



NO. S246230
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INTRACORP VANNESS LIMITED PARTNERSHIP

PLAINTIFF

AND

THE OWNERS, STRATA PLAN LMS992, and CROWE MACKAY &
COMPANY LTD., AS LIQUIDATOR OF THE OWNERS, STRATA PLAN
LMS992

DEFENDANTS

AND:

INTRACORP VANNESS LIMITED PARTNERSHIP

DEFENDANT BY WAY OF COUNTERCLAIM

NOTICE OF APPLICATION

Name of Applicant: Crowe MacKay & Company Ltd. as Liquidator of the
Owners, Strata Plan LMS992

To: The Plaintiff, Intracorp Vanness Limited Partnership

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Thursday, the 23rd day of October, 2025 at 9:45 am for the orders set out in Part 1 below.

The Applicant estimates that the application will take two (2) hours.

- ☐ This matter is within the jurisdiction of an Associate Judge.
- ☒ This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. Pursuant to Rule 9-7, an order that the plaintiff/defendant by counterclaim Intracorp Vanness Limited Partnership ("**Intracorp**") pay to Crowe MacKay & Company Ltd., court confirmed liquidator of The Owners, Strata Plan LMS992, (the "**Liquidator**") the sum of \$3,195,129.29, plus pre-judgment interest thereon from and after September 9, 2024.
2. Costs of this application and proceeding to be paid by Intracorp to the Liquidator.
3. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

A. Overview

4. This summary trial application arises out of a dispute following the completion of the sale to the Plaintiff, Intracorp Vanness Limited Partnership as purchaser, ("**Intracorp**") of the strata complex of The Owners, Strata Plan LMS992 (the "**Joyce Place Strata**").
5. The Joyce Place Strata was a strata development referred to as "Joyce Place" ("**Joyce Place**"), located at 3380 Vanness Avenue, Vancouver, BC. Joyce Place was a mixed-use 63-unit strata property.
6. By agreement dated January 11, 2021, Intracorp Acquisition Co Ltd.¹ and the Joyce Place Strata entered into a conditional Purchase and Sale Agreement (the "**PSA**") for the sale to Intracorp of the Joyce Place Strata lands and buildings (the "**Joyce Place Property**").

¹ By Notice of Assignment dated August 25, 2021, Intracorp Acquisition Co Ltd. assigned the PSA to the Plaintiff, Intracorp Vanness Limited Partnership, as purchaser. For the purposes of this application, they will be collectively referred to as "Intracorp".

7. On July 7, 2021, the Joyce Place Strata members resolved at a special general meeting (the “SGM”) to wind-up the strata and appoint the Liquidator pursuant to Part 16, Division 2 of the *Strata Property Act*, S.B.C. 1998 c. 43 (the “SPA”). At the SGM, the Joyce Place Strata members also approved the PSA pursuant to section 282 of the SPA.

8. By order granted October 19, 2022, the court confirmed the wind-up of the Joyce Place Strata, approved the appointment of the Liquidator and approved the PSA.

Affidavit #1 of E. Allegretto (“Allegretto #1”), Ex. B.

B. Purchase Price Adjustment Terms

9. The terms of the PSA include Schedule G which sets out a formula by which a purchase price adjustment (“PPA”) was to be calculated and paid to the Joyce Place Strata owners. The PPA is calculated based on the aggregate BC Assessment values of all the residential units in six “Comparable Developments” measured at two different points in time.

10. Schedule G identifies the six “Comparable Developments” as follows:

(c) “Comparable Developments” means all of the following developments:

- (i) Regent Court- 3489 Ascot Place, Vancouver, BC (Strata Plan LMS 1558);
- (ii) Nexus - 3588 Crowley Drive, Vancouver, BC (Strata Plan BCS 404);
- (iii) Wall Central Park- 5515 Boundary Road, Vancouver, BC (Strata Plan EPS3434);
- (iv) Tower-2689 Kingsway, Vancouver, BC (Strata Plan EPS2285);
- (v) Centro- 3438 Vanness Avenue, Vancouver, BC (Strata Plan LMS3463); and

- (vi) Circa- 3660 Vanness Avenue, Vancouver, BC
(Strata Plan BCS2012);

Allegretto #1, Ex. A. (p. 43).

