COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *North Vancouver (District) v. Hanlon,*
2023 BCCA 114

Date: 20230309
Docket: CA48243

2023 BCCA 114 (CanLII)

Between:

The Corporation of the District of North Vancouver

Appellant
(Defendant)

And

Juanna Patricia Hanlon

Respondent
(Plaintiff)

Before: The Honourable Chief Justice Bauman
The Honourable Mr. Justice Abrioux
The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia,
dated March 7, 2022 (*Hanlon v. North Vancouver (District)*, 2022 BCSC 353,
Vancouver Docket S1912335).

Counsel for the Appellant:	R.W. Grant, K.C. G.A. Morfopoulos
Counsel for the Respondent:	S.M.M. Hirji-Lalani R.W. Parsons
Place and Date of Hearing:	Vancouver, British Columbia January 10, 2023
Place and Date of Judgment:	Vancouver, British Columbia March 9, 2023

Written Reasons by:
The Honourable Chief Justice Bauman

Concurred in by:
The Honourable Mr. Justice Abrioux
The Honourable Madam Justice Horsman

Summary:

The appellant challenges the trial judge's order that it pay the respondent an additional $900,000 for the expropriation of her property to reflect its full market value. The appellant submits the judge erred in law by failing to treat a previous listing for sale of the property as conclusive evidence of its maximum market value, and it further submits the judge misconstrued evidence related to determining market value. Held: Appeal dismissed. The presumption that a listing for sale of a property by an owner should be deemed the maximum that should be paid for it as of the date the listing expired was developed during the "value to the owner" approach to compensation for expropriations, now replaced by the "market value plus" approach under current legislation. While a listing price may have some relevance in determining market value, it is not a conclusive ceiling. The judge appropriately took the listing price into account and did not misconstrue evidence.

2023 BCCA 114 (CanLII)

Reasons for Judgment of the Honourable Chief Justice Bauman:

I.

Overview

[1] In 2018 the District of North Vancouver (the "District") expropriated Ms. Hanlon's single-family home in that municipality for a project to improve the Upper Levels Highway.

[2] The parties could not agree on the amount of compensation payable to Ms. Hanlon for the taking. The District maintained that its advance payment of $2 million was more than fair in the circumstances.

[3] Ms. Hanlon demurred and the matter went before a Supreme Court judge under the provisions of the *Expropriation Act*, R.S.B.C. 1996, c. 125 ("*Act*").

[4] The judge, in reasons indexed as 2022 BCSC 353, concluded that the market value of Ms. Hanlon's property (the "Lands") was $2.9 million as of the date of the expropriation (27 November 2018). In doing so the judge gave considerably more weight to the evidence of the expert appraisers called by Ms. Hanlon than to that of the District's expert.

[5] The judge accordingly ordered the District to pay Ms. Hanlon the difference between the payment made in November 2018 and the Court-assessed market value: $900,000, plus interest and costs.

[6] The District appeals from that award. First, in its factum it argues the judge erred in law by failing to treat a listing for sale of the Lands by Ms. Hanlon at $1.9 million in 2016–2017 (adjusted for time to the date of taking in November 2018) as "conclusive, or even the best, evidence of the maximum market value" of the Lands.

[7] In oral submissions on this point, the District modified its argument to this extent: the error really lay in the trial judge's failure to factor in, as probative, the owner's listing price in 2016–2017 with the fact that no offers at that price were proffered over the course of the listing.

[8] Second, the District submits that the judge erred by placing considerable weight on a comparable sale of lands immediately across the street from the Lands when that sale consisted of a large tract of individual parcels assembled and ready for development. It says a land assembly is worth more than the sum of the purchase price of the individual lots comprising the assemblage, and therefore the assembly sale was not a true comparable to the Lands.

[9] Third, the District argues that this error led to further errors in the judge's assessment of the rate of market increase in determining the market value of the Lands.

[10] As to the first alleged error, I have concluded that to the extent the proposition that a listing for sale of a property is the upper limit of its market value was indeed the law, it was developed at a time when "value to the owner" was the measure of compensation payable on a taking — a concept which in its application evolved into a somewhat subjective measure. "Value to the owner" has been overtaken by the statutory definition of "market value" in today's legislation (*Act*, s. 32). This definition eschews subjectivity and pursues objectivity with an assumed "willing buyer" and "willing seller".

