent signed.

Did the Oakhill funding result in a higher interest rate than what was agreed?

[89] The respondent alleges that the Oakhill funding was at 12.49998%, and not at the agreed 9.75%, and "now presents serious future consequences" for his ability to refinance and constitutes "further evidence of a coordinated and predatory lending scheme."

[90] There is no evidentiary basis for the respondent's allegation, and it is bound to fail. The documents establish that the petitioner did not charge the respondent an interest rate greater than agreed. Again, the source of the respondent's allegation is the Authority to Pay. Because the funding date was different from the interest adjustment date, there needed to be an interest adjustment. That adjustment is

broken down between the petitioner's portion and Oakhill's portion of the funds. The petitioner's portion is shown as calculated at 9.25%—less than the 9.75%—and Oakhill's portion is shown as calculated at 12.49998%. The overall result is exactly the same as the total amount calculated at 9.75%. Mr. Bains states that the petitioner and Oakhill adjusted internally the interest rate that would be divided between them. This does not affect the respondent and he was not charged anything higher than the rate to which he agreed.

Does the Mortgage offend s. 6 of the Interest Act?

[91] The respondent alleges that the Mortgage offends s. 6 of the *Interest Act*, R.S.C. 1985, c. I-15. That section states:

s. 6 Whenever any principal money or interest secured by mortgage on real property or hypothec on immovables is, by the mortgage or hypothec, made payable on a sinking fund plan, on any plan under which the payments of principal money and interest are blended or on any plan that involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable on any part of the principal money advanced, unless the mortgage or hypothec contains a statement showing the amount of the principal money and the rate of interest chargeable on that money, calculated yearly or half-yearly, not in advance.

[92] This argument is bound to fail. Section 6 does not apply because the mortgage is not payable on a sinking fund plan, or a plan which requires blended payments of principal and interest or an allowance of interest on stipulated repayments. The Mortgage requires interest only payments: *746628 B.C. Ltd. v. 674566 B.C. Ltd. & Others*, 2006 BCSC 817 at para. 26.

[93] Even if s. 6 were to apply, the purpose of that section is to protect a mortgagor from having concealed from them the true rate of interest they are paying: *Kilgoran Hotels et al. v. Samek et al.*, [1968] S.C.R. 3 at 5-6; *Ferland v. Sun Life Assurance Company of Canada*, [1975] 1 S.C.R. 266 at 271. In this case, the payments are clearly stated to be interest only at 9.75% per annum, compounded monthly, which is exactly the stated monthly payment of \$10,562.50. Further, the Credit Disclosure Statement sets out the total cost of the loan—including the dollar

amount of interest to be paid along with all other fees—and the APR which includes all interest and costs.

Were the interest rate, fees, and security excessive?

[94] The respondent argues that the interest rate, fees charged, and security charged were excessive for his financial circumstances. The respondent argues he should have been offered a mortgage on terms closer to those which would be offered to persons who could qualify at a conventional bank because he had substantial equity in the Property. He attaches the BC property assessment which valued the Property for tax purposes at \$2.161 million as of July 1, 2023. He queries why an assignment of rent was required and sees this as part of a predatory plan of the petitioner to take the Property from him.

[95] The court must consider all the surrounding circumstances. Where the weaker party did not understand or appreciate the significance of the contractual term, the focus is on whether they have been unduly disadvantaged. In this case, I have found that the respondent did understand the contractual terms. To the extent the respondent could be considered to be in needy circumstances, the inquiry focuses on whether the stronger party has been unduly enriched, such as where the contract price significantly departs from the market price. I therefore focus on this, while keeping in mind all the other surrounding circumstances.

[96] As noted earlier, although the respondent and Mr. Bains (who is a mortgage broker) both expressed opinions, neither party tendered admissible expert evidence of what credit was readily available in the market for someone in the respondent's circumstances. That does not bar a finding of improvidence: *McKenzie-Barnswell v. Xpert Credit Control Solutions Inc.*, 2025 ONCA 253 at para. 41. Nor in my view, does that necessarily bar a finding that a transaction is not improvident. Admissible expert evidence would have been of assistance. However, it was not provided, and in this case, there is other evidence from which the court may draw inferences.