11. The formula for the calculation of the PPA is defined in Schedule G as follows:

"Purchase Price Increase" means an amount equal to (A) the Purchase Price, multiplied by (B) the Aggregate Value Increase, multiplied by (C) sixty five percent (65%);

12. The Purchase Price under the PSA was \$41,400,000.

13. Clause 3(b) of Schedule G defines "Aggregate Value Increase" to mean:

...the percentage by which the Adjustment Date Aggregate Value exceeds the Reference Date Aggregate Value;

Allegretto #1, Ex. A. (p. 43).

14. Clause 3(a) of Schedule G defines "Adjustment Date Aggregate Value" to mean:

... the aggregate assessed value of all of the Comparable Strata Lots as set out in the most recent property assessment notices issued by BC Assessment prior to the Value Adjustment Date for each of the Comparable Strata Lots (provided that, for greater certainty, the property assessment notices used to determine the Adjustment Date Aggregate Value will not be earlier than the property assessment notices used to determine the Reference Date Aggregate Value);
(emphasis added)

15. The "Value Adjustment Date" is January 1, 2021.

16. Clause 3(d) of Schedule G defines "Comparable Strata Lots" to mean "all of the residential strata lots located within the Comparable Developments on both the Value Reference Date and the Value Adjustment Date."

17. Clause 3(f) of Schedule G defines "Reference Date Aggregate Value" to mean:

... the aggregate assessed value of all of the Comparable Strata Lots as set out in the 2021 property assessment notices issued by BC Assessment (setting out property value as of July 1, 2020) for each of the Comparable Strata Lots;
(emphasis added)

Allegretto #1, Ex. A. (p. 44).

18. Clause 3(g) of Schedule G defines “Value Adjustment Date” to mean “the date that is eighteen (18) months after the date on which the Vendor’s Second Condition is satisfied. The Vendor’s Second Condition was satisfied on July 8, 2022, making January 8, 2023 the “Value Adjustment Date”.

Affidavit #1 of J. King (“**King #1**”), Ex. C.

19. As a result, the applicable BC Assessment values for use in determining the “Reference Date Aggregate Value” of the “Comparable Developments” are those issued for the Comparable Strata Lots on January 1, 2023 (setting the value as at July 1, 2022).

20. The aggregate value of Comparable Strata Lots in the six Comparable Developments on the Value Reference Date (January 1, 2021) is \$733,472,908. This amount is the “Reference Date Aggregate Value”.

King #1, para. 10, Ex. F.

21. The aggregate value of Comparable Developments on the Value Adjustment Date is \$820,561,008.00. This amount is the “Adjustment Date Aggregate Value”.

King #1, para. 11, Ex. G.

22. As a result, the Aggregate Value Increase is 11.873390148%, being “the percentage by which the Adjustment Date Aggregate Value exceeds the Reference Date Aggregate Value”.

23. The "Purchase Price Increase" (the PPA) is therefore \$3,195,129.29 (\$41,400,000 x 11.873390148% x 65%).

King #1, para. 13.

C. Intracorp Disavows PPA

24. On September 9, 2024 (the "Closing Date"), the PSA completed and the Joyce Place Property was transferred by the Liquidator to Intracorp. Intracorp did not pay the PPA as part of tendering the purchase price.

Affidavit #2 of E. Allegretto ("Allegretto #2") #2, para. 11.

25. In advance of the Closing Date, Intracorp advised the Liquidator that it would not be paying a PPA. Specifically, Intracorp asserted that:

...there is no increase to the Purchase Price pursuant to Schedule G of the Purchase Agreement, as there have been Comparable Development Changes with respect to each of the Comparable Developments, and accordingly, there are no Comparable Developments for the purposes of calculating the Adjustment Date Aggregate Value.

King #1, Ex. D.

26. Intracorp relied on clause 6 of Schedule G which states:

If a Comparable Development Change (as defined below) for any Comparable Development occurs prior to the Value Adjustment Date, then such Comparable Development will be deemed to not be a Comparable Development for the purposes of this Schedule G and the Comparable Strata Lots within such Comparable Development will be excluded for the purposes of calculating the Reference Date Aggregate Value and the Adjustment Date Aggregate Value.

Allegretto #1, Ex. A, p. 43.

