

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1063466 B.C. Ltd. v. 1286121 B.C. Ltd.*,
2026 BCSC 891

Date: 20260514
Docket: H230973
Registry: Vancouver

Between:

1063466 B.C. Ltd.

Petitioner

And

1286121 B.C. Ltd., 622013 B.C. Ltd., TDP Holdings Ltd., Kapil Gaba, Kuldeep Kumar Bansal, Meenu Bala, 77 Investments Ltd., HQ Real Estate Services Inc., The Crown in Right of British Columbia, The Tenants of 14178 104 Ave, Surrey, BC, The Tenants of 13283 56 Ave, Surrey, BC

Respondents

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Petitioner:

W. Zhou

The Respondent Kapil Gaba, appearing on
his own behalf:

K. Gaba

No other appearances.

Place and Date of Hearing:

Vancouver, B.C.
April 9, 2026

Place and Date of Judgment:

Vancouver, B.C.
May 14, 2026

Introduction

[1] The petitioner seeks to collect a judgment it obtained against the respondent Mr. Gaba and others. It has mortgage security for the relevant loan, but it does not believe there is sufficient equity in the relevant properties and expects there will be a significant shortfall. Accordingly, it has embarked on parallel collection proceedings as against three properties owned by Mr. Gaba, a guarantor of the debt. This application is the third step in the process for executing against land using the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78 (the “COEA”).

[2] By application filed February 23, 2026, the petitioner applies for orders that:

- a) The Registrar’s report dated January 21, 2026 be approved;
- b) Mr. Gaba’s interest in the following properties be sold in satisfaction of a judgment granted to the petitioner and registered on title to the properties November 27, 2024. They include:
 - i. 6837 144 Street, Surrey, BC [PID 008-882-924, Lot 85 Section 16, Township 2 New Westminster District Plan 26517] (the “**144 Street Lands**”);
 - ii. 6074 Prince Edward Street, Vancouver, BC [PID 013-905-228, Amended Lot 44 (see 524640L) Block 4 District Lot 645 Plan 2317] (the “**Principal Residence**”); and
 - iii. 1205 49 Avenue East, Vancouver, BC [PID 008-692-670, Lot 8 District Lot 729 Plan 13271] (the “**49 Avenue Lands**”);(collectively, the “**Gaba Properties**”)
- c) The petitioner have exclusive conduct of the sales and be at liberty to list the properties for sale with a real estate agent or firm, and related orders;
- d) Any sale be subject to court approval, unless agreed to by the petitioner, the respondent 77 Investments Ltd. and Mr. Gaba.

[3] The respondent Mr. Gaba opposes all of the relief sought.

Background

[4] On or about June 30, 2023, the petitioner (as lender) entered into a loan agreement with the respondent 1286121 BC Ltd. (“128 BC”) (as borrower) and 622013 B.C. Ltd. (“622 BC”), TDP Holdings Ltd. (“TDP”), Kapil Gaba (“Mr. Gaba”) Kuldeep Kumar Bansal (“Mr. Bansal”) and Meenu Bala (Ms. Bala”) as guarantors, for the principal amount of \$4,000,000 (the “Loan”). It was secured by mortgages registered on four properties:

- a) A mortgage granted by 128 BC against PID 030-641-764, Lot 1 Section 2 Township 5 New Westminster District Plan EPP70034 (the “**128 Lands**”);
- b) A mortgage granted by 622 BC against PID 024-096-636, Lot A Section 25 Block 5 North Range 2 West New Westminster District Plan LMP37429 (the “**622 Lands**”);
- c) A mortgage granted by TDP against PID 024-097-616, Lot A Section 24 Block 5 North Range 2 West New Westminster District Plan LMP37430 (the “**TDP Lands**”); and
- d) A mortgage granted by Mr. Bansal and Ms. Bala against PID 000-548-952, Lot 16 Section 8 Township 2 New Westminster District Plan 16781 (the “**56 Avenue Lands**”).

