

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 147 OF 2017 (NSJ)

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)
AND IN THE MATTER OF NEW GENERATION IDEAS COMPANY LIMITED

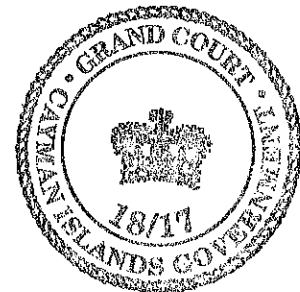
JUDGMENT ON THE PRELIMINARY ISSUE HEARING TO DETERMINE THE
VALUATION OF 76 BEVERLY PARK

Appearances: Mr Jan Golaszewski of Carey Olsen for the Petitioner
Mr Nick Hoffman of Harney Westwood & Riegels for the Respondent

Hearing dates: 3-4 July and 29 August 2019

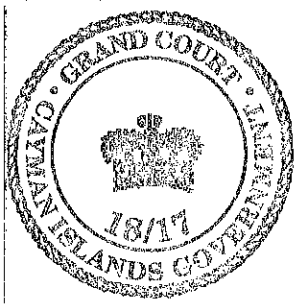
Draft Judgment
circulated: 17 September 2019

Judgment
delivered: 25 September 2019



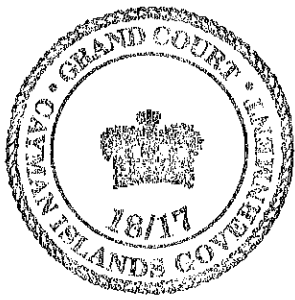
Introduction

1. This is my judgment on a preliminary issue arising in relation to a contributory's winding up petition.
2. The petition (the *Petition*) was presented on 17 July 2017 by Her Royal Highness Princess Fahdah Husain Abdulrahman Al-Athel (the *Petitioner*). The Petition seeks the winding up



of New Generation Ideas Company Limited (*NGI Cayman*), a Cayman Islands exempted company.

3. The Petitioner is a registered shareholder and director of NGI Cayman. The other registered shareholder and director is His Royal Highness Prince Faisal Bin Abdullah Bin Abdulaziz Al Saud (the *Respondent*). The Petitioner and Respondent were previously married but were divorced on or around 11 April 2016 in the Kingdom of Saudi Arabia (I note that the Respondent refers, following the divorce, to the Petitioner as Ms Faisal Al-Athel).
4. The Respondent opposes the Petition. The Respondent's position is that the Petitioner has no interest in a winding up of NGI Cayman and that the Petition is accordingly an abuse of process that should be struck out or dismissed. This is the only ground on which the Respondent opposes the making of a winding up order.
5. NGI Cayman owns all the shares in New Generation Ideas LLC (*NGI Delaware*), a Delaware company. The shares in NGI Delaware are NGI Cayman's only asset. NGI Delaware's sole asset is a valuable property at 76 Beverly Park Lane, Beverly Hills, California (the *Property*).
6. The Petition seeks the winding up of NGI Cayman on the following grounds:
 - (a) NGI Cayman is a quasi-partnership involving two, formerly married, members and the Petitioner has lost trust and confidence in the other sole member, the Respondent, on account of the dissolution of their marriage; and
 - (b) the only reason for the existence of NGI Cayman, being the holding of the Property for the Petitioner and the Respondent jointly in the context of their marriage, has been irretrievably lost as a result of the dissolution of their marriage.
7. The Respondent argues that the amount of NGI Delaware's liabilities (which are primarily sums which he claims to be owed) exceed the value of the Property. It is therefore insolvent and will be unable to make distributions to NGI Cayman. As a result, the shares in NGI Cayman are worthless and the Petitioner has no financial interest in the company.
8. After service of the Petition, the Respondent issued proceedings in Delaware against NGI Delaware and the Petitioner seeking confirmation of the sums owed to him by NGI Delaware and damages against the Petitioner (the *Delaware Proceedings*). The Petitioner actively opposed the Delaware Proceedings. She sought to have them dismissed or stayed.



Until March this year they were continuing. However, in March 2019, the Delaware court ordered that the Delaware Proceedings be stayed for the time being. This was because of concerns derived from the fact that NGI Delaware was not represented in the Delaware Proceedings and that this Court might shortly appoint an officer of the Court who could and would act for and represent NGI Delaware.

9. The Delaware Proceedings, if continued to judgment, would determine whether NGI Delaware was indebted to the Respondent and if it was indebted, in what amount. The Delaware Proceedings did not deal with and would not determine the value of the Property, NGI Delaware's only asset. In order to adjudicate on the Petition and the Respondent's opposition to the making of a winding up order, it is necessary to establish the value of the Property. It seemed to me that there was no need, and it would be unfair to the Petitioner, to delay the determination of that issue in the winding up proceedings pending the conclusion of the Delaware Proceedings. Since the only issue on the Petition is whether the Petitioner has a sufficient financial (tangible) interest in NGI Cayman, promptly determining one of the two core questions in dispute (the value of NGI Delaware's assets) would allow the Petition to be dealt with expeditiously and cost-effectively. I therefore decided that it was appropriate to order that the Court should proceed to determine the value to be attributed to the Property for the purpose of the winding up proceedings (the *Value Issue*).
10. On 21 December 2018, in response to applications for, and *inter partes* correspondence with the Court concerning, directions for the further conduct of the proceedings I issued the following decision:

"It appears that there is now only one issue in dispute. That is the Petitioner's standing. The dispute involves two elements. The first is the value of the property owned by NG Delaware. The second is the amount of NG Delaware's liabilities. The second issue may be determined in the Delaware proceedings if the motion to dismiss is unsuccessful. The first issue will be decided in the proceedings on the Petition. The Petitioner asserts that the property is worth more than the maximum amount of NG Delaware's liabilities. If correct, the Petitioner has standing and the Petition can be heard. Since there is no defence relied on beyond the standing point, the only question will be whether the Court is satisfied that a winding up order should be made...."



... In these circumstances I consider that the proceedings on the Petition should proceed on the basis that expert evidence on the value of the property be expedited and dealt with as a preliminary issue...

... If the Court determines that the value of the property is less than the maximum amount of the liabilities the proceedings on the Petition will either be adjourned to await the outcome of the Delaware proceedings or further directions can be made to allow the Court to determine the amount of NG Delaware's liabilities. It appears that the only issue on which discovery is needed is the valuation of the property and a suitable order and timetable can be made for this to be done and fit in with the timetable for the preparation and filing of the expert's report."

11. I gave directions for the determination of the Value Issue as a preliminary issue (these directions were given before the judgment of the Delaware court in March 2019). These directions were set out in an order dated 11 March 2019 (the **Directions Order**), the relevant parts of which were as follows:

"9. Each of the parties have leave to file and serve expert evidence as to the fair market value of the property owned by New Generation Ideas LLC (such evidence to provide if appropriate a range of values from the best case to the worst case and an indication of the variables, facts and matters which have a material effect on the market value of the property and an explanation of how they have such an effect).

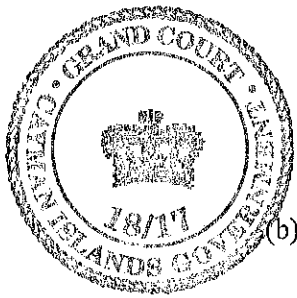
... ..

10. The question of the valuation of the Property shall be determined as a preliminary issue."

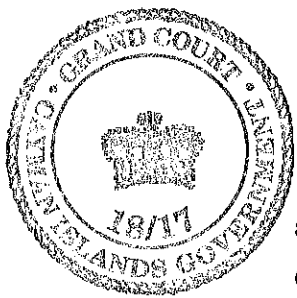
12. The Petitioner instructed Michelle Oliver as her expert (**Mrs Oliver**). Mrs Oliver is a professional real estate agent and a director of real estate at the Beverly Hills office of Douglas Elliman, specialising in ultra-luxury properties. The Respondent instructed Robert Dietrich as his expert (**Mr Dietrich**). Mr Dietrich is a vice president with Kidder Mathews Valuation & Advisory Services in its Los Angeles office and is its national Specialty Practice Leader. He is a professional appraiser who is authorised to give formal appraisals. Both Mrs Oliver and Mr Dietrich valued the Property as at 19 March 2019.

13. The following evidence was filed by the parties:

- (a) the Expert Valuation Report of Mrs Oliver, dated 15 March 2019 (**Mrs Oliver's First Report**).