2023 BCCA 114 (CanLII)

2023 BCCA 114 (CanLII)

[11] As to the alleged failure to consider the history of the market treatment of the listing of the Lands, the absence of offers during the listing period is simply evidence of the absence of offers during the listing period. Why that might be so is unknown; it is pure speculation to conclude that it was the view of potential buyers that the price for the Lands was too high.

[12] As to the second alleged error regarding the value of assembled lands in comparison to lands available for assembly, the District did not argue this at trial, which did not allow for the development of a record of evidence that supports its submission. The District asks this Court to take judicial notice of a theorem that is anything but notorious: the whole is greater than the sum of its parts in matters of land value.

[13] As for the third alleged error, the judge made no palpable or overriding error in his assessment of the evidence regarding the rate of market increase.

[14] In my view, the judge's careful review of the evidence and his acceptance, in large part, of the expert opinions tendered by Ms. Hanlon leave the District in the position of endeavouring to retry the case in this Court. Absent reviewable error, that is for naught.

[15] I would dismiss the appeal and I expand on my reasons for doing so below.

II.

Background

[16] For approximately 20 years, Ms. Hanlon lived on a 9,332 square foot lot at 750 Forsman Avenue in the Lynnmour neighbourhood in North Vancouver. Ms. Hanlon's home is a 1,700 square foot mid-century bungalow. As described by the trial judge, the character of the neighbourhood has gone through a number of changes in the past 30 years, resulting in it becoming more attractive to residents and developers. Much of Lynnmour is now occupied by multi-family townhouse developments. Both parties agreed that the "highest and best use" of the Lands is

not its present use as a single-family dwelling, but rather its value as developable land, likely as part of an assembly sale.

[17] In 2018, the District approached Ms. Hanlon to wholly expropriate the Lands for local improvements related to the redesign and reconstruction of the Upper Levels Highway. On 21 November 2018, the District made an advance payment to Ms. Hanlon, as required by s. 20 of the *Act*. The District paid $2 million on the basis of an October 2019 appraisal report prepared by Vanessa Fenton, which assessed the property value at $1,680,000 (the additional amount representing costs of moving and other compensation). This valuation represents $225 per buildable square foot.

[18] Ms. Hanlon brought the action below for additional compensation, relying on a December 2019 appraisal by Lindsay Black and Ryan Wong, which assessed the market value at $3.2 million, or $430 per buildable foot. The report is retrospective to 1 January 2018. The relevant valuation date is 27 November 2018.

[19] Ms. Fenton (for the District) and Mr. Wong (for Ms. Hanlon) agreed that market values in Lynnmour are strong and steadily increased in the years prior to the expropriation. The appraisers also agreed that the direct comparison method, in which market value is estimated by comparing to sale prices for similar properties and adjusting for differences between them, was the appropriate methodology. Adjustments include a “time adjustment” for market changes between past sale dates and the expropriation date, and a qualitative adjustment to reflect market desirability.

[20] The critical difference between the two experts’ reports was their treatment of the geographically closest comparable project: the “Spera Comparable”. As described by the judge, the Spera Comparable is a land assembly comprising of three lots on Forsman Avenue directly across the street from the Lands, and additional adjacent lots on neighbouring streets, resulting in eight single-family residences. The lots were sold in 2015 for $9,684,892, or $164.05 per buildable foot.

2023 BCCA 114 (CanLII)

In August 2016, however, the contracts were assigned to a single buyer for $15,189,053, reflecting an increase in value to $223 per buildable foot.

[21] Ms. Hanlon's report valued those comparable lots at $14,184,891, taking into account the August 2016 assignment sale price (this figure reflects deductions for the assignment fee and other components of the price not reflective of the land value). The District reports did not consider the later assignment sale price, instead valuing the Spera Comparable at $10,679,891 (closer to the original total purchase price).

2023 BCCA 114 (CanLII)

Trial Judgment

[22] Justice Crerar first set out the relevant law. An owner of expropriated property is entitled to be compensated in accordance with the *Act*. Section 31 of the *Act* sets out the basic formula for determining compensation, while s. 32 defines "market value":

> **32** The market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer.

[23] The judge emphasized that expropriation of an entire property significantly interferes with a citizen's private property rights, and therefore the statute must be strictly construed against the government. Since the statute is remedial, it must be read in a broad and purposive manner: *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*, [1997] 1 SCR 32, 1997 CanLII 400.