[5] 128 BC subsequently defaulted. On or about December 12, 2023, the petitioner commenced foreclosure proceedings.

[6] On June 24, 2024, Associate Judge Vos granted an Order Nisi which included personal judgment against Mr. Gaba and others in the sum of \$5,062,277.76, plus costs. As of the date of the hearing before me, no payments had been made towards the balance owing on the judgment. Accrued post-judgment interest to the date of the hearing is \$488,944.39, making the total owing **\$5,551,172.15** plus costs.

622 Lands and TDP Lands

[7] The 622 Lands and TDP Lands were sold pursuant to orders approving sale in another foreclosure. The petitioner's mortgage was the third-ranked mortgage on those properties. The petitioner did not receive anything from either of those sales.

128 Lands

[8] The petitioner's mortgage is the second-ranked mortgage on the 128 Lands. The first mortgagee has been granted conduct of sale of the property. It is currently listed for sale. The petitioner has tendered an appraisal dated September 12, 2025, prepared by Michael Oord of Grover, Elliot & Co. Ltd. which opines that the market value of the 128 Lands at **\$20,060,000**. The petitioner says based on the redemption amount set out in the Order Nisi granted to the first mortgagee, it appears there will be no equity available for it from an eventual sale.

[9] Mr. Gaba says:

- a) The 2026 BC Assessment valuation (as of July 1, 2025) of the 128 Lands is \$25,127,000.
- b) The 2025 BC Assessment valuation (as of July 1, 2024) was \$25,821,000.
- c) He has tendered an appraisal dated April 15, 2023, prepared by Phillip Law of L.W. Property Advisors Ltd., which opines that the property's market value is **\$30,550,000**.

He argues that the appropriate approach to valuing this property is to take the average of the two formal appraisals, $[(\$20,060,000 + \$30,550,000) \div 2 =]$ **\$25,305,000**. Coincidentally, this is similar to the property's BC Assessment value.

[10] Mr. Gaba says the charges on the property which rank in priority to the petitioner include:

Item	Amount
First Mortgage	\$18,327,288.89
Property Tax Arrears 2024 - 2025	\$447,949.54

Real Estate Commission and GST	<u>\$531,300.00</u>
Total	\$19,306,538.43
Monthly Interest	\$308,403.57

[11] Applying these values, he argues net equity in the 128 Lands available to the petitioner is about **\$5,551,172.15**, which is sufficient to satisfy all or the vast majority of the petitioner's judgment plus accrued post-judgment interest.

56 Avenue Lands

[12] The petitioner's mortgage is the second-ranked mortgage on the 56 Avenue Lands. It has conduct of sale of this property. It expects there will be about **\$1,700,000** in equity available to it, after paying realtor commission, paying out the first mortgage and a CRA judgment registered on title. Since the equity in this property is not sufficient to satisfy the judgment, it decided to take execution proceedings against the Gaba Properties, using the *COEA* process.

[13] Mr. Gaba says on February 19, 2026, the petitioner accepted (subject to court approval) an offer to purchase the 56 Avenue Lands for \$6,300,000 (the "February Offer").

[14] Mr. Gaba notes the 2026 BC Assessment valuation for this property (as of July 1, 2025) is \$7,660,000.

[15] He says the charges on the 56 Avenue Lands which rank in priority to the petitioner include:

Item	Amount
First Mortgage	\$4,157,212.88
Judgment – HMTK in Right of Canada	\$236,404.93
Real Estate Commission and GST	<u>\$170,100.00</u>
Total	\$4,563,717.81

[16] He says if the court approves the February Offer, the petitioner can expect to receive about **\$1,736,282.19** from the proceeds of sale. However, he believes the February Offer is significantly below that property's fair market value. If it were to be at what he says is its fair market value, the petitioner could receive much more.

The Gaba Properties

[17] Mr. Gaba is registered owner of 144 Street Lands, Principal Residence and 49 Avenue Lands. The petitioner registered its judgment on title to each of them on November 27, 2024, under LTO Registration No. CB1733772.