- (b) the Appraisal Report, prepared by Mr Dietrich, also dated 15 March 2019 (*Mr Dietrich's First Report*).
- (c) the Joint Report of Mrs Oliver and Mr Dietrich, dated 29 March 2019, filed jointly by both parties (the *Joint Report*).
- (d) the Supplemental Expert Report of Mrs Oliver, dated 18 April 2019 (*Mrs Oliver's Supplemental Report*).
- (e) the Supplemental Report of Mr Dietrich also dated 18 April 2019 (*Mr Dietrich's Supplemental Report*).
14. Mrs Oliver's opinion was that the value of the Property was \$ [REDACTED] on a worst-case basis; \$ [REDACTED] on a medium-case basis and \$ [REDACTED] on a best-case basis. Mr Dietrich's opinion was that the fair market value of the Property was \$ [REDACTED]. This was the medium-case in his range of worst-case to best-case valuations. In his view, the fair market value of the Property was \$ [REDACTED] on a worst-case basis, \$ [REDACTED] on a medium-case basis and \$ [REDACTED] on a best-case basis. All references are to United States dollars (in this paragraph and elsewhere in this judgment).
15. The hearing of the preliminary issue took place on 3 and 4 July 2019. The Petitioner was represented by Mr Jan Golaszewski of Carey Olsen and the Respondent was represented by Mr Nick Hoffman of Harney Westwood & Riegels (*Harneys*). Both Mrs Oliver and Mr Dietrich gave evidence and were cross-examined at length on their expert reports. The parties' written closing submissions were filed on 17 July 2019 and a further hearing was held on 29 August 2019 at which the attorneys presented their closing submissions.
16. Mr Dietrich gave his evidence in a clear and reasoned manner. When challenged, he explained the reasons for his opinion and why he was not persuaded to change his view. While not always able to recall the detail of parts of his written report he demonstrated a sound grasp of the methodology and analysis he had adopted. When shown that some errors had been made in his first report he acknowledged them and showed that they did not affect his valuation opinion. While he occasionally referred to his own taste in décor and those of his wife, I am satisfied that his valuation opinion was entirely based on his professional judgment and the sources and data referred to in his reports. I saw no basis for the Petitioner's criticism of bias (in the Petitioner's closing submissions the Petitioner's



attorneys had referred to “*personal bias*” but during his oral closing submissions Mr Golaszewski clarified the Petitioner’s position. He said that this was a reference to and criticism of Mr Dietrich’s reliance on his personal preferences to support his valuation but not real bias or impropriety). In my view, Mr Dietrich was an expert witness who sought fairly to present his opinions and to assist the court.

17. Mrs Oliver was a less satisfactory or convincing witness. She struggled to explain or justify the basis on which she had formed her opinion as to the worst-case, middle-case and best-case valuation and when challenged she hesitated and changed her mind. She was not assisted by the fact that her written reports were brief, with no or limited analysis. This was the first time she had given expert evidence before a court and she therefore did not have the benefit of prior experience of being cross-examined. She did her best to provide the Court with her views as to the value of the Property based on her experience and from the perspective of a real estate broker but because she was not qualified as an appraiser or used to giving detailed appraisals, her views lacked rigour and sound evidence based support.

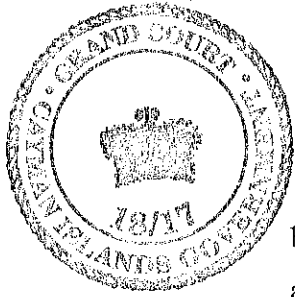
The background

18. The Petitioner and the Respondent were married on 11 July 2011. As I have noted, they divorced on 11 April 2016 in the Kingdom of Saudi Arabia.
19. The Property was purchased for approximately \$17,000,000 on or around 13 October 2011. The Respondent provided the funds for the purchase of the Property.
20. From the date of the purchase of the Property until the divorce, the Petitioner and Respondent used the Property jointly for family holidays. The Property was not rented for profit during this time, or used for any other purpose.
21. After the purchase, substantial sums were spent on renovations and maintenance of the Property. A total of approximately \$41.85 million was spent. These sums were also paid by the Respondent.
22. The Respondent claims that the purchase price and the cost of renovation and maintenance were advanced by him to NGI Delaware by way of loan so that he is a creditor of NGI Delaware for at least those amounts. He has sought a declaration in the Delaware Proceedings to that effect. In his Points of Defence in these proceedings, he avers that “*the liabilities of NGI Delaware include liabilities to the Respondent in the sum of \$41,805,000.*”



The Property

23. The Property is located at 76 Beverly Park Drive, Beverly Hills, California, within the City of Los Angeles, California. It is a large and luxurious property in a highly desirable and expensive residential area. According to the Los Angeles County records, the Property contains 2.33 gross acres including the right-of-way for Beverly Park Lane. The Property has eighty-three rooms including twelve bedrooms and fourteen bathrooms (classified as above grade) together with seven bedrooms and seven bathrooms (classified as below grade). There are four bedrooms on the north end of the basement designated as a safe room. The house also includes mechanical rooms, vestibules, laundry and other administrative areas. There are two bathrooms below the swimming pool on the west side of the site.
24. In the Joint Report, Mr Dietrich and Mrs Oliver agreed that the Property contains approximately 48,000 square feet of gross building area including an above-grade living area of 29,785 square feet, a basement area of 11,612 square feet and a garage of approximately 6,603 square feet (including a driver's lounge of 600 square feet). In Mr Dietrich's First Report, the reference to the garage area appears only to include the driver's lounge and not the rest of the garage.
25. In Mr Dietrich's First Report, he had used the net usable lot area for each property (being 94,090 square feet for the Property) but changed his approach in Mr Dietrich's Supplemental Report to the gross lot area (being 101,295 square feet for the Property). Mr Dietrich noted in Mr Dietrich's Supplemental Report that Mrs Oliver had stated that the size of the lot on which the Property was located was 132,121 square feet. However, he had been unable to locate any source for the area used by Mrs Oliver in her report. The information did not relate to the plans for the Property, the Los Angeles County Assessor's records, or any other data sources. According to the Assessor's plat map the usable lot area is 2.16 acres or 94,090 square feet.
26. Mrs Oliver contends that the appropriate square footage of the Property for valuation purposes was 48,000 square feet. Her evidence was that for comparative purposes (when comparing the Property with other properties) gross building (or living) area was the key comparator and all areas of a given property should be attributed the same value (so that, for example, the garage space was to be treated as worth the same amount as the master



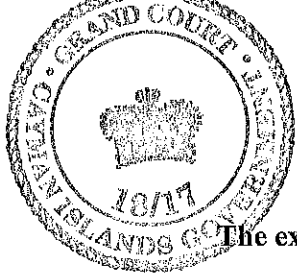
bedroom). It was, in her opinion, not appropriate to separate out the different types of accommodation within the living area. Mr Dietrich disagreed and attributed different values to different parts of the Property, distinguishing in particular between the above and below grade parts.

The Delaware Proceedings

27. On 18 May 2018, in Delaware, the Respondent filed proceedings seeking inter alia:
- (a) a declaration that the Delaware Court recognise loans owed to him, he having personally contributed funds used by NGI Delaware for renovations and maintenance to the Property; and
 - (b) damages on grounds that the Petitioner had misappropriated certain assets of NGI Delaware for personal use, and on grounds that the Petitioner breached her fiduciary and contractual obligations to NGI Delaware.
28. The Respondent brought the Delaware action in his personal capacity and by way of double derivative capacity on behalf of NGI Delaware and NGI Cayman in an effort to redress injuries suffered by both of those companies. The matters complained of (the existence of a loan, breaches of fiduciary duty and breaches of contract) involve exclusively issues of Delaware law.
29. On 19 March 2019, in Delaware, Vice Chancellor Tamika Montgomery-Reeves ordered, upon hearing the Petitioner's Motion to Dismiss or Stay Amended Complaint, that the Delaware proceedings be temporarily stayed.
30. The Vice Chancellor was concerned that neither NGI Cayman nor NGI Delaware were represented before her in the Delaware proceedings. She stated as follows in her decision:

"Moreover, the Petition foresees – and if the Princess has standing, the Cayman Court intends – that joint liquidators will take over operation of NGI Cayman and control its winding up process ...

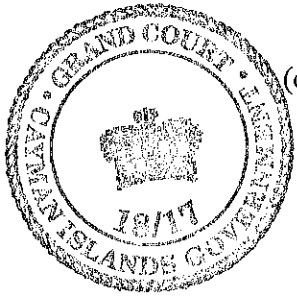
... the Cayman Court, however, is in the process of appointing a fiduciary to marshal and maximize NGI's Cayman's only asset – NGI Delaware. That fiduciary should be appointed and in place before this Court begins the process of evaluating the Prince's purported claims both against and on behalf of NGI Cayman and NGI Delaware. Otherwise the Prince is effectively unopposed, as [sic] least as to certain of the claims."