[97] For the reasons below, I find that there is no triable issue regarding this allegation, and that it is bound to fail.

[98] First, while the interest rate and fees may have been lower if the respondent had qualified for a mortgage with an “A” bank, in his petition response, and at this hearing, the respondent admitted that he did not qualify for such a mortgage. It is therefore untenable for him to suggest that he should have been offered terms close to those he may have been offered if he were in a better financial position.

[99] Second, the respondent argues that he has equity in the Property. That is true based on the tax assessment of value. However, that does not mean that he gets the rate “A” banks will offer. The “A” banks would have surely known he had equity yet did not lend to him.

[100] Third, by the respondent’s own admission, there were other circumstances that affected his ability to obtain a loan. The respondent had not accurately declared his income or filed tax returns. Prior to this Mortgage, the respondent had to obtain mortgages from private lenders (Neighbourhood and National) in increasing amounts, and both those mortgages went into foreclosure a year after they were given. Further, the respondent contested both foreclosure proceedings. The National mortgage was in foreclosure at the time the respondent sought funding from the petitioner.

[101] Fourth, there is information of what was charged by other private lenders in the years leading up to 2023. This is not contemporaneous to 2023, but it provides some information of what the market was offering to the respondent at not-too-distant times. In December 2017, the Property was mortgaged to Neighbourhood at 6.74% per annum, compounded monthly. There was no evidence of what fees, if any, were charged by Neighbourhood. In the 2019 response to petition in that proceeding, the respondent stated that the Neighbourhood rate went from 6% to 7% to 13% to 14%. The respondent then obtained the National mortgage in May 2021 at 6.7% per annum, calculated monthly. The mortgage amount was almost \$300,000 greater. There is no evidence of whether the increase in debt was from broker fees, an interest reserve, the builder’s lien that had been on the Property, or something else. The interest on the Neighbourhood mortgage would only have accounted for

about \$120,000 of this increase. In Mr. Dhillon's March 13, 2023, email to Mr. Orlando, he stated that at renewal Pioneer (i.e. National) "rescinded the pioneer offer with a much higher interest rate and the client was not happy about this."

[102] I appreciate that the petitions and the respondent's responses in these other proceedings are not sworn statements (the affidavits presumably filed in support of those petitions and responses were not filed on this application) but I consider the statements of the original interest rates to be reliable. First, they would have been documented in the mortgages. Second, the respondent's response to the Neighbourhood mortgage refers to the original interest rate being 6% to 7%, which is consistent with the petition. Third, at this hearing, the respondent referred to the May 9, 2023 letter setting out the payout amount of the National mortgage and it is calculated at 6.7%. Fourth, in his petition responses and at this hearing, the respondent did not challenge that these were the original interest rates.

[103] More importantly, the respondent did not suggest that the response he had filed in the Neighbourhood foreclosure proceeding regarding the increase in rate at renewal was inaccurate, nor did he suggest that what he told Mr. Dhillon regarding the National/Pioneer increase in rate at renewal was inaccurate. To the contrary, at this hearing, he talked about the increasing debt he had found himself in by using private lenders and the fees he had incurred in doing so, and his unhappiness that rates had increased. In my view, the Mortgage rate is not significantly different than what, according to the respondent, these other lenders had been prepared to offer. It is in the middle of that range.

[104] Fifth, even if the rates from the Neighbourhood and National mortgages are not considered, the respondent tasked Mr. Dhillon with obtaining the lowest rate and cost. If other lenders had been prepared to lend to the respondent at a better price, it is reasonable to conclude that the respondent would have borrowed from them and not the petitioner. Even now, the respondent has not provided any evidence of an ability to re-finance at more favourable terms.

[105] Sixth, Mr. Dhillon's March 14, 2023, email to Mr. Orlando states that the client was expecting an interest rate "less than 10%", signifying what the respondent would consider acceptable for an interest rate. In my view, it is a reasonable inference that this was based on the respondent's attempts to find funding elsewhere. There is no evidence that the respondent complained to the petitioner or PHL about the interest rate or fees or assignment of rents until after the Mortgage was in collections.