[18] On July 12, 2025, Associate Judge Muir granted an order that there be a reference made to the District Registrar of the court in respect of four properties, which include the three Gaba Properties which are the subject of this application.

[19] On January 21, 2026, Associate Judge Robinson (as Registrar) issued the Registrar's Report pursuant to s. 94 of the *COEA*. It finds that the three Gaba Lands properties are liable to be sold and that Mr. Gaba's has an interest in them as (sole) registered owner. It states:

- a) There are three mortgages registered in total, one on each of the Gaba Lands:
 - i. Mortgage in favour of TD Bank registered against the 144 Street Lands, in the amount of \$520,800;
 - ii. Mortgage in favour of TD Bank registered against the 49th Avenue Lands, in the amount of \$1,050,500; and
 - iii. Mortgage in favour of CIBC registered against the Principal Residence, in the amount of \$1,500,000.
- b) There are two judgments registered against all three of the Gaba Lands:
 - i. Petitioner's judgment in the amount of \$5,062,227.76 plus interest and costs; and
 - ii. 77 Investments Ltd.'s judgment in the amount of \$1,140,832.77 plus interest and costs.
- c) There is no priority between the judgments.

[20] The petitioner says since there is no priority between its judgment and the judgment of 77 Investments Ltd., any proceeds from the sale of the Gaba Properties would be shared *pari passu* [ranking equally and without preference] as between them.

[21] The petitioner has tendered appraisals prepared by Sean Kim of Macintosh Appraisals dated February 9 and 10, 2026, which opine that the market value of the Gaba Lands are as follows:

Property	Appraised Value
144 Street Lands	\$1,150,000 to \$1,275,000
49 Avenue Lands	\$1,500,000 to \$1,700,000
Principal Residence	\$3,550,000 to \$3,900,000

[22] It argues that even if one adopts the upper end of the range of these values, the petitioner's share of proceeds from the sale of each would be roughly as follows, after paying out the mortgage on each property and the principal residence exemption amount Mr. Gaba's Principal Residence:

	144 Street Lands	49 Avenue Lands	Principal Residence
Appraised Value	\$1,275,000	\$1,700,000	\$3,900,000
Less Mortgage	(\$520,800)	(\$1,050,000)	(\$1,500,000)
Less Commission	<u>(\$38,194)</u>	<u>(\$49,350)</u>	<u>(\$107,100)</u>
Net Proceeds	\$716,006	\$600,650	\$2,280,900
Petitioner's Share	82.51%	82.51%	82.51%
Petitioner's Payout	\$590,813.89	\$495,927.47	\$1,882,088.89

This adds up to **\$2,968,830.25** over the three properties.

[23] The petitioner argues that, assuming it receives about \$1,700,000 from selling the 56 Avenue Lands, plus \$2,968,830.25 from the three Gaba Properties, that only totals \$4,669,000, which is insufficient to retire the balance owing on its judgment.

[24] The petitioner says Mr. Gaba has granted several mortgages over another one of his properties, including:

- a) Mortgage CA5103953, in the principal amount of \$519,000 to The Toronto-Dominion Bank;
- b) Mortgage CB727350, in the principal amount of \$4,175,000 to Morteq Lending Corp.;
- c) Mortgage CB1443264, in the principal amount of \$1,000,000 to 1379370 B.C. Ltd.

[25] It argues there is a risk of further dilution by other creditors. 1379370 B.C. Ltd. has started a foreclosure against Mr. Gaba and others in New Westminster Action H259492, alleging that mortgage is in default. It seeks judgment against Mr. Gaba in the amount allegedly owing under the mortgage, \$1,188,158.41 as of September 4, 2025, with interest accruing at the daily rate of \$547.94.