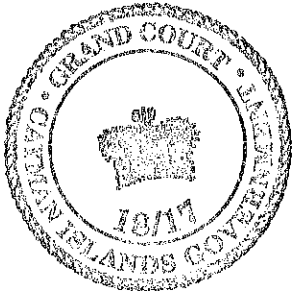
The experts' opinions

Mr Dietrich's valuation

31. Mr Dietrich is qualified as an appraiser and certifies his opinion by reference to the rules and regulations governing the provision of appraisals in California. Licensed or certified appraisers are governed in their competency by the Competency Rule in the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation (*USPAP*). The Reference Book (Information Relating to Real Estate Practice, Licensing and Examinations) published by the California Department of Real Estate (the *Reference Book*) explains the proper approach to and standards governing the preparation of appraisals. It summarises the appraisal process and methods by reference to various USPAP standards. The Reference Book also refers to the definition of an appraisal contained in the USPAP. This is as follows: "*To appraise means the act or process of developing an opinion or value.*"
32. Mr Dietrich adopts the Sales Comparison Approach. This is one of three approaches for determining the market value of a property referred to in the Reference Book. The Reference Book says that under this approach "*Recent sales and listings of similar type properties in the area are analysed to form an opinion of value.*" The Respondent explained this approach further in his written submissions and said that it involved:
- (a) researching the competitive market for information on properties that are similar to the subject property and that have recently been sold, are listed for sale, or are under contract. This involves a consideration of the characteristics of the properties with the aim of finding a set of comparable sales or other evidence such as listings or contracts as similar as possible to the subject property to ensure they reflect the actions of similar buyers.
 - (b) verification of that information to ensure its factual accuracy and that the transactions reflect arm's length market considerations.
 - (c) selecting the most relevant units of comparison used by participants in the market (e.g. price per acre, price per square foot, price per unit) and developing a comparative analysis for each unit. The appraiser's goal is to define and identify a unit of comparison that explains market behaviour.



- (d) looking for differences between the comparable sale properties and the subject property using all appropriate elements of comparison. Adjusting the price of each sale property, reflecting how it differs, to equate it to the subject property or eliminate that property as a comparable. This step typically involves using the most similar sale properties and then adjusting for any remaining differences. If a transaction does not reflect the actions of a buyer who would also be attracted to the subject property, the appraiser should be concerned about comparability.
- (e) reconciling the various value indications produced from the analysis of comparable properties into a value conclusion. A value opinion can be expressed as a single point estimate, as a range of values, or as more or less than a given amount.
33. Mr Dietrich relied on his own visit to and inspection of the Property, a visit to and external viewing of the comparable properties, the analysis of third party data (including official plans prepared the local authorities and data collected by and available by subscription on a number of sites regularly used by appraisers when preparing an appraisal or valuation) and interviews with several real estate brokers to obtain their opinion on market conditions. Mr Dietrich's First Report was detailed and lengthy containing detailed analyses and documentation.
34. Mr Dietrich's approach can be summarised as follows:
- (a) Mr Dietrich used nine comparable sales and listings in Mr Dietrich's Supplemental Report.
- (b) he explained that he searched for similar homes in the local market area and limited his search to sales (and listings) of properties within Beverly Park. This provided data on homes subject to the same deed restrictions with the same neighbourhood influences including location in the same gate-guarded community. Mr Dietrich considered that most of the sales were of lots of similar size to the Property and, since the Beverly Park subdivision is less than 30 years old, the homes were generally of a similar age, design, appeal and condition. Where there were differences from the Property, Mr Dietrich identified these and applied appropriate adjustments.
- (c) seven of the nine were sales. In Mr Dietrich's First Report, 44 Beverly Park Circle



was treated as a listing but it was subsequently sold on 15 March 2019 and therefore was included as a sale in Mr Dietrich's Supplemental Report. The sales completed in the period from April 2017 to March 2019, with the sale of 44 Beverly Park Circle being the most recent.

- (d) two of the nine were listings (on market). These are for 22 Beverly Park Terrace (Comparable 7) and 75 Beverly Park Lane (Comparable 9). Mr Dietrich decided not to include various listings relied on by Mrs Oliver, in particular 67 Beverly Park. This property was listed for \$165 million and had been on the market for over two years. He considered that while the property was unique, having a lot area of nearly ten acres, it was overpriced and the listed price was not a reliable indicator of market price. He considered the listing to be well out of line with other listings and sales. He concluded in Mr Dietrich's First Report that: *"The listing price was so far out of the range of logical values that appropriate adjustments cannot be made."* In Mr Dietrich's Supplemental Report he stated as follows:

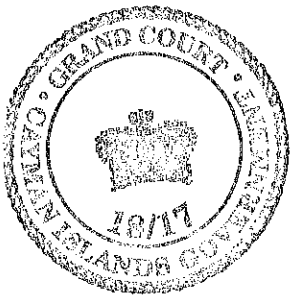
"One of the listings is a property at 67 Beverly Court which is listed for \$165 million. The property has been on the market for over 620 days at the date of this report. While it is unique, having a lot area of nearly 10 acres, in my view it is over-priced, having been exposed to the market for nearly 2 years. These very high-priced listings are sometimes priced in order to create notoriety for the property, but with little chance of achieving a sale. For example, I note the following sales:

- The "Manor" was listed for \$150 million in 2010, and sold in 2011 for \$85 million.*
- The Thomas estate was listed for \$135 million and sold for \$65 million in 2017.*
- The Playboy Mansion was listed at \$200 million and sold for \$100 million in 2016.*

Based on my review of the listing at 67 Beverly Court, the price is well out of line with other listings and sales in the Beverly Park neighborhood. As a result, I did not analyze the sale directly in the valuation of the Subject Property."

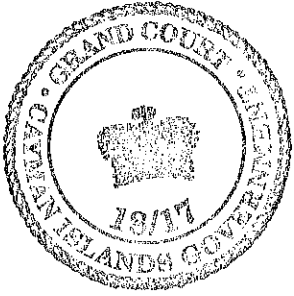
- (e) he considered that the comparable sales and listings he had used provided a sufficient data set on which to base his valuation. During his cross-examination, he said:

"In practice more data is sometimes helpful. In this particular case, with six fairly recent sales having occurred over the prior two years, especially in that small of a market area, I thought I had a pretty

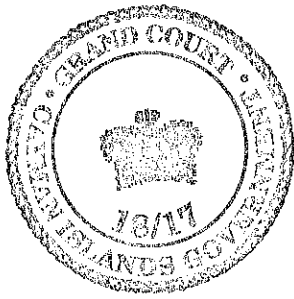


good data set to work with. And also taking in consideration the overall market, the listings that are active in the entire greater market area being Beverly Hills, Bel Air, Holmby Hills, I thought it was a very good data set.”

- (f) Mr Dietrich made two types of adjustments. First, transaction adjustments to take account of relevant factors relating to the comparable sale and secondly physical adjustments, to take account of physical differences between the relevant properties. The purpose of the adjustment was to discount or reduce the price obtained on the sale, or the asking price, of the comparable property where it was superior to the Property in some relevant or material way (and to increase the value of the comparable property where it was inferior to the Property). He made these adjustments by reference to details of the comparable properties and the sales or listings which he and his colleagues at Kidder Matthews had prepared. These details were contained in a comparable data sheet for each comparable property attached to Mr Dietrich’s First Report. The data was based on MLS transactions (details compiled on the Multiple Listing Service, a site that aggregates listing data), Parcel Quest (a site available by subscription containing property data and research tools based on assessor's records) and various public records, when available for the particular comparable property.
- (g) as regards transaction adjustments, Mr Dietrich did not adjust sale prices to take account of changing market conditions. After considering value trends with various brokers he concluded that the market in Beverly Hills had slowed significantly during the previous year especially for homes over \$20 million. He applied a discount to listed properties. A discount of 15% was applied to 22 Beverly Park Terrace (Comparable 7), which had been on the market for thirty one months (based on the average percentage difference between the listing and selling price of three of the sold properties which had been on the market for a similar – long – period). A discount of 25% was applied to 75 Beverly Park (Comparable 9) because it was the highest priced listing in Beverly Park (excluding 67 Beverly Park), which had been on the market for over a year and appeared to be overpriced.
- (h) as regards physical adjustments, Mr Dietrich considered a number of factors including the following:



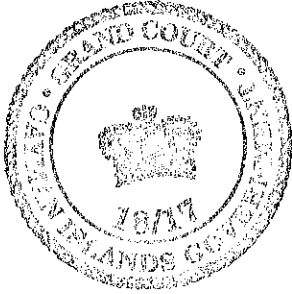
- (i) *lot size and orientation*: since land is very expensive in the region, and quite expensive in Beverly Park, it was necessary and important to adjust the comparable properties by reference to the size of the lots (the aggregate area of the ground) on which the properties were situated. Mr Dietrich considered that once a lot reaches a certain size, the marginal utility (and value) of any additional area begins to decrease. He decided to adjust the sales of larger lots downwards based on an adjustment of \$25 per square foot. Sales of comparable properties with lots smaller than the Property were adjusted upwards on the same basis.
- (ii) *view*: since none of the comparable properties had significant views Mr Dietrich did not adjust for views.
- (iii) *design and appeal*: Mr Dietrich concluded that most of the comparable properties had a design and appeal that were similar to the Property and therefore no adjustment was needed – save in relation to 78 Beverly Park Lane (Comparable 6) where he made a reduction of ten per cent, since that property “*is reported to be one of the finest estates on the West Coast.*”
- (iv) *quality of construction*: all of the comparable properties were similar to the Property – they were all of good quality construction. Therefore no adjustments were required.
- (v) *year built/renovated*: the Property was built in 2003 and in Mr Dietrich’s terminology remodelled in 2013. While much of the structure was fifteen years old, Mr Dietrich considered that the “*effective age*” of the Property was reduced. He therefore decided to adjust upwards by 5% the price of the comparable properties built before 2000.
- (vi) *condition*: Mr Dietrich noted that while the Property was in generally good condition it had been without power and water for several months. As a result, it was possible that the water features and other equipment might need to be repaired and other repairs needed. Accordingly, Mr Dietrich made a downward adjustment of \$500,000 to the comparable properties.
- (vii) *gross living area*: Mr Dietrich made an adjustment for gross floor space



above grade where the comparable properties had larger or smaller living areas. He used an adjustment of \$400 per square foot. He explained that *"This is approximately two thirds replacement cost but represents the marginal utility of adding square footage to a residence."*