27. The term "Comparable Development Changes" is defined in Schedule G. The material portion of this definition relied upon by Intracorp states:

In this Schedule G, "**Comparable Development Change**" means the occurrence of any of the following:

- (a) any change or proposed change to the permitted use or redevelopment of any land within any Comparable Development (including, without limitation, any change or proposed change to the official community plan, zoning or any other City bylaw which affects the redevelopment potential of such land);

...

- (g) there is any other change, event, fact or condition which causes the assessed value of Comparable Strata Lots with any Comparable Development to increase for reasons other than normal market conditions.

Allegretto #1, Ex. A. (p. 44).

28. Intracorp asserted that the following events constituted “Comparable Development Changes” which disqualified all six of the “Comparable Developments”:

- (a) the passage of the Vancouver Plan by City Council on July 22, 2022;
- (b) The approval by the City of Vancouver (the “City”) of
 - (i) a 5% increase to certain engineering fees that relate particularly to the development industry and a 2.3% increase to other engineering fees for 2022 on or about December 7, 2021;
 - (ii) a motion to update Vancouver’s Development Cost Levy By-law on or about June 22, 2022; and
 - (iii) a 3.3% increase to engineering fees for 2023 on or about December 6, 2022;
- (c) The City passed By-law No. 13345 on or about June 7, 2022, which made amendments respecting carbon emissions, air filtration, and included carbon limits to the Vancouver Building By-law, By-law No. 12511;
- (d) The Greater Vancouver Water District’s:
 - (i) Development Cost Charge Bylaw No. 353 2022 passed and finally adopted on June 24, 2022; and
 - (ii) Development Cost Charge Bylaw No. 257, 2022 passed and finally adopted on or about April 28, 2023;

(e) South Coast British Columbia Transportation Authority (“TransLink”) passed:

- (i) Bylaw No. 143-2021 on or about September 23, 2021, imposing development cost charges for the year 2022 and increasing the TransLink Development Cost Charge effective January 1, 2022;
- (ii) Bylaw No. 144-2022 on or about March 24, 2022, amending the TransLink bylaw imposing property tax for the year 2022; and
- (iii) Bylaw No. 145-2022 on or about March 24, 2022, increasing the property tax rates levied by TransLink effective January 1, 2022; and

(f) The COVID-19 epidemic.

(Collectively, the “Alleged Changes”)

Amended Response to Counterclaim, paras. 8 to 12.

D. Invalidity of Intracorp Position

29. The Liquidator obtained affidavit evidence from BC Assessment and the opinion of a real estate planning and development expert in answer to the Alleged Changes. This evidence and opinion are independent and complete answers to Intracorp’s assertion that there have been “Comparable Development Changes” to all of the “Comparable Developments” such that “there is no increase to the Purchase Price pursuant to Schedule G”.

30. For this reason, the Liquidator submits a PPA of \$3,195,129.29 was due from Intracorp on September 9, 2024 and remains payable.

a) **BC Assessment**

31. Both the “Adjustment Date Aggregate Value” and the “Reference Date Aggregate Value” are predicated on “property assessment notices issued by BC Assessment”.

32. When determining the assessment value of the “Comparable Strata Lots” that are the individual residential strata units making up the “Comparable Developments”, BC Assessment did not make any value or assessment adjustments to reflect anything in the nature of the factors set out in section 7 of Schedule G.

Affidavit #1 of B. Murao, para. 6.

33. As a result, none of the Alleged Changes could have caused the assessed value of the Comparable Strata Lots to increase for reasons other than normal market conditions. Intracorp cannot rely on section 7(g) of Schedule G as justification for supporting that any of the “Comparable Developments” were the subject of a “Comparable Development Change”.

b) **No Change of Permitted Use or Redevelopment**

34. Chuck Brook is a real estate planning and development expert. Mr. Brook provided an opinion dated September 12, 2025 (the “**Brook Opinion**”).

King #1, Ex. B.

35. The Brook Opinion considers whether the market would have:

- (a) considered it reasonably likely, or merely possible, that the Alleged Changes would occur;
- (b) expected the Alleged Changes to be reasonably likely to change the permitted use, redevelopment or redevelopment potential of the “Comparable Strata Lots”; and

- (c) considered the Alleged Changes to be capable of increasing the redevelopment potential so as to increase the market value of the Comparable Strata Lots.