[26] Mr. Gaba says that:

- a) The 2025 BC Assessment value (as of July 1, 2024) of the 144 Street Lands was \$1,397,600. He rents the property to two families, both of which have young children, who have lived at the property for between one and three years;
- b) The 2025 BC Assessment value (as of July 1, 2024) of the 49 Avenue Lands was \$1,850,700. He rents the property to two families, both of whom have young children, who have lived at the property for between four and over ten years; and
- c) The 2025 BC Assessment value (as of July 1, 2024) of the Principal Residence was \$4,163,000. This is Mr. Gaba's family home. He lives there with his wife and their four children, ages 3 to 21 years. The children were all born and raised in the home. It was built by Mr. Gaba's father in the late 1990s and passed to Mr. Gaba following his father's death in the early 2000s. He and his family have established a safe and social environment for themselves and their children in and around the property for over twenty years.

Applicable Law

[27] The petitioner relies on Rule 13-5 [*Sales by the Court*] of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (“SCCR”) and ss. 94 and 96 of the *COEA*.

[28] Rule 13-5 of SCCR is as follows:

Court may order sale

(1) If in a proceeding it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.

[29] Rule 13-5 is normally utilized when a sale of property is sought in the course of a continuing proceeding. In this case, sale of property is being sought as a collection remedy after final judgment, expressly contemplated by s. 96 *COEA*. One case where a similar distinction was discussed is *Ostrikoff v. Ostrikoff*, 2023 BCSC 77 at para. 38, which involved sale of property under another statute which contemplates sale as a final remedy, the *Partition of Property Act*, R.S.B.C. 1996, c. 347:

[38] Although the petition refers to both Rule 13-5 and the *Partition of Property Act*, I think it is the latter that applies here. Rule 13-5 applies when the issue of sale of property arises in the course of a proceeding, for example in a family action, whereas the *Act* provides a direct and specific remedy that can be the subject of a petition in itself.

[30] See also in *Nguyen v. Pham*, 2023 BCSC 1246 at para. 52:

[52] In the alternative, the petitioner relies on Rule 13-5 of the SCCR. In my view, s. 6 of the *PPA*, rather than Rule 13-5 is the more applicable provision. While Rule 13-5 applies to a “proceeding” which includes a petition, the wording of that Rule appears to contemplate that it applies when “the issue of the sale of property arises in the course of a proceeding, for example in a family action, whereas the *PPA* provides a direct and specific remedy that is itself the object of a petition”: *Ostrikoff v. Ostrikoff*, 2023 BCSC 77 at para. 38; *Phoenix Homes Limited v. Takhar*, 2017 BCSC 699 at para. 16 [*Phoenix*]. Regardless, I will address this basis for an order for sale as well.

[31] See also *Garib v. Randhawa*, 2024 BCSC 2159 at paras. 39-53.

[32] Section 96(1) of the *COEA* deals with orders for sale of land:

Order for sale of land

96 (1) If in a summary way or on the trial of an issue, or as the result of inquiries under sections 92 to 95, or otherwise, any land or the interest of any judgment debtor in it is found liable to be sold, an order must be made by the court declaring what land or what interest in it is liable to be sold, and directing the sale of it by the sheriff.

[33] This sale process is the third step in the COEA process for executing against land. It was discussed in *Frigerio v. Cameron*, 2003 BCCA 680 at paras. 14-16:

14 The third step in the process was for the Director to apply under s. 96(1) of the Court Order Enforcement Act to have the Registrar's report confirmed and the land ordered sold. That section provides:

[the reasons set out s. 96(1), above]

15 The section mandates that an order be made declaring what land or what interest therein is to be sold and declaring that it be sold by the sheriff. The chambers judge made an order confirming the Registrar's report but, as indicated, she did not order that the property or any part thereof be sold.

16 While the mandatory aspect of the legislation and the provisions of the order made in March 2002 do not appear to have been impressed on the chambers judge, it does appear to me that, in the circumstances, it was not open to her at this stage to decline to order that the property be sold by the sheriff. There was an outstanding order that the property or a competent part thereof be sold to realize the arrears and secure Mr. Frigerio's future support obligation and, while it may not be necessary to sell all of the property to achieve that purpose, no case for the sale of only some of the six lots was made out at any stage of these proceedings.