- (viii) *above grade room count:* the Property contains more bedrooms than the comparable properties. However, Mr Dietrich considered that this was already taken into account by his adjustment based on gross living area so that a further adjustment was not required.
- (ix) *basement:* adopting a different approach from that taken in Mr Dietrich's First Report, Mr Dietrich concluded in Mr Dietrich's Supplemental Report that only one of the comparable properties included basement space. He therefore decided that an adjustment was required to take into account the additional basement space at the Property. In his view, the contributing value of basement space was less than the contributing value of above grade rooms with natural light. This was especially the case for space that was not finished to the same standard as the main luxury residence. He was of the view that the finish in the basement in the Property was *"fairly basic"* and there was an absence of any outside view. He made his adjustment based on \$150 per square foot. As to his methodology, he noted as follows (see Mr Dietrich's Supplemental Report, page 9, footnote 13):

"The contributing value of the basement is less than above-grade liveable area. As previously discussed, an adjustment of \$400 per square foot was reasonable for the living area adjustment. There was not adequate sales data to extract an adjustment for the basement. Therefore, I relied on information from Marshall & Swift Valuation Service ("MVS"). Page 26 in Section 12 (Residential Costs- see page 27 of the Addenda), the replacement cost of high value basements is \$103 per square foot. This cost requires adjustment in Section 99 of MVS for location in Los Angeles by 120% (Section 99 page 6). I adjusted this up to a rounded \$125 per square foot. I then increased this amount for quality and location in Beverly Park to an adjustment of \$150 per square foot. Marshall Valuation is a subscription cost estimating service that has been in business since 1932. The service addresses over 30,000 building components and is updated monthly."



(x) *garage/carport*: the Property has a ten-car garage that Mr Dietrich considered to be entirely below grade. It is accessible by hydraulic lift for the cars and by stairs for people. He noted that “*While most luxury buyers have staff to drive and perform parking duties, most American buyers at some time or other want to drive their own vehicle making the lift somewhat cumbersome.*” In these circumstances, he applied an upwards adjustment to the comparable properties based on \$100,000 per space. He considered that while this would not represent the cost of putting an equivalent garage on to the comparable properties (i.e. replacement cost) it would cover the cost of a functional equivalent.

(xi) *listing status*: as I have noted, Mr Dietrich included two (originally three) listed properties. He made adjustments to the asking prices to take into account the risk that the sale price would be different. In Mr Dietrich’s First Report (on page 9) he explained his approach as follows:

“The Comparable Listings were, of course, not sales. That being the case, all required adjustment to reflect a price at which they would likely sell. Comparable Sales 2, 3 and 4 were listed for 255 to 318 days before a sale. The sales prices were 10.9%, 16.2% and 17.9% below the listing price. I have therefore applied downward adjustments of 15% for Comparable Listings 7 and 8. Listing 9 is the highest priced listing in Beverly Park (excluding 67 Beverly Park). It appears to be over-priced as it has been on the market for over one year. I adjusted Listing 9 downward by 25% for this reason.”

35. Mr Dietrich’s conclusions were set out in his Revised Adjusted Value Table in Mr Dietrich’s Supplemental Report, as follows:

REVISED ADJUSTED VALUE TABLE

Sale No.	Address	Sale Date	Living Area Square Feet	Lot Area Acres	Sale/Listing Price	Adjusted Value
1	70 Beverly Park Ln	Apr-18	14,061	158,189	\$25,000,000	
2	46 Beverly Park Cir	Jun-17	11,598	78,374	\$25,150,000	
3	25 Beverly Park Ter	May-17	15,450	165,087	\$27,500,000	
4	27 Beverly Park Ter	Apr-17	20,61	233,581	\$26,725,000	
5	40 Beverly Park Cir	Mar-18	22,712	83,791	\$32,000,000	
6	78 Beverly Park Ln	Nov-17	24,000	99,023	\$38,000,000	
7	22 Beverly Park Ter	Listing	10,365	88,225	\$24,000,000	
8	44 Beverly Park Cir	Mar-19	17,100	80,519	\$23,000,000	
9	75 Beverly Park Ln	Listing	14,554	221,136	\$47,500,000	
Sub.	76 Beverly Park Ln	Mar-19	29,785	101,295		

36. In Mr Dietrich's First Report, he concluded as follows:

*"Market Value Conclusion: Normal marketing time (9 to 12 months) - \$ [REDACTED]
 Value Range: Worst Case to Best Case - \$ [REDACTED] to \$ [REDACTED]
 Marketing Time for Values: Marketing Time for \$ [REDACTED] - 3 to 6 months
 Marketing Time for \$ [REDACTED] - 2 to 3 years
 Marketing Time for \$ [REDACTED] - 5 to 10 years
 Marketing Time for \$ [REDACTED] or more unrealistic"*

[page 1]

"Prior to adjustments, the unadjusted values were from \$25.0 million to \$38.0 million for the Comparable Sales and \$24.0 to \$47.5 million for the Comparable Listings. After adjustments, the Comparable Sales indicated a rounded range of \$ [REDACTED] to \$ [REDACTED], and the Comparable Listings adjusted to a rounded range of \$ [REDACTED] to \$ [REDACTED]. The best indications of value are, inherently, the Comparable Sales. However, the Comparable Listings are supportive of a similar range. Based on my analysis, my final value conclusion is \$ [REDACTED]" [page 12]

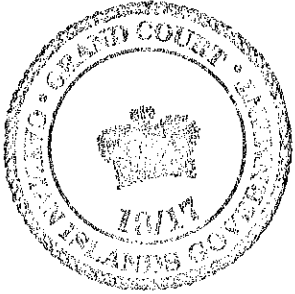
"The Court has asked for "a range of values (from the best case to the worst case) and an indication of the variables, facts and matters which have a material effect on the value of the property and an explanation of how they have such an effect." The appropriate range from the best case to worst is \$ [REDACTED] as the best case to \$ [REDACTED] as the worst case. This is generally the range of adjusted values from the Sales Comparison Approach. The lower limit or worst case would represent a sale with a short market exposure of about 3 to 6 months. The upper limit or best case would be established with a required market exposure of 2 to 3 years as described in detail previously. Higher prices could be expected with a longer exposure to the market. The variables are addressed in great detail earlier in this section" [page 14]

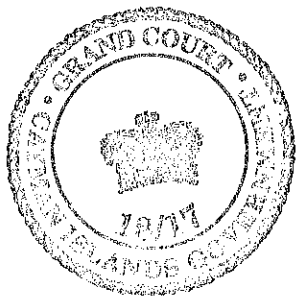
In Mr Dietrich's Supplemental Report, he modified his conclusions.

"[Mr Dietrich's First Report] and [Mrs Oliver's First Report] provide value conclusions as follows:

	<i>Dietrich First Report</i>	<i>Oliver First Report</i>
<i>Fair Market Value:</i>	\$ [REDACTED]	Not Addressed
<i>Value Range Worst Case to Best Case:</i>	\$ [REDACTED] to \$ [REDACTED]	\$ [REDACTED] to \$ [REDACTED]

Following the preparation of the Joint Report and additional research, I have modified my market value conclusion for the [Property] to \$ [REDACTED] [REDACTED]....In addition, I have modified my worst to best case opinions to a range of \$ [REDACTED] (worst case) to \$ [REDACTED] (best case). These





values do not include the costs of sale and ownership until the property is sold.”

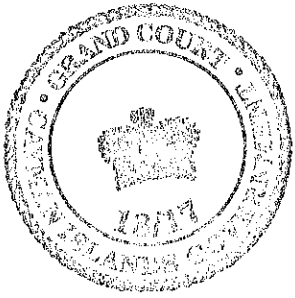
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In Mr Dietrich’s First Report, Mr Dietrich had primarily relied for his view as to fair market value on the mid-point in the rounded range of the adjusted values for sales (\$ [REDACTED] to \$ [REDACTED]) tested against his rounded range for listings (\$ [REDACTED] to \$ [REDACTED]). In Mr Dietrich’s Supplemental Report, one of the listings had become a sale and he included the two remaining listings with the sales, all suitably adjusted. This had produced a range of \$ [REDACTED] to \$ [REDACTED]. As a result, Mr Dietrich adjusted his opinion so that his range went from a worst-case of \$ [REDACTED] to a best-case of \$ [REDACTED]. This results in his (middle-case) market value of \$ [REDACTED].