[106] Seventh, there is no evidence that a 1.25% fee charged by the respondent significantly departed from market fees. It is very close to the broker fee charged by the respondent's own broker. However, apart from that, including both these fees in the total cost of financing, the APR was 11.181%. Assuming that Neighbourhood and Pioneer/National did not charge any fees—an assumption in favour of the respondent—there is still no evidence to indicate that the total cost of financing significantly departed from what, according to the respondent, these other lenders were prepared to offer.

[107] Eighth, Mr. Bains states that the petitioner "offered to the respondent terms it would offer to anyone in a similar file situation." While that does not prove market rate, it shows that the respondent was not singled out.

[108] Ninth, there is nothing unconscionable about an assignment of rents, which the petitioner has not yet attempted to enforce. There is no evidentiary basis for the respondent's assertion that the assignment of rents was part of a plan by the petitioner to take the Property from him by taking his rent so he could not pay the monthly Mortgage payments. An assignment of rents, if enforced, would be to pay the monthly Mortgage payments.

[109] In summary, considering all the above, there is no evidentiary basis to conclude that the interest rate, fees, and security obtained by the petitioner significantly departed from the market price for someone in the respondent's position.

Conclusion

[110] In summary, the respondent has not established either of the two elements of common law unconscionability. The allegation of common law unconscionability is dismissed.

[111] I appreciate the difficult financial circumstances the respondent finds himself in. At this hearing, we discussed the possibility of selling the Property, but at this time, he is not prepared to do so as he states he will then have to pay the amounts claimed by the petitioner. In the meantime, he is incurring interest charges.

[112] The respondent raises other arguments regarding events that are after the date of the Mortgage. The relevant time to assess whether a transaction is improvident is at the time the contract: *Uber* at paras. 75 and 79. Hence, these arguments are not relevant to the assessment above. However, I will address these under the next section on unconscionability under the *BPCPA*, as the respondent alleges that they show that the petitioner employed predatory lending practices to keep him in a cycle of debt to take his Property from him. Pursuant to s. 8(1) of the *BPCPA*, an unconscionable act or practice may occur before, during or after a consumer transaction.

Issue 4: Unconscionability under the *BPCPA*

Legal Principles

[113] There is no dispute that the Mortgage is a “consumer transaction” as defined in s. 1 of the *BPCPA*, and that sections 7 to 10 in Part 2 (Unfair Practices) of the *BPCPA* applies: s. 2(2)(a). The petitioner was a “supplier”, and the respondent was a “consumer” as those terms are defined in s. 1.

[114] Section 9(1) of the *BPCPA* prohibits a supplier from committing or engaging in an unconscionable act or practice in respect of a consumer transaction.

[115] Section 8 describes what must be considered by the court in determining whether an act or practice is unconscionable. That section states:

8(1) An unconscionable act or practice by a supplier may occur before, during or after the consumer transaction.

(2) In determining whether an act or practice is unconscionable, a court must consider all of the surrounding circumstances of which the supplier knew or ought to have known.

(3) Without limiting subsection (2), the circumstances that the court must consider include the following:

- (a) that the supplier subjected the consumer or guarantor to undue pressure to enter into the consumer transaction;
- (b) that the supplier took advantage of the consumer or guarantor's inability or incapacity to reasonably protect the consumer or guarantor's own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of the consumer transaction, or any other matter related to the transaction;
- (c) that, at the time the consumer transaction was entered into, the total price grossly exceeded the total price at which similar subjects of similar consumer transactions were readily obtainable by similar consumers;
- (d) that, at the time the consumer transaction was entered into, there was no reasonable probability of full payment of the total price by the consumer;
- (e) that the terms or conditions on, or subject to, which the consumer entered into the consumer transaction were so harsh or adverse to the consumer as to be inequitable;
- (f) a prescribed circumstance.

[116] Whether considering unconscionability under the common law or under the *BPCPA*, the essential elements are the same: *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122 at para. 54; *Vanguard (BCCA)* at para. 14. The difference is that under the *BPCPA*, the burden of proof is on the supplier to show that it did not commit or engage in an unconscionable act or practice: s. 9(2).

Did the petitioner commit or engage in an unconscionable act or practice in respect of the Mortgage?

