IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *H & W Investments Ltd. v. George,*
2017 BCSC 2150

Date: 20171127
Docket: S30135
Registry: Chilliwack

Between:

H & W Investments Ltd. and
Meyer Enterprises Ltd.

Petitioners

And

Pamela Margaret George

Respondent

Before: The Honourable Mr. Justice N. Brown

Reasons for Judgment

In Chambers

Counsel for the Petitioners:	P.A. Thome
Counsel for the Respondent:	P.G. Kent-Snowsell
Place and Dates of Hearing:	Chilliwack, B.C. October 28, 2016 July 21, 2017
Place and Date of Judgment:	Chilliwack, B.C. November 27, 2017

[1] The petitioners, H & W Investments Ltd. (“H & W”) and Meyer Enterprises Ltd., petition the court for an order of sale of two parcels of Agricultural Land Reserve (“ALR”) properties found in Chilliwack, B.C. They ask that the parcels (collectively the “Lands”) be sold out of court, free and clear of all encumbrances, except for the reservations, provisos, exceptions and conditions stated in the original Crown grant.

[2] The petitioners also ask that the Lands be sold forthwith in accordance with s. 8 of the *Partition of Property Act*, R.S.B.C. 1996 c. 347 [*PPA*] with the petitioners and respondent having liberty to place bids on the Lands and to match the best bid received from a third party.

[3] The petitioners also ask for exclusive conduct of the sale and authority to list the Lands for private sale by general, exclusive, or multiple listing, through a licensed real estate agent, agents or firms, with authority to agree to pay a commission of not more than 3% of the gross selling price to any real estate agent or firm who may arrange the sale of the Lands, plus applicable taxes, such as commission and taxes to be paid from the gross proceeds of the sale of the Lands on completion.

[4] The petitioners propose that the net proceeds of sale of the Lands, after payment of all necessary costs of sale and discharge and encumbrances, be divided in the following manner:

1. an amount equal to 50% of the total net sale proceeds shall be paid to the petitioner, H & W Investments Ltd.;

2. an amount equal to 25% of the total net sale proceeds shall be paid to the petitioner, Meyer Enterprises Ltd.; and

3. an amount equal to 25% of the total net sale proceeds should be paid to the respondent, Mrs. Pamela Margaret George.

[5] In addition, the petitioners ask for the following related orders:

1. The price and other terms of the sale of the Lands, and distribution of the sale proceeds, shall be subject to the approval of the court in this proceeding unless otherwise agreed in writing by all the registered owners of the Lands.

2. The petitioners are entitled to recover the costs of this proceeding, on a solicitor and client basis, and such costs shall be paid from, and form a charge on the proceeds of the sale of the Lands of the respondent's proceeds.

3. All necessary accounts, directions and inquiries be taken.

4. The parties are at liberty to apply to the Court for such further and other directions as may be necessary to carry out the full purpose and intent of this Order, including approval of the sale of the Lands.

5. The petitioner seeks an order for Certificates of Pending Litigation against the Lands.

[6] The formal Land Registry descriptions of the Lands located respectively at 45465 and 45485 Stevenson Road, in the City of Chilliwack, are as follows:

> CIVIC ADDRESS: 45465 Stevenson Road, Chilliwack, British Columbia
>
> P.I.D.: 002-260-948
> Parcel "One" (Reference Plan 16766)
> of Parcel "D" District Lot 261
> Group 2 New Westminster District
>
> AND:
>
> CIVIC ADDRESS: 45485 Stevenson Road, Chilliwack, British Columbia
>
> P.I.D.: 005-359-571
> Parcel "D" (Reference Plan 3994)
> District Lot 261 Group 2
> Except firstly: Parcel 1 (Reference Plan 16766)
> Secondly: Part Subdivided by Plan 73025
> New Westminster District
>
> [Emphasis added.]

[7] For convenience, I will reference the properties respectively as 45485 Stevenson Road, being “P.I.D. 571” on the registered title; 45465 Stevenson Road, being “P.I.D. 948”, on the registered title; and collectively as the “Lands”.

THE INTERESTED PARTIES

[8] The parties interested in this petition are:

1. Mrs. Johanna Haan, President and owner of H & W.

2. Mr. Dean Andre Meyer, co-petitioner and President of Meyer Enterprises Ltd., an owner of the Lands.

3. Mrs. Pamela Margaret George, the respondent.

WHO CURRENTLY OWNS THE LANDS?

1. P.I.D. Ownership shares

[9] P.I.D. Ownership shares are as follows:

1. P.I.D. 948, 45465 Stevenson Road, continues to be registered in the name of Mrs. George, the respondent, who holds an undivided quarter-interest.

2. Meyer Enterprises Ltd., a co-petitioner, owns an undivided quarter-interest.

3. H & W, a co-petitioner, has an undivided half-interest, registered on June 6, 1994.

4. P.I.D. 571, 45485 Stevenson Road, is collectively owned by H & W and Meyer Enterprises. They hold a three-quarter-interest on the 8.372 acres. It is affected by ALR Plan No. 47, deposited September 11, 1974.

5. P.I.D. 571, 45485 Stevenson Road, is currently leased for agricultural purposes to a third party.

HISTORY

1. Johanna Haan

[10] Mrs. Haan, 86, retired, is President and Secretary of H & W. Her husband Cornelis “Casey” Haan was a real estate land developer. He died on November 28, 2011. Mrs. Haan‘s first affidavit was sworn October 28, 2015. In it, she explained that it was through Mr. Haan’s activities as a real estate land developer that she came to receive all the voting shares in H & W. On March 13, 2007, H & W purchased 45465 Stevenson Road, P.I.D. 948 for $215,000, thereby acquiring a 50% interest in the 0.184 parcel. As that parcel gives access to the adjacent 45485 Stevenson Road, P.I.D. 571 property, it was purchased as an investment to be held for anticipated future subdivision and development.

[11] There is no residential or other building on 45465 Stevenson Road, P.I.D. 948; a residential building formerly on the property having been removed. In the current Official Community Plan, it is zoned rural residential, designated as low-density residential. An appraisal prepared by Fortin Appraisals Ltd. dated December 23, 2014 appraised the market value of 45465 Stevenson Road., P.I.D. 948 at $300,000.

[12] As for 45485 Stevenson Road, P.I.D. 571, in September 1974, H & W purchased a 50% interest in it for $50,000. It is in the ALR and comprises 8.372 acres. No dwellings are situate on the property, rented from time to time for forage crops. As of January 1, 2015, it was leased 12 months at a flat rate of $500 for the purpose of grazing.

[13] Mrs. Haan deposed at para. 19 that the property was purchased to hold for anticipated future subdivision and development, if it could be removed from the ALR.

[14] In June 2013, an application was filed with the Agricultural Land Commission ("ALC") to remove 45485 Stevenson Road, P.I.D. 571, from the ALR. The ALC rejected the application. On p. 33 of the ALC's Minutes, the ALC concluded it did not believe the location of the subject properties adjacent to residential development rendered them unsuitable for agricultural production.