[34] Section 96(2) of the COEA gives the court discretion to defer the sale of the debtor's home:

(2) Despite subsection (1), if a premises situated on the land or interest in it of a judgment debtor is the home of the debtor, the court may defer the sale, subject to the performance by the judgment debtor of terms and conditions of payment or otherwise as the court imposes.

[35] This subsection has been interpreted to mean a deferral of sale can be ordered with or without terms imposed. The test requires consideration of the relative risk of prejudice to the debtor from not granting the deferral versus the risk of prejudice to the creditor from granting it. See *Kriegman v. Wilson*, 2020 BCCA 66 at paras. 61-62 and 73-77:

61 ... Consistent with the 1970 version, I read s. 96(2) as giving the judge a discretion to defer the sale of a home, and when doing so, the discretion to impose terms or to not impose terms.

62 It follows that I conclude the judge made no error of law in his interpretation of s. 96(2) of the *COEA*. He had discretion to order deferral of the sale of the Property under s. 96(2), without imposing terms and conditions for performance by the judgment debtor, Ms. Wilson.

...

73 I therefore find that it would not be contrary to the legislation for a judge to take into account hardship to the debtor when considering the discretion to defer sale of the debtor's home under s. 96(2). However, proper consideration of the discretion would require considering prejudice to both parties, the debtor and creditor.

74 In this case, the judge did consider the relative risk of prejudice to both parties: to the Trustee if a deferral was ordered, and to Ms. Wilson if no deferral of sale was ordered.

75 The judge recognized and took into account that any delay in realizing available assets will to some degree increase the costs of the Trustee and impact those entitled to share in the ultimate distribution of assets, however, it was hard to put a precise figure on this prejudice (at para. 42). In this unusual case, in the absence of evidence as to when the Trustee expected to be in a position to say it had completed its other collection efforts from other debtors, it could not be concluded that the delay in selling Ms. Wilson's home was going to cause any material delay in recovery by other persons awaiting the Trustee's efforts.

76 Countering the prejudice to the Trustee caused by delay was the judge's finding that the Judgment was well secured against the Property and there was no evidence it was at risk (at para. 43). The amount of the Judgment was \$347,044.92 and the Property was appraised in August 2016 as having a market value of \$650,000; it was assessed in 2017 at a value of \$821,900 (at para. 13). Even if there were downward pressures in the market, it would seem a negative market change was a risk to be borne by the debtor who would lose equity, but it was unlikely to affect the creditor.

77 Further, nearly the entirety of the value of the Property stems from the underlying land, and not the home itself. There is little risk to value as a result of the home aging. There was no evidence to suggest that Ms. Wilson has other creditors that would potentially dilute the Trustee's recovery under the Judgment. The judge made it clear in the terms he imposed that it was the debtor's obligation to make the Property available for sale free of encumbrances.

Position of the Parties and Analysis

Petitioner

[36] The petitioner argues that its judgment is not well secured. Even the sale of all the Gaba Properties is projected to leave it with a shortfall of nearly \$1,000,000. If the sale of the Principal Residence is delayed, that would leave a shortfall of over \$2,700,000 remaining unpaid. It also says its recovery under the judgment is at risk of further dilution by other creditors of Mr. Gaba. If the petitioner in New Westminster Action H259492 obtains an order nisi with a personal judgment and registers it on title to the Principal Residence during a deferral period, the eventual sales proceeds would have to be shared *pari passu* amongst three judgment creditors rather than the current two, and this would leave it with an even greater shortfall. Deferral of sale of the Principal Residence would cause it significant prejudice and this would outweigh any prejudice to Mr. Gaba if a deferral is not granted.