36. Put another way, the Brooks Opinion assesses whether any of the Alleged Changes fit within section 7(a) or (g) of Schedule G as Comparable Development Changes. The Brooks Opinion concludes that none of the Alleged Changes were capable of changing the permitted use, redevelopment or redevelopment potential of or increasing the redevelopment potential so as to increase the market value of any of the Comparable Strata Lots. Indeed, the Brook Opinion notes that many of the Alleged Changes would, as a matter of fact, “diminish the residual land value by increasing development costs.”

King #1, Ex. B. paras. 6.50 and 6.96.

37. As a result, the Alleged Changes asserted by Intracorp are factually incapable of amounting to a “Comparable Development Change” as defined in Schedule G of the PSA. Therefore, Intracorp has no sustainable grounds, as a matter of contract, to exclude any of the “Comparable Development s” from use in the calculation of the PPA.

Part 3: LEGAL BASIS

38. The Liquidator relies on Rule 9-7 of the *Supreme Court Civil Rules* and on the inherent jurisdiction of the Court.

A. The Issues Are Suitable for Summary Disposition

39. Alternatively, Rule 9-7 provides that, on hearing a summary trial application, the court may consider and weigh conflicting evidence and grant judgment in favour of any party, either on an issue or generally, unless the court is unable to find the necessary facts or is of the view that it would be unjust to do so.

Cepuran v. Carlton, 2022 BCCA 76 at paras. 149 – 150.

40. In deciding whether a matter is suitable for summary trial, the court may consider a number of factors including the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise from delay, proportionality, the course of proceedings, and whether the evidence is sufficient to decide the dispute.

Cepuran, supra.

41. The Liquidator submits that this Court can and should determine this matter by way of summary trial. Intracorp's delay in paying the PPA to the Liquidator as part of completing its purchase of Joyce Place has prejudiced all the former owners. Each or those owners have been deprived of the use of part of the sale proceeds that they expected from the sale of their individual strata units.

42. The Liquidator has adduced evidence sufficient to allow the Court to determine, pursuant to the PSA:

-
- (a) Whether the Alleged Changes constitute "Comparable Development Changes"; and
 - (b) The quantification of the amount of the PPA pursuant to Schedule G of the PSA.

43. These issues are factually simple, do not engage contested legal principles or conflicting evidence, and can be decided summarily on the affidavit evidence before the Court.

44. The issues raised on this application are suitable for summary trial. If the Liquidator is successful, that will dispose of this matter entirely before either party incurs further litigation costs.

45. A full trial to resolve this matter would result in unnecessary delay and costs to all parties. In particular, it prejudices the former owners of Joyce Place who have been denied their full share of the Purchase Price. The prejudice to the former owners is exacerbated by the fact that they are not parties to this action.

B. Entitlement to the PPA

46. As a matter of fact and contractual interpretation, none of the Alleged Changes are “Comparable Development Changes” as defined in section 7 of Schedule G of the PSA. For this reason, Intracorp is not entitled to exclude any (let alone all) of the “Comparable Developments” in the calculation of the PPA.

47. The goal of contractual interpretation is to ascertain the objective intent of the parties – a fact-specific goal – through the application of legal principles of interpretation. The court applies a practical, common-sense approach, the over-riding concern of which is to determine the intent of the parties and the scope of their understanding.

Sattva Capital Corp. v Creston Moly Corp., 2014 SCC 53,
paras. 47 and 49.

48. Interpreting a negotiated commercial document must be done in a manner which avoids a commercial absurdity. The document must be construed in accordance with sound commercial principles and good business sense.

IFP Technologies (Canada) Inc. v EnCana Midstream and Marketing,
2017 ABCA 157, paras. 88-89.

49. The words of one provision must not be read in isolation but should be considered in harmony with the rest of the contract and in light of its purpose and commercial context. For this reason, the courts do not accept overly broad interpretations of price adjustment clauses.

Tercon Contractors Ltd. v. British Columbia (Transportation and Highways),
2010 SCC 4, para. 64;
Niebergal v QHR Technologies Inc., 2020 SKQB 327;
aff'd 2022 SKCA 85.

50. The interpretation of Schedule G to the PSA must be undertaken in the context of the entire agreement and its surrounding context. That context included recognition by the parties that there would be a considerable amount of time between the date the PSA was signed (January 11, 2021) and the probable closing date

(ultimately September 9, 2024). The PPA was intended to adjust the purchase price in the event there was a meaningful rise in the market value of Joyce Place over that period of time.