[24] Ultimately, the judge agreed with Ms. Hanlon's valuation report, assessing the property at a higher value by including the assignment sale price of the Spera Comparable, over the District's. First, he found the Spera Comparable to be the most relevant comparable both geographically and in terms of development use; second, he found that it served as the most relevant "paired sale" of two proximate sale prices of a single property, showing a rapid rise in values between the initial sale and the assignment sale.

[25] Overall, the judge found the due diligence of the plaintiff's appraisers to be more persuasive than that of the defendant's, as the District's valuation report had not provided a fulsome consideration process wherein the appraiser acknowledged and ultimately rejected the assignment price; it simply excluded it without a rationale. Only at trial did Ms. Fenton provide a rationale for excluding the assignment sale price, stating she had not been able to determine whether the assignment was an arms-length transaction, and that, in her opinion, it was an excessively high outlier. While the District argued that the difference between the two sale prices reflected a 42.3 percent increase in less than a year and it was therefore prudent to exclude it, the judge noted that every new sale in a rapidly-rising market inherently appears to be an outlier despite its legitimacy.

[26] The District pointed to a recent expired listing of Ms. Hanlon's Lands as evidence of the upper limit of its market value. In May 2016, the Property was listed for $2.468 million, and in October the price was dropped to $1.9 million. The listing expired in April 2017. While the listing received inquiries, no offers were made.

[27] The District cited a line of case law for the proposition that "if an owner places a value on his property by listing it for sale at a certain price, this should be deemed to be the maximum which should be paid for it": *Roberts and Bagwell v. The Queen* (1955), [1956] 1 DLR (2d) 11 (Ex Ct) [*Roberts*], 1955 CanLII 312, aff'd [1957] SCR 28. The judge disagreed, finding that while this maxim may have applied in a wide and stable market, it did not apply in a rapidly-rising market.

[28] However, the judge did consider the failed sale to somewhat undermine Ms. Hanlon's expert valuation of $3.2 million (as of January 2018), questioning that the value had increased by $1.3 million over nine months. He further noted that the failed sale occurred after the Spera assignment, diluting the force of that sale as a comparable. Finally, he noted that the Lands were again listed for sale at $3 million in June 2018 and were not "snatched up" at that price.

[29] In light of these considerations, the judge set the market value of the Lands in November 2018 at $2.9 million. He also found that Ms. Hanlon was entitled to costs

2023 BCCA 114 (CanLII)

and interest under ss. 45(4) and 46(1) of the *Act* due to the deficiencies in the original expropriation payment.

Issues on Appeal

[30] The issues on appeal as cast by the District are:

1. Did the trial judge err in law by failing to treat Ms. Hanlon's listing of the Lands for sale prior to the expropriation as conclusive evidence of their maximum market value?

2. Did the judge misconstrue the evidence, failing to differentiate between a large tract of assembled lands and a single lot to be assembled with other lands for development?

3. Did the trial judge err in using the sale price of a large assembly of neighbouring lands as the best measure of the rate of appreciation of the value of the lands in the District?

III.

Analysis

Issue 1: Did the trial judge err in law by failing to treat Ms. Hanlon's listing of the property for sale prior to the expropriation as conclusive evidence of the maximum market value of the Lands?

[31] The argument that an owner's listing of a property sets a ceiling on its value appears to have had its genesis in President Thorson's judgment in the Exchequer Court of Canada in *Roberts*.

[32] That case involved an injurious affection claim arising out of a taking for the Toronto Airport at Malton, Ontario (as it then was). In the course of his reasons the judge said this:

> The listing of the property by the suppliants for $150,000 cash puts this amount as the top limit of its possible valuation for it is their own statement of its value to them. If they were willing to sell it for that amount they cannot complain of a valuation at that amount. While this listing, by itself, knocks out

2023 BCCA 114 (CanLII)

> the valuation of $2,000 and $2,100 per acre put forward by the suppliants' experts it does not follow that they are entitled to the amount of the listing. The opinion of an owner on the value of his property is always admissible in evidence even if he is not a real estate expert, but it is well recognized that his statement of its value should be regarded as the top limit of his claim for its value (at 23–24).