Mr. Gaba

[37] Mr. Gaba says based on his valuations and equity calculations for the 128 Lands and 56 Avenue Lands, there is sufficient equity in those properties to secure the judgment plus accrued post-judgment interest. Net equity in the 128 Lands available to the petitioner is about \$5,551,172.15. With respect to the 56 Avenue Lands, if the February Offer is approved, the petitioner would receive a further \$1,736,282.19. Sale of the Gaba Properties is not necessary or expedient.

[38] Alternatively, if the court considers it appropriate to order the sale any of the Gaba Properties, he says an additional [$\$590,813.89 + \$495,927.47 =$] \$1,086,741.36 would be available through the sale of the 144 Street Lands and 49 Avenue Lands. He asks sale of the Principal Residence be deferred, pursuant to s. 96(2) of the COEA.

Analysis

[39] Mr. Gaba did not directly address in argument to the issue of whether the Registrar's report should be approved. No issue having been raised about it in particular, I order that the registrar's report is approved.

[40] The next issue is whether there is sufficient equity in the two properties on which the petitioner has registered its mortgage, the 128 Lands and 56 Avenue Lands. This is difficult to assess on the record before me.

[41] For the 128 Lands, two appraisals have been tendered which offer sharply divergent valuations. The petitioner's appraisal of September 12, 2025 indicates a market value of \$20,060,000. Mr. Gaba's appraisal of April 15, 2023 indicates a market value of \$30,550,000. Neither party offered a detailed analysis of the other's appraisal. Mr. Gaba's solution was to simply propose that the average of the two valuations be used. The distinction in values is significant because the petitioner would receive nothing to apply towards its judgment if its valuation is correct, while it could be close to fully paid out if the average of the two valuations is accurate.

[42] The first mortgagee of the 128 Lands has conduct of sale of the property and has listed it for sale. However, I was not taken to any evidence regarding the property's current list price, history of any price reductions which may have occurred, whether any offers have been received and for how much, and the like. Such evidence might have provided some practical insight.

[43] Mr. Gaba tendered several BC Assessment valuations, however, absent agreement they are not admissible as evidence of value in civil proceedings. See in this regard *Dosanjh v. Liang*, 2015 BCCA 18 at para. 63. This was also discussed in *Sarzynick Estate v. Skwarchuk*, 2021 BCSC 443 at paras. 228-229:

228 The Braidwood Property was purchased for \$173,500 on May 31, 2018. The plaintiffs point to the 2020 BC Assessment Value of \$198,300, as evidence that the Braidwood Property appreciated by roughly \$24,000. However, I am not able, as a matter of law, to rely on a BC Assessment as a viable assessment of a property's value: *Dosanjh v. Liang*, 2015 BCCA 18; *Tekamar Mortgage Fund Ltd. v. Hegel*, 2018 BCSC 1369 at para. 35. In *Dosanjh*, at para. 63, Justice Groberman for the majority reasoned that "there is, absent agreement, no scope for using assessments [BC

Property Assessments] in place of expert opinion evidence in cases such as the present one". Similarly, in *Tekamar*, Justice Butler, then of this Court, reasoned as follows:

[35] Before leaving this argument, I should comment on the appellant's reliance on the BC Assessment values for the Property. I agree that the much higher value shown in the annual assessments in comparison with the sale price raises a question for the Court. However, the assessments do not provide admissible evidence of value: *Dosanjh v. Liang*, 2015 BCCA 18. Accordingly, I must consider the real evidence of value and that includes not only the appraisals but the historical evidence about the attempts to sell the Property. I am not persuaded that in these circumstances the annual assessments provide reliable, let alone admissible, evidence of value.

[Emphasis added]

229 I am sympathetic to the plaintiffs' assertion that the Braidwood Property has appreciated in value since it was purchased. However, as BC Property Assessments are not an admissible form of evidence for property values in a civil case, I am not in a position to make a finding on any appreciation in value at this time.

[44] The most obvious distinguishing feature as between the two appraisals is that the petitioner's is more recent and presumably reflects more recent market conditions.