[15] Mrs. Haan deposed at para. 21 that she did not anticipate 45485 Stevenson Road, P.I.D. 571, could be removed from the ALR for the purposes of subdivision in the near future, or at all. She further stated, at para. 22, that she is currently 83 years old (according to her birthdate, 86) and would like to place 45465 Stevenson Rd., P.I.D. 948, and 45485 Stevenson Road, P.I.D. 571, for sale or, alternatively, purchase the respondent's interest, to which end she explained she had received no cooperation from the respondent, Mrs. George.

2. Dean Andre Meyer

[16] At para. 22 of his affidavit, Mr. Meyer deposed his company would like to offer 45465 Stevenson Road, P.I.D. 948, and 45485 Stevenson Road, P.I.D. 571, for sale; or alternatively, purchase the respondent's interest at fair market value. He also said he had received no cooperation from the respondent to achieve that end.

[17] At para. 23, Mr. Meyer stated that H & W and Meyer Enterprises Ltd. are willing to purchase the respondent's interest at the "as is" value, at the midpoint of the appraisal of 45485 Stevenson Road, P.I.D. 571, made by Fortin Appraisals Ltd., i.e. between $1,088,000 and $1,170,000, the midpoint being $1,129,000, the respondent's 25% interest being $282,250. At para. 24, he deposed the respondent has been unwilling to sell the property for its present appraised value, rather she wants to sell it at a valuation of $5,025,000, based on the assumption it will be excluded from the ALR. In which case, the respondent's 25% interest would equal $1,256,250.

[18] The report on which Mr. Meyer relies is attached as Exhibit "H" to his October 15, 2015 affidavit. In it, Mr. Fortin concludes his 75-page report with the opinion that that the value of the property at 45485 Stevenson Road, P.I.D. 571, recognizing a

latent potential for subdivision, is between $1,088,000 and $1,170,000. Assuming it will be excluded from the ALR, he appraised its value at $5,025,000. That figure assumes 77 lots and units developed on its 8.372 acres.

[19] At para. 25, Mr. Meyer deposed that a sale and distribution of funds or a purchase by the co-owners of the 45485 Stevenson Road, P.I.D. 571 property would be more expeditious because the property is not subdividable.

3. Respondent Pamela Margaret George

.1 Historical background

[20] The following history is relevant to Mrs. George's contention that there was some form of agreement or understanding among the owners that the property would be held long-term for investment, awaiting approval of the ALC for the properties to be excluded from the ALR.

[21] Mrs. George explained some of the family history behind the acquisition of the Lands. She explained her husband, Fred George, was a real estate agent in the 1960s. Donald Percy Meyer then was employed in house construction. They began to pull together their resources to develop residential properties for the growing family population in the Chilliwack area. They incorporated a company in 1968 to facilitate joint projects. Donald Meyer and Fred George carried on business together until Donald Meyer's death in 2005. Mrs. George further deposed that during that same period, Cornelis Haan also carried on business through his incorporated company, Haan Construction Ltd. ("HaanCo").

[22] Mrs. George recalled that the subject Lands originally formed part of a larger property known as Eden Bank Farm in the Sardis area, since then divided into several parcels. Her husband and Donald Meyer decided the subject Lands were suitable for residential development. They collaborated with Cornelis Haan, who was willing to co-invest and redevelop the property. In September 1974, they agreed to purchase the remainder of what was a larger parcel, 45465 Stevenson Road, P.I.D. 948, for $50,000.

[23] In 1986, Donfred Holdings Ltd., the name of the company under which Donald Meyer and Fred George conducted their development projects, obtained consent from the City of Chilliwack to subdivide a portion of Parcel D; to then develop and sell four low-density residential lots on it.

[24] After the subdivision, development and sale of the lots, Donfred and HaanCo continued to hold what was left of 45485 Stevenson Road, P.I.D. 571, which, as mentioned, fell within the ALR. Mrs. George maintained (at para. 22) that Fred, Don and Casey never disagreed about the use or disposition of the ALR property, sharing a long-term vision and goal for the investment. She stated, “It was mutually understood that the ALR Property would eventually come out of the ALR, and that one day it would be possible to carry out the intended development of the ALR Property”.

[25] I see the hearsay nature of the foregoing assertions by Mrs. George. Her affidavit is populated with numerous instances of such hearsay, along with arguments and opinions on some subjects. For example, at para. 24 she stated:

> 24. To the best of my knowledge, even as Fred, Don and Casey got older and retired from active business, neither they, nor any of their immediate family members, until the present proceedings, had ever suggested that the ALR Property should be sold prior to its exclusion from the ALR. They had not paid very much for the land. It made no business sense to sell it when the long term potential was always there for a substantial increase in value whenever the ALR Property should be released from the ALR.

[26] That noted, I will comment further on admissibility concerns later in these reasons.

[27] In 2005 and 2006, the George and Meyer families wound up the Donfred business, dividing the remaining assets among its shareholders, which included Mrs. George.

[28] In 2006, Donfred, and MeyerCo amalgamated as one company called Meyer Enterprises Ltd., with Dean Meyer, Marisa Meyer, son and daughter respectively of Donald Meyer and Myrna Meyer, becoming officers of Meyer Enterprises Ltd.

[29] In 2007, Myrna Meyer transferred a one-quarter undivided interest in the ALR property to Meyer Enterprises Ltd. In March of that same year, Mrs. George and her husband, Meyer Enterprises Ltd., and H & W purchased 45465 Stevenson Road, P.I.D. 948, from the estate of another person.

[30] Mrs. George maintains that purchase demonstrated "our continued commitment to the long term potential for development of the ALR Property", (para. 34). Mrs. George further deposed (at para. 35) that "[d]espite the death of [Donald Meyer] in 2005, and development of a new business relationship with his son Dean, all of the co-owners remained in agreement regarding the long term vision for the ALR Property, and felt that the purchase of Parcel One would ultimately enhance their joint investment in it." When Mrs. George's husband died on January 27, 2008, he left his interest in that ALR property to her.

[31] The respondent contends "significant changes in the approach to long term planning at the City of Chilliwack have occurred that she says has made it] clear the ALR Property is of highest priority for urban densification in the Chilliwack area and exclusion from the ALR" (para. 38). The petitioners forcefully dispute that assertion. I will return to that subject and the petitioners' response further on in these reasons.

[32] At para. 46, Mrs. George deposed that she personally attended the ALC's March 20, 2013 hearing of an application for exclusion of the subject Lands from the ALR. The City supported the application. Also attending were Dean Meyer and Ron Haan. Not mentioned is the fact that despite the City's support for the exclusion, the ALC refused the application, noting among their reasons the suitability of the Lands for agricultural purposes. Further, since then, there is no evidence of any successful applications being made for exclusion of ALR Lands from the "Evans Road Block" in which the Lands are situate.