[117] The evidence does not support a finding of unconscionability at common law, and I find that it also does not support a finding of unconscionability under the *BPCPA*. I will address each of the statutory factors under s. 8, and the respondent's arguments regarding other events that post-date the Mortgage.

Surrounding circumstances

[118] I have reviewed all the surrounding circumstances in the evidence above and adopt those here.

Did the petitioner subject the respondent to undue pressure to enter into the Mortgage?

[119] I have reviewed the evidence and arguments under the heading “Whether the petitioner was aggressive in the negotiation” under Issue 3. I adopt those here. The petitioner and the respondent did not have any direct contact when they entered into the Mortgage. The email correspondence between the respondent’s broker and the petitioner shows that it was the respondent’s broker who approached the petitioner and requested a loan. The petitioner offered terms and the respondent did not accept them for a month. The respondent, through his broker, then approached the petitioner a second time seeking funding.

Was the respondent unable by incapacity or other reasons to reasonably protect himself?

[120] At this hearing, the respondent advised that he was not alleging any of the circumstances in s. 8(3)(b).

Did the total price of the Mortgage grossly exceed the total price at which similar subjects of similar consumer transactions were readily obtainable by similar consumers?

[121] This involves the same evidence and arguments that were addressed under the heading “Were the interest rate, fees, and security excessive?” in Issue 3, and I adopt those here. As noted previously, neither party filed admissible expert evidence, but I conclude from all the other evidence that the total price of the Mortgage did not grossly exceed the total price at which similar subjects of similar consumer transactions were readily obtainable by similar consumers.

At the time the Mortgage was entered into, was there no reasonable probability of full payment of the total price by the respondent?

[122] I find that there was a reasonable probability of full payment of the Mortgage. Prior to agreeing to loan the funds, the petitioner inquired regarding the respondent's exit strategy and was told there was \$1 million in equity in the Property, and that the respondent would be filing his taxes and re-financing with a "B" bank. On the BC tax assessment value, there was about \$800,000 in equity. Further, the respondent stated at this hearing that he had income that had not been reported, that he could and did pay the Mortgage, and that he was going to sell the Property, or refinance once he had filed his tax returns.

Were the terms and conditions of the Mortgage so harsh or adverse to the consumer as to be inequitable?

[123] I find that they were not for the reasons discussed in the section entitled "Were the interest rate, fees, and security excessive?" in Issue 3.

Prescribed Circumstance

[124] The parties did not argue that there was any relevant prescribed circumstance in the regulations to the *BPCPA*.

Other alleged unconscionable acts

[125] Finally, I turn to the other alleged unconscionable acts the respondent alleges the petitioner engaged in, all of which post-date the Mortgage, but which he alleges are predatory lending practices that relate back to the Mortgage: *BPCPA*, s. 8(1).

[126] First, the respondent disputes that he defaulted under the Mortgage and interprets the petitioner's claim that he did as part of the plan to take his Property. The basis for this allegation is the respondent's assertion that during the term of the Mortgage, he made all the monthly mortgage payments. The first six months were paid by pre-authorized debit, and the last six months were paid from the interest reserve.

[127] This argument is bound to fail. The respondent's argument ignores that the default was not in the first year of the Mortgage. The defaults were in not paying the Mortgage after the Mortgage term expired, and in not paying the accelerated amount once the demand was made, none of which is contested.

[128] Second, the respondent denies receiving any correspondence from the petitioner regarding the renewal of the Mortgage until he received the letter dated July 4, 2024, which states that the petitioner and his broker had made multiple unsuccessful attempts to contact him. The respondent argues this statement was made by the petitioner to fabricate evidence of non-responsiveness on his part, thereby creating a misleading record to support its position. He states that this conduct raises serious concerns about the accuracy and integrity of the documentary evidence submitted by the petitioner.

[129] There is no evidentiary basis for the respondent's allegation, and it is bound to fail. The emails were produced on this application. Even if the respondent did not receive the emails to him and his broker that pre-date that letter, there is no evidence to support that the July 4, 2024, correspondence was an attempt by the petitioner to fabricate evidence in furtherance of a plan to take his Property.