[45] Both parties agree that there is roughly \$1,700,000 in equity available from the 56 Avenue Lands.

[46] On the available evidence, there does appear to be a significant risk that simply relying on an eventual sale of the 128 Lands and 56 Avenue Lands will not be sufficient to pay out what is owing on the petitioner's judgment.

[47] In my view, it is appropriate in the circumstances to order that Mr. Gaba's interest in the 144 Street Lands and 49 Avenue Lands be sold. Neither of those properties qualifies for deferral under s. 96(2) of the COEA, as they are not the "home of the debtor". The petitioner will have exclusive conduct of the sale. Any proposed sale is subject to court approval, unless it has been approved in writing by the petitioner, Mr. Gaba and 77 Investments Ltd.

[48] With respect to the Principal Residence, this is Mr. Gaba's home. He asks that its sale be deferred. Given the lack of clarity in the valuation evidence relating to the 128 Lands in particular, and given the clear and unchallenged evidence indicating the extent of the prejudice that Mr. Gaba and his family members residing in the Principal Residence will experience if it is sold, I agree that at least a temporary delay in selling it is appropriate.

[49] This is not a case where Mr. Gaba has proposed a payment plan or other terms as an alternative to avoid sale. He did not tender evidence suggesting he has the financial means to make meaningful voluntary payments towards the petitioner's judgment. He seeks a deferral without terms, based on valuations he has put forward of various other properties which are alternative targets of involuntary collection proceedings. As properties are marketed and hopefully sold, this may bring further clarity. In my view, a deferral of **4 months** appears appropriate in the circumstances. Thereafter, the petitioner is at liberty to re-apply for sale of the Primary Residence.

[50] The petitioner asks that it be allowed to sell the subject properties through a realtor rather than via the sheriff. It relies on *Kriegman v. Wilson*, 2018 BCSC 1497 [varied by 2020 BCCA 66 on other grounds] at paras. 37-38:

[37] The Trustee submits that the property should be sold by way of a listing with a real estate agent and the active marketing of the Lands instead of through the Sheriff.

[38] This part of the application was not opposed by Ms. Wilson. In *First Western Capital Ltd. v. Wardle* (1984), 59 B.C.L.R. 309 (C.A.) [*First Western*] Hutcheon J.A. in dealing with the issue of whether the COEA was a complete code for the administration of the sale of land commented, "...the Act is not a complete code and that the court retains jurisdiction over the conduct of sale." *First Western* was followed in *Instafund Mortgage Management Corp. v. 379100 British Columbia Ltd.*, [1998] B.C.J. No. 2381 (S.C.) where the sale of the property through a real estate agent was approved.

[51] I agree that this is reasonable and appropriate, and so order. The 144 Street Lands and 49 Avenue Lands may be sold by way of a listing with a licensed realtor, to list the properties on the Multiple Listing Service to assist in the sale and to pay

realtor fees not exceeding 7% of the first \$100,0000 and 2.5% of the balance of the sale price, plus GST, to be paid from the gross proceeds of sale.

[52] There will also be an order that any person or persons in possession of the properties being sold, including any tenant or tenants in possession, permit any duly authorized agent of the bailiff to inspect or appraise the properties and the interior thereof and show them and their interior thereof to prospective purchasers between the hours of 10 am and 8 pm on any day excluding Sundays and statutory holidays, and to post signs on the properties indicating they are offered for sale.

[53] The petitioner also asked that the advertising requirements under s. 101(1) and (2) be dispensed with, pursuant to s. 101(3). The petitioner says that because the properties will be listed for sale and widely advertised through the Multiple Listing Service, the statutory advertising requirements are superfluous. I agree this is reasonable. The advertising requirements under the *COEA* are dispensed with, as permitted under s. 101(3).

Costs

[54] The petitioner has been largely successful in this application and is entitled to costs of the application as against Mr. Gaba.

“Associate Judge Bilawich”