[33] At para. 47, Mrs. George refers to news reports that she maintained "raised questions about the longevity of the ALC as a statutory body", indicating, she opined, "some loss of political confidence in the narrow mandate of the ALC to preserve agricultural land, and query whether there is a need to replace it with a

more flexible vehicle capable of balancing economic and social needs with the preservation of agricultural land for communities at the urban-ALR boundary." What is not mentioned by Mrs. George regarding the documents she attached to her affidavit, such as Exhibit "P", is that, according to the ALC Chair's reported statement, Zone 1, in which the subject Lands are situate, would be more "strictly protected". On the other hand, In Zone 2, which would encompass, for example, the north-east portion of the province, ALC considerations would now include additional considerations.

[34] Otherwise, the materials attached do not indicate significant relevant changes in the ALC's mandate and governing principles since 2014 – insofar as they relate to Zone 1. Some of the contents do refer to closer cooperation between the ALC and local governments, particularly with respect to the cooperative objective of protecting agricultural lands within urban settings and development. Exhibit "L", titled "Evans Block Neighbourhood Plan Terms of Reference" noted that he ALC had "expressed a willingness to discuss the future of these lands, based on the City's 2040 Official Community Plan rationale", which is:

> - To support existing infrastructure capacity, and to build up a developmental reserve fund (to support future select hillside development)
> - To facilitate much needed parks and sports field development
> - To provide land needed for … [road] widening.
>
> [Emphasis added.]

[35] At para. 49, Mrs. George refers to the subject Lands' "heightened prospects for exclusion", stating that she "believe[s] it to be true that the Petitioners have brought this Application at this time pursuant to the Partition Act … to try and obtain [her] ¼ interest in the ALR Property for the Meyer and/or Haan families at the lowest possible price prior to its release from the ALR."

[36] But there is nothing in the Official Community Plan that changes the development prospects for the subject Lands. The City's support for the 2013 application made no difference in the result. Since then, there is no evidence of

successful exclusion applications in any portion of the Evans Road Block, which has 12 owners.

[37] It is fair to say that paras. 58 and 59 of Mrs. George's affidavit capture the essence of her position:

> 58. I am not adverse to the sale of my interest in the Lands now, prior to release of the ALR Property, for no less than the 2014 appraised out-of-ALR value. I accept that this price is lower than the future out-of-ALR value will be at the date of the actual release of the ALR property from the ALR. I am willing to concede the difference in price, in order to permit the Petitioners to make plans with the City for its development, and to give them comfort that they have secured my share before other investors express interest in it.
>
> 59. I believe it to be true that the Fair Market Value or 'agricultural value' proposed by the Petitioners as the appropriate price for my sale to them is not fair, equitable or ethical because we are not arms-length third parties but long term business partners who have together held the ALR Property for 42 years and purchased Parcel One in 2007, with the intention of seeing the Lands through to development. My husband Fred would not have pursued the purchase of Parcel One in the year before his death had it entered his mind that Dean and Ron would be pressing me now to sell our ¼ share in the Lands at what I believe to be rock bottom prices as soon as the City of Chilliwack has begun to put its weight behind a feasible plan for the development and urban densification of the Evans Road Block.

[38] In effect, Mrs. George says she is only willing to sell her interest as if it is out of the ALR, which according to Mr. Fortin would fetch a price of $5,025,000; the putative cost of subdivision implicitly borne by the petitioners, with no financial contribution from her.

[39] This thinking does not realistically diminish the risks Mrs. George expects the petitioners to bear in the hope the ALC will exclude the properties at some future date, while she receives out-of-ALR compensation now, and bears no risk. Holding Mrs. George's interest would offer the petitioners little comfort when there is no sound basis on which to expect the subject Lands will be excluded any time in the near future. Risks born by a party generally come with a reasonable expectation of compensation for that consideration. Subdivision and development cannot take place without the property being excluded. Then to be borne are development costs

and other local government pecuniary demands, which are unpredictable. The City could quite easily withdraw its support for exclusion of ALR lands for residential development and focus all its energies on industrial lands that could produce employment for local residents, etc.

[40] It would be financially imprudent to pay maximum value now to Mrs. George on the speculation that the ALC will exclude the property, ever, let alone in the near future, as Mrs. George predicts.

[41] Mrs. George grants in her affidavit that she does not have the means to purchase the petitioners' interest. The petitioners point out that while Mrs. George is not in a financial position to buy out their interest, she insists they pay her a price based on highly speculative assumptions. The petitioners also argue, reasonably, that the respondent insists they absorb all speculative risks and costs of subdivision costs, yet pay her on the assumption the ALC has agreed to the removal and subdivision of the property, all without any contribution from her; effectively holding them as "hostages to fortune", as they see their situation.

[42] At para. 51, Mrs. George deposed that the petitioners had never at any time proposed to her that they should together list the Lands for sale on the open market. She further deposed that she had never suggested she is unwilling to sell her interest to them. That assertion misses the critical element that she wanted to sell her interest based on an out-of-ALR valuation. The petitioners submit that it would be irrational for them to purchase something at a price that is speculative; one which they may never recoup. This is the state in which the petitioners now find themselves stuck; unable to deal with the Lands, three-quarters of which they own, and so realize their equity, then freeing them to pursue other opportunities.

[43] It should be noted that on July 23, 2014, the petitioners did send a letter to Mrs. George in which they made an offer of sale or purchase to her.

[44] In his affidavit of October 15, 2015, Dean Meyer deposed that the petitioners are willing to purchase the respondent's interest at the "as is" value, at the midpoint

of the appraisal for 45485 Stevenson Road, P.I.D. 571, that is: $1,088,000 - $1,170,000, being $1,129,000; the respondent's 25% interest being $282,250.

[45] The parties did have discussions but as mentioned above, Dean Meyer noted at para. 24 of his affidavit that Mrs. George "has been unwilling to sell the property for its present appraised value but rather [she] wants to sell the property assuming exclusion from the [ALR] in the amount of $5,025,000, her 25% interest [accordingly] being $1,256,250."

[46] Counsel for the petitioner submits that what the respondent is saying, in effect, is "buy it from me at an out-of-ALR price. Bear the risk of getting it out of the ALR of continuing to hold it. Payment of development fees and other preparatory steps will be yours alone". In short, counsel submitted, "give me the money and you are on your own".

[47] Counsel submitted that explains why discussions broke down.

[48] Mrs. George's stated perspective on what is fair is a blinkered one. Considering the evidence as a whole, it is more than possible the petitioners would be left holding only optimistic expectations but in reality a property they have no use for and from which they will never see a benefit.

[49] Mrs. George stakes her position mostly on an untested belief that the Chilliwack community plan and the impetus of an animated City Council will propel matters quickly forward in the near future, the City taking the lead, likely convincing the ALC to exclude the subject Lands from the ALR. Considering all the available evidence placed before the court, the ALC's previous 2014 rejections of exclusions of industrial lands, the lack of any progress or success in excluding any parcels from the Evans Road Block since 2013, the continuing unchanged mandate of the ALC, the cautious prognoses of City planners, and the City's understandable main focus on obtaining exclusion of land for industrial purposes, cumulatively forcefully argue that a formal risk analysis would most likely conclude that there is little likelihood of the subject Lands being excluded from the ALR in the foreseeable future. Since it is

the petitioners who would bear the risk, they understandably do not see Mrs. George's position as a fair one.