[130] Third, although the respondent did not accept the petitioner's renewal offer, the respondent alleges that the renewal offer was predatory and part of a plan to take his Property. The respondent states that the original renewal offer made by the petitioner was at a greater interest rate than the original mortgage (10.25% versus 9.75%). He submits that rather than negotiating in good faith, the petitioner leveraged its superior bargaining position to impose oppressive renewal terms designed to trigger a default and acquire the Property in foreclosure at a price well below fair market value.

[131] There is no evidentiary basis for the respondent's bald assertion, and it is bound to fail. There is nothing in the renewal offer which suggests it was part of a predatory plan of the petitioner to take the respondent's Property. Mr. Bains states why the petitioner offered this rate, and that at the meeting with the respondent, the

petitioner again offered the renewal at 9.75%, and that he was authorized to go to 9.25%. Nor is there any basis for the allegation that the petitioner planned to sell the Property at below market value.

[132] Fourth, the respondent alleges that the offer of a forbearance agreement was part of the petitioner's predatory practices and plan to take his Property because the petitioner would have charged a 1% fee which would have added to the respondent's indebtedness and cycle of debt.

[133] Again, there is no evidentiary basis for the respondent's bald assertion, and it is bound to fail. There is nothing in the forbearance offer which suggests it was part of a plan to take the Property. Rather, the forbearance offer indicated that this was to facilitate the respondent selling the Property.

Conclusion

[134] In summary, considering all the above and keeping in mind that the burden is on the petitioner, I find that the respondent's allegation of unconscionability under the *BPCPA* in relation to the Mortgage is bound to fail.

Issue 5: Post-Default Charges Included in the Redemption Amount

[135] The respondent challenges the following charges claimed by the petitioner and included in the amount to redeem in the order *nisi*: (a) lender "penalty fee" of \$500; (b) ProLink insurance premium of \$11,518.50; (c) NSF fees of \$1,050; and (d) lender demand fee of \$750.

[136] I have doubt that a challenge to these charges comes within the handwritten clause in the order *nisi*. That term states that the respondent may bring an application to challenge the validity and enforceability of the Mortgage. It does not include post-default disbursements claimed. Reinforcing the foregoing interpretation, at the time of the order *nisi*, the respondent did not raise these issues either in his response to petition or in his affidavit. The legal basis in the response to petition was limited to unconscionability and the arguments addressed in these reasons. Nor from my review of the previous applications did the respondent raise this issue until

this hearing, leading to an issue of notice. The issue is not mentioned in the May 22, 2025, notice of application. However, I did not receive an argument from the petitioner to this effect, so I address the respondent's arguments.

[137] At this hearing, counsel for the petitioner advised that he could not find any contractual basis for the \$500 "penalty fee". I therefore conclude that this amount should be deducted from the redemption amount. The Mortgage contains clauses that permit the petitioner to claim: (i) protective disbursements such as property insurance premiums (the respondent admitted he had stopped insuring the Property, and the petitioner is permitted to incur costs to perform obligations the respondent does not honour); (ii) fees for dishonored or late periodic payments (\$250 each); and (iii) and a \$750 demand fee.

[138] The respondent challenges the Prolink charges which are insurance premiums. He states he tried to obtain details from Prolink but it would not provide him with information. He did not state he had made inquiries of the petitioner.

[139] I find that the Prolink charges are sufficiently proved. These charges were supported by invoices at the order *nisi*. I acknowledge that the premiums seem high, but there is no information regarding the respondent's claims history or his risk rating. In the circumstances, without any evidence from the respondent showing that these invoices are not what they purport to be, I cannot conclude that these charges should not be included in the redemption amount.

Orders

[140] The respondent's application to set aside or vary the order *nisi* on the basis that the Mortgage is unconscionable under the common law and the *BPCPA*, is dismissed. As the petitioner conceded there was no contractual basis for the \$500 "penalty fee", the order *nisi* is varied to reduce the amount owing as of December 10, 2024, by \$500 to \$1,380,156.59. I trust that the parties can agree to the required adjustment to the *per diem* amount owing thereafter. If not, the parties may make arrangements through Court Scheduling to attend briefly at 9:00 am to address the calculation.

[141] The parties did not make submissions on costs. If they cannot agree, they may make arrangements through Court Scheduling to speak to the matter.

“Norell J.”