Mrs Oliver

37. Mrs Oliver, as I have noted, is a professional real estate agent. She is in the business of advising buyers and sellers of (and parties letting and renting) high value real estate. She has obtained extensive experience in sales and lettings of properties in the Beverly Hills area including a significant number of transactions in the North Beverly Park area. In Mrs Oliver’s First Report, she explained that *“A key part of my role as a real estate agent has involved evaluating properties, and working to achieve the best value possible for my clients.”* She seeks to ascertain *“a realistic level to pitch the property in question at”* based on the size, location and condition of the property and recent sale prices of comparable properties. She made the same assessment in relation to the Property.
38. Mrs Oliver holds a real estate licence issued by the California Department of Real Estate, which is required for her work as a salesperson and real estate agent. However, she is not a licensed appraiser. The Reference Book explains the different roles of real estate brokers (which I take to be another term used for a real estate salesperson and agent) and real estate appraisers as follows (at page 37):

“Property valuation may be considered the heart of all real estate activity. Only a practical understanding of real estate values will enable real estate brokers and salesperson to carry out their functions in a useful and dependable manner in serving their clients and meeting their obligations to the general public.



Brokers and salespersons should have a good understanding of the theoretical concepts of value; the forces which influence value; and the methods by which such value may be estimated most accurately.

Probably the question most frequently asked brokers by clients is, "How much do you think the property is worth?" It is a daily occurrence for the real estate broker to have clients ask about the fair price, the fair rental, fair basis for trade or a proper insurance coverage for the property. A broker needs to know how to answer such questions correctly.

To be successful in business, an agent must determine whether time can profitably be spent in trying to sell property at a listing price set by the owner. The agent must keep in mind that in accepting a listing the agent is obligated to put forth best efforts to find a buyer for the property at that price. A seller's unrealistic asking price is a roadblock that can be remedied by a knowledgeable salesperson capable of making a market analysis and using the three approaches to value. Such ability assists the seller to set the most appropriate listing price.

The real estate professional is cautioned however not to claim greater appraisal ability or expertise than is actually possessed. Great harm can come to the client and to the professional if significant appraisal mistakes are made. When unable to competently perform [sic] a valuation the advice of a professional real estate appraiser should be sought. Licensed or certified appraisers are governed in their competency by the Competency Rule in the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation.

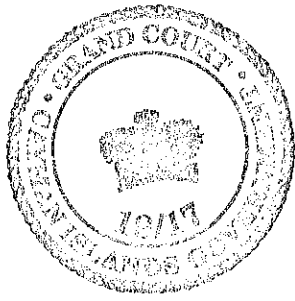
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39. During her cross-examination, Mrs Oliver confirmed that she did not (and was not authorised to) provide appraisal opinions which complied with and were prepared in accordance with the USAP standards or guidelines. She explained how she saw her role as an expert and the evidence she was providing as follows:

"I am not giving an appraisal. I do not know how to do that. But I do know valuations and especially in North Beverly Park and I do know how to sell homes. Appraisals aren't typically used in a sale of a home....[a valuation] means to evaluate a property and give it a fair market value, which is what I do every single day in my career."

40. During Mrs Oliver's cross-examination, I sought to clarify her evidence on this issue and the following exchange took place:

"JUSTICE SEGAL In other words, you're focusing on the needs and position of sellers and buyers who are contemplating a particular market transaction, and you're trying to help them work out how they can get the best price if they're a seller or how they can do a transaction as a buyer, but



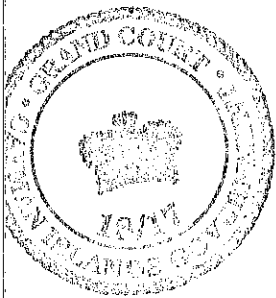
you're not formally advising them and offering them opinions as to value. So if you get it wrong, they're not going to turn around and sue you because they say what you issued was an opinion as to the value of this property.

THE WITNESS: Yeah, I'm not an appraiser, yes. I do work with attorneys. I get hired by attorneys to sell the properties. There's - I've worked with distressed properties. So it's not just a buyer-seller scenario. I work with their managers. I work with everyone across the board for purposes of pricing at the right price and selling at the right time. Pricing and timing.

JUSTICE SEGAL: Yes.

THE WITNESS: Yes. Yes. With the expertise of a certain area."

41. Mrs Oliver's First Report was a short document (of four pages) to which was attached a number of documents. First, there were brief details of the Property (stating that the house size was 48,000 square feet; the lot size was 132,121 square feet; that there were 20 bedrooms and 28 bathrooms; that the Property was built/completed in 2016 and had partial views). Secondly, there was the email instruction provided to Mrs Oliver by the Petitioner's attorneys. This attached, inter alia, a copy of a letter dated 10 October 2018 from Mrs Oliver in which she provided an opinion on the market value of the Property (the *2018 Valuation*). Mrs Oliver concluded that "*Given the current availability of high-end newer build construction homes in the surrounding areas I would price the property between \$ [REDACTED] - \$ [REDACTED]*" She stated that she was "*a licensed real estate agent with the authority to give market valuation opinions based on my experience in the Los Angeles market. In addition, I was the property manager of the guard gated community of North Beverly Park and I have closed numerous deals in this specific area.*" Mrs Oliver relied on three comparable properties – 40 Beverly Park (which had been sold on 22 March 2018 for \$32 million); 8 Beverly Park (which had an asking price of \$38.5 million) and 67 Beverly Park (which had an off-market asking price of \$165 million). Mrs Oliver calculated the average price per square foot of these properties by dividing the sale or asking price by the house size (\$3,545.89) and multiplied this figure by the Property's house size (48,000 square feet). Thirdly, there was her CV. Fourthly, there was a table of eight properties (Mrs Oliver's table listed nine properties but there was one duplication) and photographs with short particulars of five properties (two of which were included in the table) which Mrs



Oliver described as a “*selection of properties in the North Beverly Park area which [she] had sold or leased in recent years (including current listings)*” (the **Appendix 4 Properties**). Fifthly, there was a table of ten sales and listings (the **Appendix 5 Properties**) that she described as “*a broader summary of recent sales activity in the North Beverly Park area (several transactions with...which... [she] had been involved)*.” Some of the Appendix 5 Properties were also included as Appendix 4 Properties. Sixthly, there was a City of Los Angeles Parcel Profile Report for 25 Beverly Park). Seventhly, there was a list of Mrs Oliver’s recommendations of work that needed to be carried out at the Property.

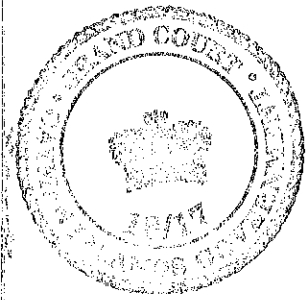
42. The Appendix 4 Properties in the table provided by Mrs Oliver were as follows.

1	25 Beverly Park Cir	Sale – sale price: \$27.5 million
2	67 Beverly Park	Listing (off market) – asking price: \$165 million [\$155 million]
3	50 Beverly Park	Land only – listing (on market) – asking price: \$28.8 million
4	75 Beverly Park	Listing (on market) – asking price \$47.5 million
5	56 Beverly Park Dr	Sale – sale price in February 2012 - \$21.75 million
6	44 Beverly Park Cir	Sale – sale asking price: \$26.5 million
7	40 Beverly Park	Sale – sale price: \$32 million
8	46 Beverly Park	Sale – sale price in June 2017: \$25.15 million

43. The additional five properties photographs of which were included in appendix 4 to Mrs Oliver’s First Report were: 50 Beverly Park (an active listing of vacant land only and item 3 in the table); 24 Beverly Park (sold by Mrs Oliver for \$24 million in June 2013); 56 Beverly Park (sold by Mrs Oliver for \$21.75 million in February 2012 and item 5 in the table); 34 Beverly Park (sold by Mrs Oliver for \$18.6 million in November 2016) and 72 Beverly Park (leased by Mrs Oliver at an unspecified date for \$125,000 per month).