[50] I will further discuss the parties' positions after first summarizing the applicable legal principles.

LEGAL PRINCIPLES

1. Statutory

[51] The petition engages the *PPA*. Section 2 provides:

> **Parties may be compelled to partition or sell land**
>
> **2** (1) All joint tenants, tenants in common, coparceners, mortgagees or other creditors who have liens on, and all parties interested in any land may be compelled to partition or sell the land, or a part of it as provided in this Act.
>
> (2) Subsection (1) applies whether the estate is legal or equitable or equitable only.
>
> (3) In order to achieve partition, special timber licences may be assigned to any of the interested parties.
>
> (4) … [Not applicable.]

[52] A recap of the parties 'undisputed' interests is as follows:

a. The parties H & W, Meyer Enterprises Ltd. and the respondent Pamela Margaret George own the properties P.I.D. 948, 45465 Stevenson Road and P.I.D. 571, 45485 Stevenson Road as tenants-in common.

b. H & W owns a half-interest in both properties.

c. Meyer Enterprises Ltd. owns a quarter-interest in both properties.

d. The respondent Pamela Margaret George owns a quarter-interest in both properties.

e. Therefore, H & W and Meyer Enterprises Ltd. collectively own three-quarters of the properties.

[53] Because H & W and Meyer Enterprises Ltd. collectively hold a three-quarter-interest in the properties, sections 6 - 8, and 10 of the *PPA* apply:

> **Sale of property where majority requests it**
>
> **6** In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if the party or parties interested, individually or collectively, to the extent of 1/2 or upwards in the property involved request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property, the court must, unless it sees good reason to the contrary, order a sale of the property and may give directions.
>
> **Sale in place of partition**
>
> **7** In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if it appears to the court that because of the nature of the property involved, or of the number of parties interested or presumptively interested in it, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the interested parties than a division of the property, the court may
>
> (a) on the request of any of the interested parties and despite the dissent or disability of any other interested party, order a sale of the property, and
>
> (b) give directions.
>
> **Purchase of share of person applying for sale**
>
> **8** (1) In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, then if any party interested in the property involved requests the court to order a sale of the property and a distribution of the proceeds instead of a division of the property, the court may order a sale of the property and give directions.
>
> (2) The court may not make an order under subsection (1) if the other parties interested in the property, or some of them, undertake to purchase the share of a party requesting a sale.
>
> (3) If an undertaking is given, the court may order a valuation of the share of the party requesting a sale in the manner the court thinks fit, and may give directions.
>
> …
>
> **Court may allow interested parties to bid**
>
> **10** On a sale under this Act the court may allow any of the interested parties to bid at the sale on the terms as to nonpayment of deposit, or setting off or accounting for the purchase money instead of paying it, or as to any other matter that seems reasonable to the court.

[54] A joint tenant of lands enjoys a *prima facie* the right to partition or sale unless justice requires otherwise: *Harmeling v. Harmeling*, (1978), 90 D.L.R. (3d) 208 (B.C.C.A.) [*Harmeling*]. At para. 10 of *Harmeling,* Seaton J.A. commented:

> [10] … I think that we ought to accept without qualification the general statement that there is a *prima facie* right of a joint tenant to partition or sale and that the court will compel such partition or sale unless justice requires that such an order should not be made.

[55] In *Bradwell v. Scott*, 2000 BCCA 576 [*Bradwell*], Finch J.A. (as he then was), writing for the Court, further explained (at para. 31):

> [31] … While equitable considerations may justify the exercise of the court's discretion against an order for partition or sale, the court's jurisdiction to make such an order does not depend upon proof or disproof of the equities. The right under s. 6 arises on establishing an interest of one-half or more in the property, subject to there being proof of good reason to the contrary. In the language of the Law Reform Commission Report referred to above (at 21):
>
> > In general, a co-owner has a right to partition or sale, regardless of the wishes of other co-owners. In earlier cases, what has been characterized as a "structured approach" was adopted, under which partition or sale would be refused only in specified situations, such as vexation, malice and economic oppression. The structured approach was abandoned by the British Columbia Court of Appeal in *Harmeling v. Harmeling*, where it was said that the court will grant an order for partition or sale "unless justice requires such an order should not be made." This discretion, consequently, is largely undefined.
>
> [Emphasis added.]

[56] In *Sahlin v. Nature Trust of British Columbia*, Inc., 2011 BCCA 157 [*Sahlin*], the Court of Appeal clarified the nature of the onus faced by a respondent who opposes a request for sale of a property. The Court noted that Finch J.A. used natural language in his interpretation of s. 6 of the *PPA*: At paras. 23 and 24, Frankel J.A., writing for the Court clarified:

> [23] In *Bradwell v. Scott*, Mr. Justice Finch, as he then was, pronounced on two matters with respect to the interpretation and application of s. 6 that are relevant to this appeal. The first is that there is no legal onus on a party opposing a request for sale sought by a co-owner with a 50% or more interest in a property to demonstrate “a good reason to the contrary”. In this regard, Finch J.A. said the following:

> [35] …The section says the court must order sale of the property "… unless it sees good reason to the contrary". **This language is neutral in terms of onus.** It is for the court to assess the evidence and to determine whether justice requires that such an order be denied. In practical terms, it would be for those opposing the application to put before the court evidence tending to establish a good reason for refusing it. … [Underlining in original; bold added.]

[24] The second [matter with respect to the discretion conferred by s. 6] is [that it] broad and unfettered. It bestows on the court the ability to refuse to order a sale when, having regard to the particular facts and circumstances, such an order would not do justice between the parties. Mr. Justice Finch summarized his conclusion as follows:

> [45] … I agree with Mr. Justice Seaton [in *Harmeling v. Harmeling* (1978), 90 D.L.R. (3d) 208 (B.C.C.A.)] that we should not limit the discretion by creating a general rule that might serve to justify refusal in any given case. The facts and circumstances of each case must be examined to determine whether a good reason, of whatever sort, exists for refusing the order.
>
> [Emphasis added by Frankel J.A.]

[57] The Court of Appeal (at para. 33) upheld the trial decision in *Sahlin,* in which Rice J. found the following factors constituted "good reason to the contrary":

(a) the Sahlin family's long-standing connection to the property;

(b) the Sahlin family's desire to use the land in a manner that respected its ecological and environmental sensitivities;

(c) an order for sale would risk exposing the Savary Land to ownership by a third party who did not share the ecological and environmental sensitivities of either the Sahlin family or The Nature Trust; and

(d) an order for partition would, in part, allow both the Sahlin family and The Nature Trust to realize their objectives for the use of the property.

[58] The reasons the respondent advanced in the case at bar for her opposing the sale of the property do not stem from teleological sensitivities or ethos considerations, such as those stated above. They are not based on important preservation purposes, the unique irreplaceable nature of the subject Lands, on heritage or cultural values, or on some other form of loss affecting the common good, lastingly lost to the respondents and the community if the Lands were to be sold. The reasons for opposing the sale in this case are chiefly rooted in financial calculations and consequences. This case is also distinguishable by the fact the

property in *Sahlin* was held in a trust. The Sahlins wanted to live on the property not develop and subdivide it.