2023 BCCA 114 (CanLII)

[33] The rationale that the listing price "…is their own statement of its value to them" reflects the "value to the owner" methodology then current for determining compensation payable in these matters. President Thorson described that methodology so:

> The value contemplated by s. 4(8) of the Act is, I think, the value of the injuriously affected property to its owner. The measure of such value is the amount which a prudent purchaser in a position similar to that of the owner and knowing all the advantages and disadvantages of the property, present and prospective, would, in the ordinary course and without the pressure of urgent need, have been willing to pay for it in order to obtain it. This is essentially the same test as that laid down by Lord Moulton in *Pastoral Finance Ass'n v. The Minister*, [1914] A.C. 1083 at p. 1088, as I sought to show in *R. ex rel. A.-G. Can. v. Supertest Petroleum, Corp.*, [1954], 3 D.L.R. 245, Ex. C.R. 105, 71 C.R.T.C. 169. Later, in that case I expressed my view of what was essentially implied in the sentence in Lord Moulton's judgment that is so often cited by itself. At p. 270 I said: "As I read Lord Moulton's judgment it envisages negotiations between the owner of the property and the prudent man referred to, who is a purchaser, each knowing the advantages of the property and the possibilities of savings and profits from its use, culminating in a sale of it to the prudent purchaser at the price beyond which, in the ordinary course and without the pressure of urgent need, he would not be willing to go" (at 16).

[34] When the Supreme Court of Canada affirmed *Roberts*, the Court made no mention concerning President Thorson's statement that "it is well recognized that [an owner's] statement of its value should be regarded as the top limit of his claim for its value". And the Court did not accept all of the President's reasoning but essentially his ultimate conclusion. *Roberts* seems to be mild support for what is referred to as an almost conclusive presumption on maximum value to the owner in these matters.

[35] Neither *Roberts* nor cases following it offer much in the way of a principled discussion of why the presumption is so strong.

[36] In *Lim v. The Queen* (1977), 12 L.C.R. 326 (FCTD), 1977 CarswellNat 690, for example, the judge simply stated:

> There is a well established principle that if an owner places a value on his property by listing it for sale at a certain price, this should be deemed to be the maximum which should be paid for it. This was applied in *Roberts v. Regina*, (1956) D.L.R. 11.

2023 BCCA 114 (CanLII)

[37] In my view, while the listing for sale by an owner has some relevance in an exercise determining its market value, it nowhere approaches, today, a conclusive ceiling on value. I say this for two reasons.

[38] First, at least in today's market, owners not infrequently list a property for sale at an attractively low asking price to prompt a bidding war between potential buyers. This is notoriously the case. In any event, it is the case here. Ms. Hanlon testified to this effect (and it was not in any way undermined in the evidence at trial):

> The property value was increasing all the time. The interest in the neighbourhood was increasing all the time. The density was more than what the property's value was. The excuse was for the better use and a higher value, and I had listed sometimes at low prices because that was the marketing strategy of the real estate agents. They said, "List low. We'll get multiple offers. We're going to come in with a far better price than what we listed at."
>
> [TS, p. 8, ll. 1-10.]

[39] Second, the presumption was developed during the "value to the owner" regime. That measure of market value evolved into something of a subjective exercise. Professor Todd in his work *The Law of Expropriation and Compensation in Canada*, 2nd ed (Toronto: Carswell, 1992) summarizes the critique of the "value to the owner" methodology (at 121–122):

> Mr. Justice Thorson was undoubtedly echoing the sentiments of many members of the legal and appraisal professions when he expressed concern about the apparent difficulties of applying the value to the owner formula in terms of its judicial generalizations:
>
> > For my part, I must frankly confess that I do not understand it and I am at a loss to know how to operate it. Is the market value of the land to be wholly disregarded? How is the amount which the assumed owner would be willing to pay to be determined? Whose opinion on this subject, if it is not left to the owner to decide, will be available to the Court? Real estate experts will not be able to give it any help.

> During the trial I put the test to Mr. Bosley, one of the most experienced and reliable real estate experts in the country, but he could not assist the Court in arriving at an answer to it. He explained that he could not apply the test because he could not know what was in the owner's mind. In his opinion, it was only the owner who could decide how much he would be willing to pay. While the wording of the test lends itself to such an opinion it could not have been intended that the owner should be the arbiter of his own entitlement.

The Ontario report, after outlining the development and application of the value to the owner standard concluded,

> This rationalization of the cases consumes both time and effort. The average competent solicitor without a great deal of time, confused by the conflicting statements and decisions, and confounded by the subsequent application of the *Diggon-Hibben* test, appears to believe that the test is a purely subjective one superimposed on various objective factors. Some fresh legislative statement of the meaning of compensation is necessary to clarify the situation.