44. The Appendix 5 Properties were as follows:

1	40 Beverly Park	Sale – sale price in April 2018: \$32 million
2	32 Beverly Park	Listing (off market) – asking price: \$38 million
3	50 Beverly Park	Land only – listing (on market) – asking price: \$28.8 million
4	49 Beverly Park	Listing (off market) – asking price: \$92 million
5	75 Beverly Park	Listing (on market) – asking price \$47.5 million



6	67 Beverly Park	Listing (off market) – asking price: \$165 million
7	44 Beverly Park	Sale – sale price in December 2016 - \$26.5 million
8	26 Beverly Park	Listing (off market) – asking price: \$43 million
9	25 Beverly Park Cir	Sale – sale price in May 2017: \$27.5 million
10	46 Beverly Park	Sale – sale price in June 2017: \$25.15 million

45. Mrs Oliver noted (in paragraph 17 of Mrs Oliver’s First Report) that she understood that:

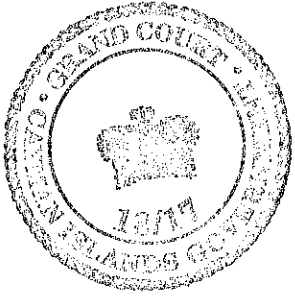
“the Court had indicated that it would like to receive evidence of the fair market value of the Property including (if appropriate):

(a) An appropriate range of values from the best case to the worst case; and

(b) An explanation of variables, facts and matters which have a material effect on the market value of the Property, along with an explanation of how any such variables have such an effect.”

46. Although Mrs Oliver failed to be explicit about or explain her methodology and approach in Mrs Oliver’s First Report, she appeared to regard all the properties she had identified as being useful for and relevant to her valuation since they were in the same area as the Property (the Beverly Park area). As permitted by the Directions Order, she provided a worst-case, middle-case and best-case valuation:

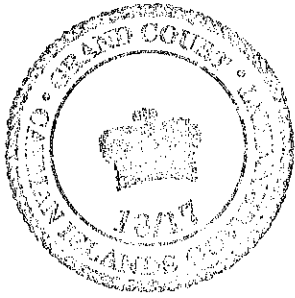
(a) as regards her worst-case valuation, she considered that the Property would be sold for approximately \$ [REDACTED] (based on a valuation of \$ [REDACTED] per square foot). This was calculated by reference to a per square foot value that was less than the square foot value achieved in sales of two of the properties she had identified. These were 25 Beverly Park Circle (Appendix 4, number 1 and Appendix 5, number 9) and 56 Beverly Park Drive (Appendix 4, number 5). Mrs Oliver appeared to regard these as of particular relevance to the worst-case valuation since each was significantly smaller than the Property. 25 Beverly Park Circle had a house (living area) size of 15,450 square feet and a land (lot) size of 165,169 square feet. 56 Beverly Park Drive had a house (living area) size of 6,000 square feet and a land (lot) size of 123,275 square feet. As I have explained, she considered the house size (living area) of the Property to be 48,000 square foot and the lot size of the Property to be 132,121 square feet. It appears (from her evidence in cross-examination although this was



not set out or explained in Mrs Oliver's First Report) that Mrs Oliver divided the house (living) area by the sale price for each of the two identified properties to obtain a value per square foot (according to my calculations \$ [REDACTED] and \$ [REDACTED] respectively) and then calculated the average to arrive at an approximate value per square foot (\$ [REDACTED]). She then multiplied that figure by the house size (living area) of the Property (48,000 square foot) to arrive at her worst-case valuation of \$ [REDACTED].

(b) as regards her middle-case valuation, Mrs Oliver considered that the Property would achieve approximately \$ [REDACTED]. In Mrs Oliver's First Report, she simply stated that this figure was "based on the average per square foot price in the North Beverly Park area." As a result, it was necessary for Mr Hoffman to spend a considerable amount of time during his cross-examination of Mrs Oliver seeking to confirm and clarify the basis on which the middle-case valuation had been prepared. In her evidence during cross-examination, Mrs Oliver was confused as to the properties she had used and relied on for her middle-case valuation, in particular whether she had used all the Appendix 5 Properties including 67 Beverly Park (a property which was only listed and listed at a very high price – with a gross living area of 28,660 and a lot size of 217,800). After giving a variety of confusing answers, and appearing to change her mind (she said that she had previously been a "little flustered"), Mrs Oliver confirmed that she did use and rely on 67 Beverly Park for this purpose. She appeared to consider that it was permissible to include 67 Beverly Park when calculating the average price (or value) per square foot of a number of properties listed and sold in the Beverly Park area, because it was in fact a property that was on the market in that area. This was the case even though she accepted that it would be inappropriate to use it as a standalone data point and basis for determining the value of the Property. So it appears that Mrs Oliver's middle case valuation is calculated by dividing the house (or living) area of each of the Appendix 5 Properties by the sale price or the listing price of that property and then applying that average per square foot price to (by multiplying it with) the square footage of the house in (the living area of) the Property (being 48,000 square feet).

(c) as regards her best case, Mrs Oliver determined that the Property would achieve approximately \$ [REDACTED] based on a valuation of \$ [REDACTED] per square foot. In Mrs



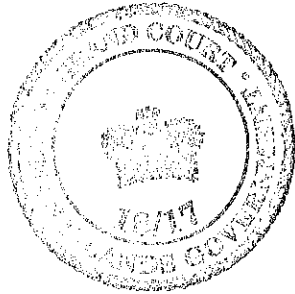
Oliver's First Report, she said that this figure "is based upon what I consider to be an achievable figure for the Property, based on its size and location by reference to the recent sales figures." It was therefore necessary, once again, for Mr Hoffman to spend some time cross-examining Mrs Oliver as to how she had reached this valuation. Her evidence (which was once again not always clear) was that she had used three of the properties she had identified. These were 75 Beverly Park (Appendix 4, number 5 and Appendix 5, number 5), 26 Beverly Park (Appendix 5, number 8) and 49 Beverly Park (Appendix 4, number 4). During her cross-examination, Mrs Oliver accepted that she had not explained or justified her methodology in either of her reports. She appeared to justify selecting these properties because she regarded 49 Beverly Park as having one of the largest living areas (albeit not quite as large as the living area of the Property at 48,000 square feet); 75 Beverly Park because it is was located across the street from the Property (albeit that it was a smaller home) and 26 Beverly Park because it had been completely renovated and in terms of finishes was in line with the Property (and very high-end). Each of the properties was only a listing and had not been sold. Mrs Oliver had calculated the price per square foot for each property by dividing the asking price by the house (living) area and then obtained an average. She then multiplied the average price/value per square foot by the area of the living area of the Property.

The Petitioner's submissions

47. The Petitioner submitted that the Court should determine the value of the Property for the purpose of the Petition to be within the range (a) provided by Mrs Oliver (between \$ [REDACTED] and \$ [REDACTED]); or, if the Court prefers Mr Dietrich's evidence, (b) provided by Mr Dietrich subject to a number of significant amendments and adjustments which the Petitioner and its attorneys consider necessary (resulting in a range of \$ [REDACTED] - \$ [REDACTED]). These revised figures and adjustments were set out in schedule 3 to the Petitioner's closing submissions. Schedule 3 amended and restated the adjustments made by Mr Dietrich. The Petitioner's attorneys submitted that if the Court did not accept Mrs Oliver's evidence, a revision to Mr Dietrich's valuation should be accepted, such revision to be made by incorporating the schedule 3 revisions into Mr Dietrich's valuation applying the

methodology he had set out in his two reports.

48. The Petitioner's primary submission is that the Court should rely on and prefer Mrs Oliver's evidence:



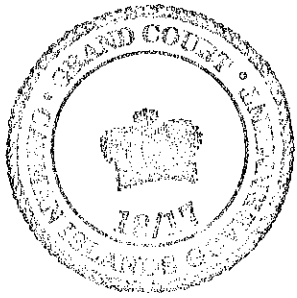
- (a) the Petitioner submitted that Mrs Oliver, despite not being a qualified appraiser, was qualified to offer an expert opinion on the price at which the Property was likely to be sold. She had experience and expertise in selling properties similar to the Property and detailed knowledge of the Property, the area in which the Property and comparable properties were located, the comparable properties and the market for the Property and such other properties. She had unparalleled experience and knowledge about the North Beverly Park community where the Property is located. She worked as the property manager of North Beverly Park between 2007 and 2012. She had visited each of the comparable properties in Mr Dietrich's report (which he had not done) and all other properties in North Beverly Park.
- (b) As Mrs Oliver said during her evidence:

"I'm not an appraiser, so I'm not following an appraiser's standards. But this is the valuation we use that I'm completely confident in in terms of pricing a house".

"I see the appraisal approach and I see my approach, and my fair market value approach includes actual sales from actual houses that I have actually been in. And the summation of the price per square foot that I have come up with, and the worst/best case scenario, middle scenario, that I feel very confident in real-world boots-on-the-ground-experience there.

I've been to every single property in that community. I can tell you the styles, the pricing, the finishes, when it was built. That goes to what any buyer will buy the property for and the value the property at when it comes to purchasing it."