[59] In passing, I note that after the provincial government made changes in 2014 to the *Agricultural Land Commission Act,* S.B.C. 2002, c. 36, s. 13 [*ALCA*], such considerations can become relevant in a Zone 2 community, i.e. outside the Lower Mainland, Vancouver Island, and the Okanagan, for situations in which a dispute has developed in a community over issues such as, the use of agricultural land for community projects like building a school, a regional growth strategy, or over the form or content of an official community plan. A facilitator appointed under the *ALCA* to resolve such disputes must give weight to the following values in descending order of priority per s. 13(4):

> (a) agricultural values, including the preservation of agricultural land and the promotion of agriculture;
>
> (b) environmental, economic, social and heritage values, but only if
>
> (i) those values cannot be replaced or relocated to land other than agricultural land, and
>
> (ii) giving weight to those values results in no net loss to the agricultural capabilities of the area.

[60] On balance, agricultural values still predominate even in Zone 2.

[61] But in the Lower Mainland, Zone 1, in which the subject Lands lie, s. 6 of the *ALCA* stipulates that the purposes of the Commission are:

> (a) to preserve agricultural land;
>
> (b) to encourage farming on agricultural land in collaboration with other communities of interest;
>
> (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

[62] In short, as counsel for the petitioners aptly pointed out, only in Zone 2 does one see criteria other than agricultural factors for consideration. The distinctions the legislature drew between the zones make sense because there is far less land

available for agricultural use in the Lower Mainland than there is in Zone 2, where the economies and population densities sharply differ.

[63] No evidence was proffered showing Mrs. George would suffer financial hardship were the Lands sold and she received her share.

[64] I do not find the unique and somewhat rarified ‘good reasons’ in *Sahlin* instructive in this case, grounded as it is in ordinary financial considerations.

[65] Further, because of the way the parties’ ownership of the Lands is distributed and the parcels situated, partition is not practicable. No tenable form of partition showing it is practicable and the parties able and willing to execute it was handed up by the parties. Partition in this case is not a simple matter such as might be the case say, for the dividing of 20 acres of agriculture land into two 10-acre parcels for two individual poultry farmers to use, one for a broiler operation, the other, say, for egg production. The prospect of achieving any model for partition on of the Lands amenable to the properties’ current boundaries, the nature and extent of the surrounding properties, and to the parties’ interests, is not promising.

[66] Further, it cannot be overlooked that the Evans Road Block has 12 individual owners. There is no evidence those stakeholders have united or will do so to apply *en bloc* for exclusion of their properties from the ALR. An *en bloc* application fully supported by the City would be required before an exclusion application could realistically be initiated. I agree with the petitioners that considering this and other potential roadblocks, such a coherent *en bloc* application would be difficult to achieve, certainly in the near term.

[67] In *Machin v. Rathbone*, 2006 BCSC 252 [*Machin*], Johnston J. helpfully overviewed the general principles to be considered at para. 15. Among them:

> 1. The jurisdiction of the court to compel, partition or sale of lands under the *Partition of Property Act* is discretionary: *Evans v. Evans*, [1951] 2 D.L.R. 221 (B.C.C.A.);
> 2. A joint or equal tenant of lands has a *prima facie* right to partition or sale unless justice requires otherwise: *Harmeling v. Harmeling* (1998), 90 D.L.R. (3d) 208 (B.C.C.A.);

3. A *prima facie* right of sale conferred to a qualifying petitioner under s. 6 is not contingent upon a demonstration of entitlement to equitable relief: *Bradwell v. Scott*, 2000 BCCA 576;

4. Whether a "good reason to the contrary" exists to the extent necessary to deprive a petitioning owner of a *prima facie* right to sale depends on the facts and circumstances of the particular case: *Harmeling v. Harmeling*, *supra*, and *Hayes v. Schimpf*, 2004 BCSC 1408;

5. The onus is on the respondents to prove that justice requires that an order for sale not be made: *Caple v. Dolman* (1999), 70 B.C.L.R. (3d) 325; and

6. There is a narrow discretion left to refuse an order for sale under s. 6: *Bard v. Bird*, [1993] B.C.J. No 1644 (C.A.), see also *Richardson v. McGuinness*, [1996] B.C.J. No. 2636 at para. 23.

[68] In *Machin*, the parties were tenants in common on a recreational property they purchased jointly when they were close friends. After a falling out, the petitioners sought an order for sale of the property. The respondents unsuccessfully argued the petitioners were obliged to sell their interest to the respondents. The petitioners owned half or more of the property, so could base their claim on s. 6 of the *PPA*.

[69] Johnston J. ordered sale of the property with either party having the right to make an offer.

[70] The facts in *Mandau v. Giesbrecht*, 2001 BCSC 719, are similar to those in this case. The respondents opposed a petition brought by Mandau for sale of 7.91 acres situate within the confines of the ALR. It was not sub-dividable in the normal way. The petitioner Mandau, had a 13/16ths undivided interest in the lands, the respondent Geisbrecht, had the remaining 3/16ths interest. Although the respondent knew the land laid within the ALR, he wished nonetheless to share it so as to build a retirement home for him and his wife.

[71] An appraisal report in that case characterized the likelihood of subdivision of the property as “not realistic or foreseeable” (para. 13).

[72] At para. 21, Cullen J. (as he then was) noted that while there were discussions about the possibility of pursuing a subdivision of the land to enable the

respondent to build the retirement home, the petitioners were reluctant to pursue subdivision unless there was a reasonable prospect of success and a determination of exactly how the land would be subdivided. Cullen J. noted the fundamental problem standing between the petitioners and respondent was their inconsistent views on how the land should be dealt with (para. 13). Referring to *Bradwell,* and to *Harmeling*, he noted the passage (at para. 10), mentioned earlier in these reasons, regarding the *prima facie* right of the joint tenant to partition unless justice requires such an order not be made.

[73] The petitioner pointed out the similarity of the respondent's position in *Mandau*, i.e. that because the ability to subdivide the land had not yet been fully explored, a sale should be postponed pending a subdivision application. As in the case at bar, the position of the petitioner was that subdivision was unlikely; that the proposed subdivision likely would be a protracted process, complicated by the need for many levels of approval, expensive, and potentially contentious, because the parties did not agree on what would constitute an equitable division of the property.

[74] The court ordered sale of the subject Lands.

APPRAISALS

[75] The court had two appraisals and a correspondence to consider:

i. Charles M. Fortin, AACI P.App, R.I. (B.C.) (Fortin Appraisals Ltd.) Appraisal dated December 17, 2014, at the request of the respondent and Carol George, her daughter. ("the Fortin appraisal");

ii. Douglas Janzen, B.Sc.Ag, P.Ag, AACI P.App, (ARC Appraisals) Appraisal dated March 28, 2017, prepared at the request of the petitioners ("the Janzen appraisal");

iii. April 3, 2017 correspondence between Douglas Janzen and counsel for the respondent related to the above appraisal; and

iv. Douglas Janzen's April 5, 2017 Addendum to the March 28, 2017 appraisal, ("the Janzen addendum").