[40] These concerns led to the reforms adopted in British Columbia in the 1987 *Act*, which changed the basis for compensation to a "market value plus" approach that codifies the heads of compensation, starting with market value and providing for additional compensation if the market value alone does not fully compensate the owner (Todd at 128–129). The heart of this approach is "market value" as defined in s. 32 of the *Act*—an objective standard presuming an open market and a willing seller and willing buyer. In this scenario, what an owner might list their property for, while no doubt of some relevance depending on the circumstances, takes on much less significance and in my view can in no way be deemed a presumptive ceiling on value.

[41] Finally, in the case here, even if the penultimate listing of the Lands at $1.9 million did provide conclusive evidence as to its market value, it is common ground that it must then be adjusted for time in a rising market between the listing's expiration in April 2017 and the date of taking in November 2018. That is a period of 18 months. The trial judge found Ms. Hanlon's appraiser's opinion on the rate of market increase during the relevant period (4.17% per month) to be more persuasive, and in alignment with the rate of market increase indicated by the Spera Comparable paired sale (42.3% per year, or 3.5% per month). He found that the District's rate of 15% per year (or 1.25% per month) was "excessively conservative".

2023 BCCA 114 (CanLII)

As the respondent argues, applying the rate of 3.5% per month over the 18-month period results in a value of $3.097 million for the Lands in November 2018, a result even higher than the judge's award of $2.9 million.

[42] In fairness to the District, it did not rest its case on the submission that Ms. Hanlon's listing price was a conclusive ceiling on value. Rather, counsel stressed the reality of that listing history: despite Ms. Hanlon's asserted strategy to start a bidding war by listing low, no offers for the Lands were received at $1.9 million.

[43] That submission has a certain initial attractiveness to it, but as I have said, in my view, it is only evidence of the fact that no offers were received during the listing period. We are left to wonder: why? And the various explanations are speculation.

[44] It may have been attributable to a concern for the very project that precipitated the taking: the highway improvement works. According to the testimony of the District's property agent, there were announcements concerning at least part of the project in 2016, and the design of the project was ongoing in 2017 (TS, p. 124, ll. 23–32).

[45] Indeed, Ms. Hanlon testified to the effect that "many developers" were interested in the property but were left "frustrated" by the District (TS, p. 7, ll. 12–27):

> A There were many developers that were interested in the property, and the district was not giving them the answers that they were asking for when they approached them. There were many frustrated developers that wanted the property, but they couldn't go forward. I didn't know what the district needed, and they didn't know exactly what the district needed either, but they had very real interest in the property.
>
> Q Okay. And you were never -- you never received an offer to purchase from one of these developers; is that correct?
>
> A No. They wanted to do their homework and see if they could do what they had in their minds to do. I didn't receive any firm offers from them, just frustration.

[46] The definition of "market value" in the *Act* obviates the need for an explanation here, as it assumes a willing seller <u>and</u> a willing buyer. In this light, the

2023 BCCA 114 (CanLII)

absence of offers during a listing period takes on much less significance in a hypothetical marketplace with an assumed buyer. As Ms. Hanlon submits, since a listing is not a completed transaction, the listing history is not, on its own, evidence of market value.

[47] I would not give effect to this ground of appeal.

Issue 2: Did the judge misconstrue the evidence, failing to differentiate between a large tract of assembled lands and a single lot to be assembled with other lands for development?

[48] In my view, it is not appropriate to entertain this submission on appeal. The theory was not advanced at trial by the District as a reason to discount the Spera Comparable as a paired sale.

[49] Whether the value of individual lots can be qualitatively differentiated from the value of those lots as an assembly appears to be a highly fact-specific exercise that properly forms part of the highest and best use analysis. Here, contingencies of the Lands and the Spera Comparable were canvassed at trial to determine the likelihood that the Lands' highest and best use as part of an assembly could be realized.

[50] In my review of the transcript, I am unable to find any evidentiary basis or even a suggestion that the Spera Comparable was not a true paired sale because it had qualitatively changed in value between the 2015 and 2016 transactions as a result of the lots being assembled.