51. The interpretation and application of the meaning of “Comparable Development Change” in clause 7(a) to (g) of Schedule G must therefore be undertaken in this context.

52. In the context of this transaction, the types of “Comparable Development Change” set out in clause 7(a) to (g) of Schedule G are to be qualified by the phrase in section 7(g) requiring that the asserted change “causes the assessed value of Comparable Strata Lots with (*sic*) any Comparable Development to increase for reasons other than normal market conditions.”

53. In claiming the Alleged Changes all qualified as “Comparable Development Change”, Intracorp relies on sections 7(a) and (g) of Schedule G. Intracorp asserts that section 7(a) of Schedule G is unmodified by section 7(g), meaning that any “changes or proposed changes to land use plans and bylaws applicable to” the Comparable Developments is a Comparable Development Change justifying exclusion. As all the Comparable Developments have been subject to “changes or proposed changes to land use plans and bylaws”, even though they have no effect on value or redevelopment potential, all the Comparable Developments are excluded such that “no Purchase Price increase is payable.”

Amended Response to Counterclaim, paras. 21-25.

54. This is an overly broad and absurd interpretation. Acceding to this interpretation effectively renders the PPA unenforceable as it would allow Intracorp to raise (as it has done) trivial “Comparable Development Changes” to justify the exclusion of all the Comparable Developments from use in calculating the PPA.

55. The only reasonable interpretation of section 7(a) is that, like the basket section 7(g)², the “change or proposed change to the permitted use or redevelopment of any land” must “cause() the assessed value of Comparable Strata Lots . . . to increase for reasons other than normal market conditions.” Section 7(g) begins with the words “there is any other change, event, fact or condition which causes . . . “(emphasis added). As a result of using these words, the qualification in section 7(g) that the “change, event, fact or condition” must result in an increase in market value for “reasons other than normal market conditions” is operative for each of the circumstances set out in Sections 7(a) to (f).

56. To interpret section 7(a) absent that qualification makes it commercially absurd. Such an interpretation means, for example, that a change (or just a possible change) to a bylaw governing signage on the Comparable Developments would exclude them even though it would have no material impact on the “permitted use or redevelopment” of the Comparable Developments.

57. The calculation of the PPA is a mathematical formula predicated on the aggregate assessment values of all the Comparable Strata Lots of the “Comparable Developments”. The assessment values to be used are published by an independent third party: BC Assessment. The applicable valuation dates are known and uncontested: being January 1, 2021 and January 1, 2023.

58. Based on the BC Assessment data, the value of the “Purchase Price Increase” (the PPA) is \$3,195,129.29.

59. The Liquidator seeks judgment against Intracorp for the amount of the PPA, plus pre-judgment interest thereon and costs.

² “7(g) there is any other change, event, fact or condition which causes . . . “(emphasis added)

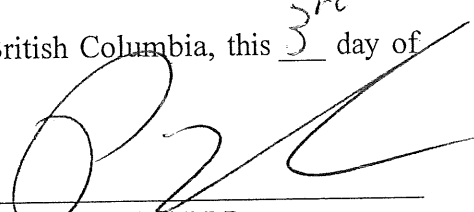
Part 4: MATERIAL TO BE RELIED ON

- 60. Affidavit #1 of E. Allegretto filed September 9, 2024 (excluding exhibits C, D and E).
- 61. Affidavit #1 of B. Murao made August 14, 2025.
- 62. Affidavit #2 of T. Takagaki, made September 17, 2025.
- 63. Affidavit #1 of J. King, made October 2, 2025.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 3rd day of October, 2025.


 Lawsen Lundell LLP
 Solicitors for the Applicant, Crowe
 MacKay & Company Ltd. as
 Liquidator of the Owners, Strata
 Plan LMS992

This Notice of Application is filed by Peter J. Roberts, K.C./Jordan Hayward, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: proberts@lawsonlundell.com; telephone number: 604-685-3456.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____
of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Associate Judge

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☒ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above

NO. S246230
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INTRACORP VANNESS LIMITED
PARTNERSHIP

PLAINTIFF

AND:

THE OWNERS, STRATA PLAN LMS992 ET AL.

DEFENDANTS

NOTICE OF APPLICATION



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: Peter J. Roberts, K.C.

PJR/acc2