1. The Janzen appraisal

[76] Using a comparison approach, Mr. Janzen offered a final estimate of the Lands' value at $1,515,000; the total of $335,000 for the 0.18 acres and of $1,180,000 for the 8.372 acres. The figure of $335,000 for 45465 Stevenson Road, P.I.D. 948, was based on comparative sales data. Mr. Janzen noted many of the sales he indexed were located in "old Chilliwack", properties being utilized for infill housing or indicative of neighbourhood renewal. He found the strongest indicators of value relative to 45465 Stevenson Road, P.I.D. 948, were properties at 44452 Keith Wilson Road and 46436 First Avenue, which, in his opinion, generated a range for the subject property of between $286,000 and $337,600. That appears to be a reasonable, well-founded estimate.

[77] As for Mr. Janzen's sales analysis for 45485 Stevenson Road, P.I.D. 571, he based it on previous comparable sales, with some adjustments to make the comparatives more accurate. His analysis produced broad sale prices ranging from $750,000 to $1,101,000. After adjustments for time and improvements, parcel size, zoning and speculative pressure, the range narrowed to between $761,064 and $974,000. He noted two of the sales he reviewed which had required the least comparison adjustments suggested a range of between $761,064 and $898,200.

[78] His final estimate for 45485 Stevenson Road, P.I.D. 571, free of the influence of market speculation, was $925,000.

2. Speculative influence on price

[79] At p. 28 of his report, still under the heading of Sales Analysis, Mr. Janzen opined as follows on the speculative influence on pricing:

> As indicated earlier, regardless of the fact that the land is firmly locked in the ALR and the City of Chilliwack 2040 OCP indicates this land will continue to be Agricultural into the foreseeable future, there is an undeniable speculative motivation for any land sold or bought in this Evans Block. As indicated in the

> sales selected to estimate value of the Subject Property, Index 3 was adjusted downward 28% to reflect speculative motivation. A 49 acre parcel at 45295 Stevenson sold January 2017 at $5,500,000 to local farmers. This was at a value of almost $112,000 per acre allocated to the land which is [a figure] far above values generally seen for 50 acre parcels. Another 58 acre property adjacent an established development on Fairfield Island sold to another farmer in December 2016 [after] allocating approximately $100,000 per acre to the land. The realtor for the Stevenson property advised they had priced it approximately 35% above typical farmland values recognizing the speculative motivation; he advised his experience was that this type of motivation could account for an adjustment between 20% and 35% of "normal" market value.

[80] Having established the adjusted raw current market value of the subject property to be $925,000, Mr. Janzen accordingly concluded at pp. 28 and 29 that a premium increase of 20% to 35%, as recommended by realtors, would result in an increase of the range of value for the subject property to between approximately $1,110,000 and $1,250,000 (or $132,616 - $149,000 per acre): p. 29.

[81] At p. 29, Mr. Janzen pointed out that as property sizes increase, particularly on smaller parcels up to 15 or 20 acres, land values per acre decrease significantly. Accordingly, he thought it "prudent to approach the midrange". He also noted for a variety of reasons that larger parcels would likely be more heavily influenced by a speculative factor than smaller parcels. Therefore, smaller subject property would be less impacted than the larger parcels he referred to in his report. He opined that setting "the speculative motivation at between 25% and 30% would be reasonable", resulting in this calculation for the property at 45485 Stevenson Road, P.I.D. 571:

Land Value: 45485 Stevenson Road	$925,000
Plus: Speculative Motivation @27.5%	$254,375
Equals	$1,179,375
Rounded to	$1,180,000
Land Value: 45465 Stevenson Road	$335,000
TOTAL	**$1,515,000**

[82] At p. 6 of his appraisal, Mr. Janzen noted that agriculture is an essential component of the Chilliwack economy. He said, it "provides a solid foundation for the local economy. With approximately 67 percent … of Chilliwack land dedicated to agriculture, it is home to more farmland than any other Lower Mainland community.

… [Agriculture] provides the community with an estimated $700M in economic activity [annually], plus substantial secondary impacts."

[83] At p. 7 of his report, Mr. Janzen noted the subject properties lie "approximately 1.3 km southwest of the core of "Old Sardis", on the north side of Stevenson Road [and] 1,500 ft. west of its junction with Vedder Road, the main north-south traffic artery linking Chilliwack proper in the north with the sub communities of Vedder Crossing and Yarrow in the South."

[84] Mr. Janzen noted that "The properties form part of what is known in Chilliwack as the 'Evans Block' … an approximately 170 acre block of nearly level productive agricultural land between Evans Road to the west and Vedder Road to the east": p. 7.

[85] Mr. Janzen further explained that "12 individually owned properties lie within [the Evans Block] … surrounded on three sides by fully built out residential subdivisions. Beyond Evans Road to the west are larger tracts of agricultural land … which are all actively farmed. All the land within [the Evans Block] is zoned for Agricultural Use by the City of Chilliwack and designated as Agricultural Land in the 2040 Official Community Plan.": p. 7. Further, it lies within the Provincial ALR as noted, and is all actively farmed. He further noted that "Despite the obvious productive agricultural utility of this area, it has been viewed by local developers for many years as future residential development land": p. 7.

[86] Mr. Janzen further noted that "the encroachment of low density residential housing on three sides of the property [had led to] speculation that the development of the Subject lands to higher density use is imminent": p. 15.

3. Land use controls affecting the subject properties

[87] Beginning at p. 15, Mr. Janzen discussed in considerable detail the impact of land use controls affecting the subject Lands.

[88] He noted land use controls for 0.18 acre 45465 Stevenson Road, P.I.D. 948, required little discussion. It was viewed as Rural Residential zoning, with a designation of Low Density Residential Use, the lot size consistent with adjacent properties.

[89] As for 8.372 acre 45485 Stevenson Road, P.I.D. 571, Mr. Janzen looked on land use controls, as mentioned above, as "a great source of speculation": p. 15.

[90] Mr. Janzen opined that the likelihood of imminent approval for redevelopment is best understood through increased knowledge of the Agricultural Land Commission and Chilliwack's long-term plans currently in place. He stated, "A review of the Agricultural Land Commission Act, decisions made by the ALC over a number of years and discussions with people at various levels of the process provide a reasonable understanding of likely outcomes": p. 15.

[91] Mr. Janzen explained further, at p. 15:

> The City of Chilliwack recognizes the requirement to retain land for agricultural purposes but also understands the benefits of development and city growth. Where the ALC currently has a rigid framework in place to discourage and prevent removing land from the Agricultural Land Reserve, the City of Chilliwack seems more amenable to support removal of certain parcels under certain conditions. Various studies have been commissioned by the City of Chilliwack over the years attempting to convince the ALC that a long term development plan permitting the removal of certain lands from the ALR is necessary to ensure the responsible and reasonable growth for the City and its economic health.
>
> At least one report referenced development within an "urban containment boundary." This boundary, south of the Trans Canada highway would be Evans Road in the west and the Chilliwack River Road in the east. A variation on this theme was to arrange phased removal of land from the ALR, within that containment zone, for specific purposes according to community need.