[51] The record is clear and the judge accepted that the District's appraiser did not disclose the 2016 assignment price of the Spera assemblage because she allegedly could not determine it was an arm's length transaction, and because at trial (not in her report), she suggested it was an outlier. The judge did not misconstrue the essential difference between the parties' arguments.

[52] The evidentiary record was not developed at trial to support the District's new theory on appeal. It would be inappropriate to allow the issue to be raised in this

2023 BCCA 114 (CanLII)

vacuum: *Gorenshtein v. British Columbia (Employment Standards Tribunal),* 2016 BCCA 457 at para. 44.

[53] The theory is not one of which judicial notice may be properly taken and in fairness to the District, I did not take it to stress this submission vigorously.

2023 BCCA 114 (CanLII)

[54] I would not give effect to this ground of appeal.

Issue 3: Did the trial judge err in using the sale price of a large assembly of neighbouring lands as the best measure of the rate of appreciation of the value of the lands in the District?

[55] The District's argument here is that the judge's assessment of market changes after August 2016 was based on the mistaken assessment of the Spera Comparable as a paired sale. As I have found that there was no such mistake made by the judge and the evidence at trial *was* that Spera was a paired sale, this argument lacks merit.

[56] The judge was faced with competing expert views on the rate of increase in the rising market between the relevant dates.

[57] Ms. Fenton for the District posited a rate of increase in the market of 15% per year between early 2014 and early 2018. As observed, the judge found this to be an excessively conservative estimate.

[58] Ms. Black and Mr. Wong for Ms. Hanlon testified to an annual increase approaching 50%. The judge had the benefit of their reports and extensive cross-examination thereon. He stated at para. 11:

> …the Court generally agrees with and adopts the conclusions of the Plaintiff Reports in their higher assessment of the value of the Property.

[59] The judge found the Spera Comparable, which very much suggests an aggressive view of the rate of increase, "by far the most relevant comparable" (at para. 23). And as stated above, there did not appear to be a dispute at trial that if it was an arm's length transaction, the Spera Comparable would constitute a paired

sale. In light of the fact that it was arm's length, it is not in any way inappropriate for the judge to place reliance on it as indicative of market value appreciation of the Lands.

[60] In rejecting the evidence of the District's appraiser, the judge noted (at paras. 24–26):

> [24] The plaintiff was critical, in multiple ways, of the District and its expert for not including the assignment value in the first valuation, suggesting bad faith. A witness representative from the District acknowledged that she was aware of the Spera assignment price before the $1.68 million was offered to the plaintiff, but took no steps to review or correct the District valuation on which that amount was based. Ms Fenton's excuse – that she was unable to ascertain whether the assignment fee reflected a marketplace arm's-length transaction – does not appear in her reports, and arose only at trial. Neither District report sets out any consideration process wherein the appraiser acknowledges and ultimately rejects the assignment price, such as to allow Ms Hanlon, and, later, the Court, to evaluate and question that conclusion. The plaintiff also suggests that the District and Ms Fenton have a vested interest, beyond the present dispute, to downplay the value of the Spera Comparable: the District also expropriated a portion of the Spera property itself, and is presently engaged in similar litigation about the value of that expropriation: litigation in which it relies on yet another report authored by Ms Fenton.
>
> [25] <u>While these facts do cast a shadow on the District and its reports</u>, the evidence before the Court was not sufficient to reach the inferences urged by the plaintiff, and this Court declines to do so.
>
> [26] In conclusion, I agree with Mr Hirji for the plaintiff that the Spera Comparable provides compelling evidence of value in two ways. First, it is the most relevant comparable, geographically, and in terms of the development use. Second, it serves as the most relevant paired sale: that is, two proximate sale prices of a single property, showing a rapid rise in hyperlocal property values between the initial sale and the assignment sale.
>
> [Emphasis added.]

[61] The judge concluded that the failure of the District's appraiser to consider or place weight on the Spera Comparable was "fatal to its conclusions, and to the District's justification of the compensation paid to the plaintiff" (at para. 27). It was for the judge to determine the weight he placed on the expert evidence before him. No palpable and overriding error in that assessment has been demonstrated on appeal.

2023 BCCA 114 (CanLII)

IV.

[62] In the result I would dismiss the appeal.

"The Honourable Chief Justice Bauman"

I agree:

"The Honourable Mr. Justice Abrioux"

I agree:

"The Honourable Madam Justice Horsman"

2023 BCCA 114 (CanLII)