- (c) the Petitioner also submitted that Mrs Oliver's methodology and approach were reliable and of particular assistance in determining the core issue on the present application, namely, at what price would the Property probably sell for? Obtaining a reliable view on that question depended on having a deep understanding of the real estate market for North Beverly Park. There was no doubt that Mrs Oliver had such a deep knowledge. Her figures represented her own considered and expert view of the likely sale price that would be achieved. Her evidence made it clear that a sale

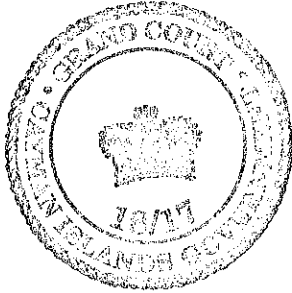


of the Property for anything less than her low case of \$ [REDACTED] would be very surprising.

- (d) Mrs Oliver's evidence was to be preferred to Mr Dietrich's evidence. She provided a realistic, real world, view of what price the Property was likely to be sold for. Her opinion should be given much greater weight than the view of a technical approach of an outsider, who had visited the Property once, and had only driven past the comparable properties he had referred to and relied on.
- (e) Mrs Oliver's analysis, based on using the price per square foot of the living area of the properties, was an appropriate measure and relied on a suitable comparator. The Appraisal Institute's "*The Appraisal of Real Estate* (14th edn., Appraisal Institute, 2013 at page 25) (the *Appraisal*) referred to the price per square foot of the gross living area as being one of two typical units of comparison for single-unit residential property (the other being total property price). Furthermore, Mr Dietrich had used price per square foot as one of the important comparison points in his report and he regularly fell back to price per square foot when comparing properties during his cross-examination.

49. Alternatively, the Court should rely on Mr Dietrich's evidence as substantially amended to take account of various errors and necessary adjustments identified by the Petitioner's attorneys in their closing submissions:

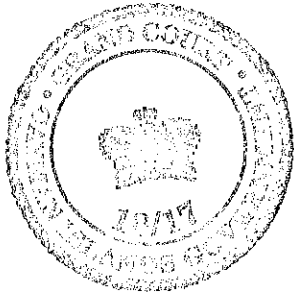
- (a) the Petitioner identified two categories of necessary amendments. First, those needed to correct for calculation errors or clear errors in comparing the Property with comparable properties. Secondly, those needed to correct for adjustments that were not justified by the data or were arbitrary and unreasonable (often because they were based on Mr Dietrich's personal preferences and not factors likely to be of relevance in the market).
- (b) as regards the first set of amendments, the Petitioner's attorneys identified four amendments that they submitted were needed:
 - (i) *calculation error*: first, it was said that Mr Dietrich made an error in calculating the adjustment to be made in respect of lot size for Comparables 2, 3, 5, 6, 8 and 9. This was necessary because Mr Dietrich, when seeking



to compare the value of the Property with comparable properties with different lot sizes, had incorrectly multiplied the difference between the lot size of the Property (101,295 square feet) and the lot size of the comparable property by \$37.5 rather than \$25. This had the effect of increasing the comparative value of comparable properties that have a lot size greater than the Property (Comparable 3 and 9), and decreasing the value of comparable properties that have a lot size smaller than the Property (Comparable 2, 5, 6, 8). The deduction from the sale price of Comparable 3 was reduced from \$2,392,200 to \$1,594,800 and the deduction from the sale price of Comparable 9 was reduced from \$4,494,038 to \$2,996,075. The addition to the sale price of Comparable 2 was reduced from \$895,538 to \$573,025; the addition to the sale price of Comparable 5 was reduced from \$656,400 to \$437,600; the addition to the sale price of Comparable 6 was reduced from \$85,200 to \$56,800 and the addition to the sale price of Comparable 8 was reduced from \$779,100 to \$519,400. The net effect of these changes was to increase the adjusted values of the comparable properties by \$1,495,950 (total reduced deductions of \$2,295,363 less total reduced increases of \$799,413). The adjusted price of Comparable 3 therefore increased from \$32,183,600 to \$32,981,000 and of Comparable 9 from \$38,965,162 to \$40,463,125.

- (ii) *views*: second, it was said that in a number of cases Mr Dietrich had adjusted downwards the value of comparable properties to take account of the fact that they had better views compared with the Property – even though, in Mr Dietrich’s First Report, he had stated that since none of the comparable properties had significant views he had not made any such adjustment. His adjustment tables had noted that comparable properties had a better view (because they had a City or City/Canyon view) and so their comparable value had been reduced. The comparable properties concerned, and the associated reductions, were as follows: Comparables 2 (\$1,257,500); 3 (\$1.375); 4 (\$1,336,250) and 7 (\$1.2 million). The Petitioner’s attorneys submitted that Mr Dietrich’s comment in the text of his report was correct and no such adjustments were justified on the facts. Accordingly, these adjustments

should be removed.

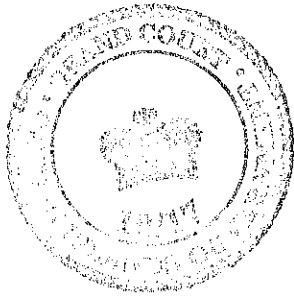


(iii) *75 Beverly Park*: thirdly, the reduction in the comparative value of another property (75 Beverly Park Lane - Comparable 9) was also unjustifiable. Mr Dietrich's First Report had stated (in the table showing the adjustments made for each property) that a reduction had been made because this property "*Adjoins Open Space.*" Since this (substantial) adjustment had not been explained or justified, and was inconsistent with Mr Dietrich's general comment that no adjustment for views was appropriate, the Petitioner's attorneys submitted that it should be removed.

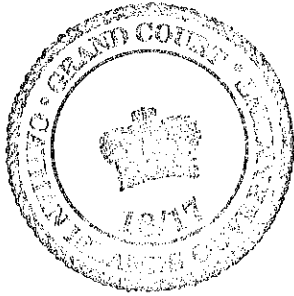
(iv) *75 Beverly Park and 27 Beverly Park basements*: fourthly, the Petitioner's attorneys submitted that Mr Dietrich had failed to take account of the fact that two comparable properties (27 Beverly Park Terrace (Comparable 4) and 75 Beverly Park (Comparable 9)) which should be treated as inferior basements and in them manner as the property at 40 Beverly Park Circle (Comparable 5). Mr Dietrich had assumed that all, save one, of the comparable properties had basements that were inferior to the basement at the Property and of a similar quality and had applied an upward adjustment of \$1,741,800 to all of them (to reflect the fact that the Property was superior so that the comparable value of the other properties needed to be increased to ensure they were equivalent). The exception was 40 Beverly Park Circle (Comparable 5), where he had only applied an increase of \$1,441,800. The Petitioner's attorneys submitted that the same adjustment should be made to 27 Beverly Park Terrace (Comparable 4) and 75 Beverly Park (Comparable 9) as the evidence showed that both properties had similar basement space. They did however acknowledge that:

"We have made adjustmentsto bring 75 Beverly Park and 27 Beverly Park in line – with the caveat that it's not entirely clear to us, as laypersons, what the correct adjustment needs to be done here. At the least, Mr Dietrich's inability to identify basement space undermines the strength of his conclusions."

(c) as regards the second set of amendments, the Petitioner's attorneys identified nine amendments that they submitted were needed:



- (i) *design and appeal 78 Beverly Park*: the Petitioner's attorneys criticised Mr Dietrich's reduction of the comparative value of 78 Beverly Park (Comparable 6) by \$3.8 million to take account of its "superior" design and appeal features. They considered it unjustifiable and submitted that the adjustment should be deleted and ignored. They noted that in Mr Dietrich's First Report he stated that he has made this adjustment because "*The house is reported to be one of the finest estates on the West Coast*" but that no further comment or justification is provided in the report. During his cross-examination, when asked as to the source of that statement, Mr Dietrich said as follows: "*Well, it said that in the listing, and when I talked to [the listing agent] he said the exact same thing.*" The Petitioner's attorneys submitted that this assertion was both inaccurate, and an inadequate basis for such a substantial adjustment, for the following reasons:
- (A). it appears from Mr Dietrich's First Report that it was Mr Dunatov and not Mr Dietrich who contacted the listing agent.
 - (B). none of the listing information appended to Mr Dietrich's First Report made any such claim.
 - (C). even if the listing did state that, it was unsurprising that a listing agent would seek to inflate the potential sale value of his properties.
 - (D). no substantive analysis had been undertaken of the other comparable properties for the purpose of determining appropriate adjustments for design and appeal, and it was to be assumed given their collective value that they were also some of the finest estates on the West Coast of the United States.
 - (E). all that the information attached to Mr Dietrich's First Report stated was that: "*The listing broker, Mauricio Umansky, stated that the property was in a great condition*".
- (ii) *the garage*: the Petitioner's attorneys submitted that Mr Dietrich had undervalued the garage space and facilities at the Property which were more valuable than the equivalent facilities at the comparable properties so that the

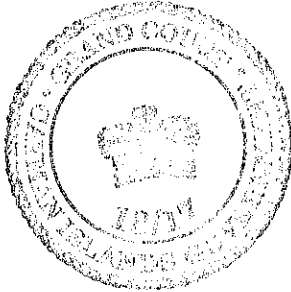


comparable values should be increased. They submitted that a uniform increase for each of the comparable properties of \$500,000 was reasonable. They noted that Mr Dietrich had only adjusted the comparable values based on a per-space basis, valuing each garage at \$100,000 per car space. The garage at the Property had more features than comparable garages, namely a driver's lounge and a hydraulic lift to raise and lower cars. It was to be assumed that significant sums were spent on both these items. Despite this, Mr Dietrich had assigned no value to these additional features. His basis for that conclusion, as set out in Mr Dietrich's First Report, was that "*most American buyers at some time or other want to drive their own vehicles making the lift somewhat cumbersome*". During his cross-examination, Mr Dietrich was asked to explain how he was qualified to make such an assessment and he said as follows:

"That's – I would say it's a complicated answer, but if you live in Los Angeles, you're part of what's called a car culture... People drive. Sometimes they have – the very wealthy have staff, you have drivers. Many of the upscale property owners, we're talking about movie stars and whatnot, whether they be John Travolta or, what's his name, Jay Leno, stars like that, are car people. They like to have access to the cars. I'm somewhat of a car person myself. I recognize that. And a lot the, you know, wealthy people we deal with, drive themselves".