.1 Chilliwack's prior attempts to withdraw land for industrial use

[92] Mr. Janzen noted (at p. 16) efforts the City undertook in 2003 for a two-phased exclusion of land to meet the City's industrial needs, and one undertaking, phase 3, for exclusion of lands (that included the Evans Block and the subject Lands) to meet residential needs. Mr. Janzen observed that "[t]he result of the

extensive planning and negotiation was that some lands [north of the Trans Canada highway] were released for Industrial purposes" but the ALC did not exclude the Evans Block.

[93] From speaking to Gillian Villeneuve, Manager of Planning and Development for the City of Chilliwack, Mr. Janzen obtained useful information regarding the City's development and ALC objectives. Mr. Janzen assured the court that he posed his questions to Ms. Villeneuve carefully to ensure that how he worded his questions did not sway her answers. In brief, the information he gleaned was as follows:

a. The city believes it needs more industrial land.

b. This has been a priority for the Parr Road property, just north of Highway 1.

c. The Evans Block is their second or third priority.

d. The ALC's decline of the City's Parr Road proposal was a setback but offered valuable lessons on the direction the ALC was taking.

e. Asked about the possibility of the Evans Block coming out of the ALR she advised (p. 2 of the Janzen Addendum) that it is difficult enough to get industrial land, which is critical to the City, out of the ALR.

f. Whenever residential land is mentioned by the City, the ALC tells us, "We have lots of hillside to develop."

g. She does not see an "*en bloc*" application coming forward from that property in the foreseeable future.

h. She is not optimistic that if such a proposal was brought forward in the foreseeable future that it would be successful.

[94] Mr. Janzen also stated that after his discussion with Ms. Villeneuve, he spent some time reviewing ALC decisions in the previous two to three years, then spoke

with Ms. Kerry-Rae Russel, a land use planner with the ALC. In brief, she advised Mr. Janzen that:

- conversion to industrial land is the primary request for most Lower Mainland communities;
- conversion to residential land is more difficult because there are usually more options which can be implemented, resulting in better outcomes for the preservation of agricultural land; and
- conversion of good agricultural land to any other purpose is very unlikely.

[Janzen Addendum, pp. 4 and 5.]

[95] At p. 5 of his Addendum, Mr. Janzen states he then re-contacted a City of Chilliwack senior planner, Shannon Web. Asked how the changes in the ALC, such as moving to regional panels, operational changes, etc., over the last three or four years have impacted the application and approval process, he advised that the ALC is much more responsive. But as for the ALC's having become more amenable to releasing land, she advised the ALC was more protective, if anything, of agricultural land.

[96] Mr. Janzen reached the conclusion that the sum of his review of materials, discussions with the ALC and the City of Chilliwack fortified his opinion on the unlikelihood of the subject Lands being excluded by the ALC in the foreseeable future.

4. Fortin Appraisal Opinion

[97] Mr. Fortin's conclusory figures for the value of the properties set out in his December 23, 2014 report, prepared at the respondent's request, assuming recognition of the Land's latent potential, fall in the range of $1,088,000 to $1,170,000, somewhat lower than Mr. Janzen's figures. But in the main, their conclusions are much the same. Mr. Fortin's "latent value" valuation, like Mr. Janzen's, was based on comparisons with similar properties.

[98] As mentioned earlier in these reasons, at p. 37 of the report Mr. Fortin emphasized that his valuation based on the property's exclusion from the ALR is highly speculative, as it is inconsistent with current zoning, the OCP, and ALR designations.

[99] Much of Mr. Fortin's appraisal was taken up with profitability calculations relating to residential development should the ALC exclude the Lands.

RESPONDENT'S CLAIMED GOOD REASONS FOR REFUSING SALE

[100] The respondent's position is that the evidence in the case and the particular facts and circumstances, produce good reason to refuse the order sought by the petitioners for sale of the subject properties. The respondent contended:

a. The claim/actions of the petitioners are an attempt to employ the *PPA* as a way to exclude the respondent's ownership of the properties prior to their release from the ALR, when the value will increase significantly, as much as fivefold, if not more.

b. The parties shared a long-standing intention to hold the properties as potential development properties, until such time as the political climate permitted its release from the ALR.

c. As recently as 2007, all of the present parties, plus Fred George, jointly purchased a small residential parcel (the Steele property, mentioned above) adjacent to the 8.3 acre ALR parcel to augment the ALR parcel development potential.

d. The petitioners and the related third-party family members (particularly Dean Meyer and Ron Haan, director of H & W, and son of Johanna Haan) are heavily involved in the real estate development business.

e. Neither Mrs. George nor any living George family members are involved in this business. Fred George, who died in January 2008, was the only George family member who worked in the real estate business.

f. The petitioners claim they want to realize the value of the land at agricultural prices of approximately $300,000 per quarter share.

g. In effect, an order for sale would equally permit them to obtain the one-quarter portion belonging to the respondent at its agricultural price instead of an 'out of ALR' value, thereby facilitating what the respondent claims are their plans to develop (or sell) the Lands whenever they are released.

h. Ordering such a sale would enable the petitioners to buy out Mrs. George at a rock bottom price now in order to retain the benefit that will accrue from their ownership of the parcel pending removal from the ALR, which appears to be closer to fruition that than in the past, based on the new Chilliwack Official Community Plan coupled with the policy change in position of the ALC.

i. The most recent Official Community Plan, Chilliwack 2040 (adopted 2014/2015) now puts the Lands within the Urban Growth Boundary of Chilliwack, designated 'development'.

j. Exclusion from the ALR of these particular properties (within the Evans Block) is of highest priority for the City of Chilliwack, as they are limiting arterial traffic routes and servicing mains.

k. The release of the properties is under discussion between the City of Chilliwack and the ALC.

l. The respondent stressed p. 62 of the OCP 2040 and the statement there, as follows:

> These designations reflect the urban corridor concept that is framed by the three main north-south traffic routes, Vedder Road, Evans Road and Chilliwack River Road. This framework, however, has to adjust to the strong presence of the First Nations whose developments are growing in scale, density and servicing needs: they have to be part of the Sardis-Vedder community and within the Urban Growth Boundary. Also within the urban corridor are some ALR parcels. While many of these parcels will continue to be agricultural in use and designation, those on the west side of Sardis and surrounded on three sides by residential subdivision have been a subject of

> discussion between the City and the Agricultural Land Commission. From a servicing perspective, they have been limiting Sardis' north-south road connection to the main arterial routes and the servicing mains along Vedder Road and a parallel street. Long term designations for these parcels are pending the outcome of an ongoing dialogue among all stakeholders, including the ALC. In the meantime, they are acknowledged as agricultural land within the Urban Growth Boundary.

[101] Before I discuss further the parties' positions and state my conclusions, I must first address the petitioners' admissibility concerns related to significant portions of the respondent's affidavit.

PETITIONERS' RESPONSE, DISCUSSION AND CONCLUSION

1. Petitioners' position on admissibility of respondent's affidavit

[102] The petitioners submitted that paras. 9, 11, 14, 17, 22, 24 - 25, 34 - 35, 40 - 50, 52 - 53, 57, and 59 in the respondent's affidavit should not be given any weight because they consist of inadmissible hearsay, are argumentative, speculation, not based on personal knowledge, do not identify the sources on which the information is based, contain subjective descriptions of factual events, assert the state of mind or intentions of other persons, or otherwise are not material, necessary, or reliable.

[103] The respondent may state in her affidavit only those facts of which she has personal knowledge: *Supreme Court Civil Rules*, B.C. Reg. 3/2016 [the *Rules*], Rule 22-2(12); *Sall v. Braich*, 2016 BCSC 253, at para. 6.

[104] Evidence based on information and belief is not admissible, *L.E.W. v United Church of Canada*, 2005 BCSC 564. Affiants must adhere to Rule 22-2 to have their affidavit evidence admitted at trial.

[105] That confirmed, I do not intend to review piecemeal the said flaws in the respondent's affidavit. The petitioners' criticisms and concerns are generally well founded and reasonable and will have some bearing on the weight I assign to those objectionable aspects of the respondent's affidavit. I do not think it is necessary, however, to reject the respondent's affidavit in whole or in part because of some

inadmissible content. Counsel for the petitioners ably addressed the petitioners' concerns. If a paragraph is argumentative, that is how it will be regarded. If Mrs. George refers to what someone else would think or do, that is clearly outside the bounds of personal knowledge and will receive little if any weight.

[106] The contents of paras. 45 and 46 of the respondent's affidavit are misleading in that the fact the ALC rejected the 2013 application the owners made for exclusion of the subject property is not mentioned.

[107] I turn now to those reasons Mrs. George argues constitute good reasons for refusing to order sale of the property. I find no reason to conclude the petitioners are motivated by conspiratorial objectives contrived to deprive her of her ownership of the properties, I see no basis for this but such accusations do speak to the deterioration in the parties' relationship and the unlikelihood of their ever reaching any consensus. Sale of the property on the open market is the most reliable evidence of what the properties are worth. From such a sale, the parties would receive their proportionate share of the proceeds.

[108] I see no relevance in the fact the petitioners and related third-party members are involved in the real estate development business and that neither Mrs. George nor her family members are so involved. There is nothing disreputable about being involved in the real estate development business and no inherent virtue bestowed by not being involved in it.

[109] As for the petitioners seeking to gain a strategic advantage, they are seeking an order for sale of the property on the open market. Mrs. George rejected the petitioners' offer and does not have the means to purchase their interests.

[110] Mrs. George complained that ordering a sale would enable the petitioners to buy her out at a rock bottom price now in order to retain the benefit that will accrue from their ownership of the parcel pending removal from the ALR, which appears to be closer to fruition than in the past, based on the new Chilliwack Official Community Plan coupled with the policy change in position of the ALC.

[111] Mrs. George appears to be arguing that the long-term relationship between the parties gives good reason why the property should not be sold. I respectfully disagree. The fact there had been a relationship between the parties over the years, standing alone, does not give good reason to deny the petition, not without evidence showing it leading to the creation of clear enforceable contractual obligations directly relevant to the relief sought by the petitioners. The petitioners are not bound by discussions or intentions expressed by former owners many years ago; and as the petitioners point out, all the original owners of these properties have passed, the parties now all beneficiaries of their bequests. Further, it is evident that after the unsuccessful 2013 application to exclude the property from the ALR, the tenor of the parties' relationship changed, Mrs. George taking the position that she would sell her interest only for a price calculated on the assumption the property was out of the ALR and developable. Naturally, Mrs. George's perspective is woven from fond memories and expectations shared with the former owners. Her emphasis on previous expectations is understandable but does not form a reason to refuse the petition.

[112] As discussed, another pillar Mrs. George relies on is her belief and contention that the contents of the most recent Chilliwack Official Community Plan show exclusion of the properties from the ALR is in the near offing. She argues that the exclusion of these particular properties is of highest priority for the City of Chilliwack, because "they are limiting arterial traffic routes and servicing mains". But the City's highest priority is exclusion of lands for industrial use, not residential development; and the City's own applications for exclusion of residential lands to date have been declined. Further, exclusions requested from the Evans Road Block to improve servicing mains, traffic routes, and to improve the neighbourhood by adding parks and playing fields, are not likely to impact the subject Lands, which the ALC has already found are suitable for agriculture. The evidence considered as a whole does not lend support to Mrs. George's speculative optimism. The ALC's being open to having discussions with the City about the future of the Evans Road Block is not a presaging of a willingness to exclude the Lands from the ALR, given their current mandate.

[113] The respondent's position on the prospects of future development is very speculative. As it is, both appraisals have factored in the speculative value of the Lands in their assessments. Whether their assessments of the Lands' speculative value hold will depend on what an arm's length purchaser on the open market is willing to pay and how much value they are prepared to attribute to speculative factors. Whatever the attribution made by willing and able purchasers, the parties will share in it as the case may be.

[114] I note that "justice" implies both reasonableness and fairness. A reason for refusing an order for sale cannot be a just one if it is an unfair or unreasonable one.

[115] The petitioners own three-quarter of the subject Lands; the respondent, one-quarter. The respondent's position effectively expects the petitioners to wait an indefinite period before they access their equity. One of the petitioners, Mrs. Haan, is 86 years of age. It is not reasonable or fair for the petitioners to have to wait an indefinite time so that the respondent, with a quarter-interest, can effectively bar the majority owners from receiving their equitable share. In my opinion, Mrs. George's position that the parties should have to purchase her interest as if the property was out of the ALR then wait to see if it ever happens, is not fair or reasonable. Getting agricultural lands excluded for industrial purposes, the City's priority, has been difficult enough and does not auger well for removal of agricultural land for residential use, certainly not in the near term. In my opinion, Mrs. George's theory and prognostications are not tenable. Neither of the appraisers' opinions support them.

[116] Further on the subject of fairness to Mrs. George, sale of the properties on the open market would naturally incorporate marketing that included the realtor's touting of the properties' speculative value, thus giving that consideration full voice in the negotiation process.

[117] In short, the open market and the wine press of negotiations will determine how much of the price, if any, will be determined by latent value, i.e. based on the possibility the Lands will eventually be excluded from the ALR.

[118] Further, it should not be overlooked that the parties will be in the same position after the market has spoken. The petitioners and Mrs. George will receive their share of the proceeds right away and be free to invest them. As it is, they already have suffered a loss of opportunity. I see no prejudice to the respondent in ordering a sale.

[119] Considering all the facts and circumstances, the authorities, and the applicable principles, I find justice does not require that the property not be sold.

[120] The petitioners are entitled to costs at Scale “B”. Accordingly, the subject Lands shall be sold. I grant the orders sought by the petitioners with the exception of costs which shall be payable at Scale “B” and shall be paid from and form a charge upon, the respondent’s proceeds of the sale of the Lands.

“N. Brown J.”