The Petitioner's attorneys submitted that Mr Dietrich's assumptions as to car culture appeared to relate to his personal tastes in driving and he had not explained why, or justified the conclusion that, car people – beyond Mr Dietrich himself – would find a car lift cumbersome such that it would be reasonable to attribute zero additional value to it. In the circumstances, it was unreasonable to attribute no additional value to the Property's garage space and facilities and \$500,000 was a reasonable adjustment to make.

- (iii) *non-adjustment in respect of special features:* in addition, Mr Dietrich's decision to attribute no additional value to certain unique features of the Property was based on unreasonable subjective judgments which did not reflect the likely position of the market and was unjustifiable. The Property had a number of unique and valuable internal features as result of its



approximately \$40 million of renovations, including (A) an office, where \$2.5 million had been spent on an art installation in the floor; (B) the so-called 'Fendi' room designed by Karl Lagerfeld; (C) a private hair salon and (D) the 'Bubble Wall Hall' art installation.

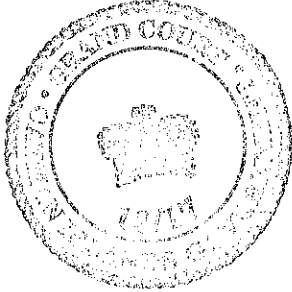
Mr Dietrich had accepted that none of the comparable properties had these kinds of features, but nonetheless assigned zero value to them. When asked during his cross-examination whether his evidence was that no other properties in North Beverly Park had similar features he had acknowledged that none did. The Petitioner's attorneys submitted that when questioned about his decision to assign no value to these aspects of the Property, Mr Dietrich appeared to indicate (despite explicitly denying that this was the case) that such items were against his personal preference (stating regarding the Fendi room "*And, I mean – to me, it looks a little bit like a waiting room, I think*"). When asked whether he was allowing his personal taste to influence his valuation of unique items, Mr Dietrich responded:

"No. My personal tastes run to more prairie design – excuse me – Frank Lloyd Wright-type architecture. So yeah, I mean, this is not mine. However my job as an appraiser is to reflect the actions and the attitude of the markets, so that's what I'm attempting to do. Not everybody would like to walk into a room with a glass floor, feeling a bit dizzy because of the optical illusion. My wife, for one person, has flat told me that, you know, she'll never go into a place that has a glass floor. I'm not too far behind her. It was kind of unnerving, you know, walking into that office. It was, actually – it affects you physically. So anyway, my job as an appraiser is to reflect what I think the tastes are of the contemporary buyer. I've dealt with a number of high-end buyers and sellers and have a pretty good knowledge of what I think contemporary tastes are."

The Petitioner's attorneys criticised Mr Dietrich for failing to base his opinion on a market view and instead allowing his opinion to be affected by his personal aversion to the office features.

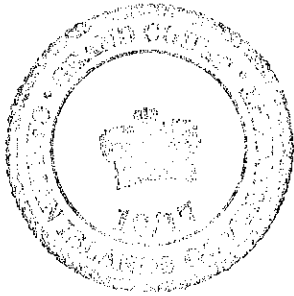
The Petitioner's attorneys submitted that in order properly to take account (of the likely market view and impact) of these unique features, on which so much had been spent during the renovation of the Property it was necessary to make an adjustment and they considered \$3 million to be reasonable.

(iv) *renovations*: the Petitioner's attorneys submitted that Mr Dietrich's valuation (and the adjustments made to comparable properties) failed to take into account the impact of the substantial renovation work done to the Property:



(A). NGI Delaware had purchased the Property in 2011 for \$16,875,000. It had subsequently spent \$38,910,000 on renovations from 2013 onwards. The Respondent (in claiming that the amount spent was a loan to NGI Delaware that he had made) had given evidence that the purpose of this expenditure was to enhance the value of the Property.

(B). the Appraisal provided a list of basic elements of comparison to be used by appraisers which included "*expenditure made immediately after purchase – new roof, renovation costs*". Despite this, Mr Dietrich had only provided a line item for the year in which the renovation occurred, with no reference to the value of those renovations, and had then conflated adjustments to Year Built with any renovation work. He had stated that "*The [Property] was built in 2003 and remodeled in 2013. While much of the structure is about 15 years old, the effective age is reduced. I adjusted the homes built before 2000 upward to the [Property] by 5%.*" Since the Property was built in 2003, and Mr Dietrich applied his adjustment to comparable properties built before 2000, the adjustment he made only related to the building age and ignored the benefits of the renovations. Mr Dietrich stated in cross-examination that: "*It did not appear to be a relevant factor or a significant factor other than providing new infrastructure as it was needed, plumbing, electrical, that type of thing which I adjusted for*". But, the Petitioner's attorneys claimed, despite asserting that he has done so, Mr Dietrich failed to adjust for these items – the adjustment he applied treated the building as having been built in early 2000s, and no adjustment was made for the refreshed plumbing, electrical and similar items that occurred ten years later.



(C). Mr Dietrich was challenged on this issue by Mr Golaszewski during his cross-examination. The following exchange occurred:

"Q. what I can't find in your report is your analysis of why the money spent creating those features does not translate to value of the property. I can't find it. Is it in your report?"

A. Sure, as I pointed out to you saw those three lines. I addressed it there. And again, my job was to estimate market value of the property that's there in its condition, taking into consideration everything that was done with the property. And what I saw didn't add value significantly above what the typical buyer would look for in that market. I adjusted upward for the, you know, hardscape infrastructure improvements. There was newer – I'm assuming newer windows and I'm assuming newer features in the property. The kitchen for sure. Some of the other things. But not enough to be able to support anywhere what was actually spent.

Q. But you didn't think it was important to include that analysis in your report?"

A. I did not think it was critical. I mean, if I would have had the actual information about that I would have probably addressed it, but I understood from the property manager what they spent, I didn't know what the breakdown was between artwork and personal property and the actual construction.

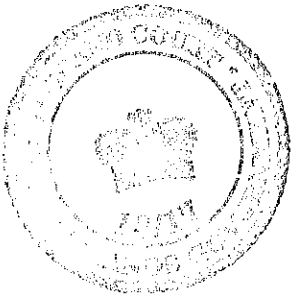
Q. Why didn't you find that out?"

A. Again, looking at the property in its current condition and what I saw and what I'm dealing with, I thought I dealt with it in the report."

(D). The Petitioner's attorneys submitted that the benefit to the Property of the substantial renovations should have been taken into account in the comparative analysis. The comparable properties were predominantly built in the early 1990s (Comparables 1, 2, 3, 4 and 7) and none, save for Comparable 5, were built after 2000. None of the comparable properties had been subject to any renovation (none had any work done for the last twenty or so years). Meanwhile, the Property had recently had approximately \$40 million spent on renovation. Accordingly, a 10% increase to the value of the

comparable properties was justified to take account of the Property's comparative advantage resulting from the renovations.

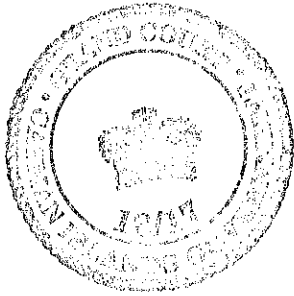
- (v) *gross living area value*: the Petitioner's attorneys also challenged Mr Dietrich's calculation of the value to be attributed to the gross living area of the comparable properties. Mr Dietrich had used \$400 per square foot as the relevant figure. The Petitioner's attorneys submitted that this figure was too low.



In Mr Dietrich's First Report, he had said:

"I have made the size adjustment based on the difference, above grade, between the size of the Comparable sales and Listings compared to the [Property]. I used an adjustment of \$400 per square foot, This is approximately two thirds replacement cost but represents the marginal utility of adding square footage to a residence excluding cost-intensive space such as a kitchen or bath. It is an adjustment for gross floor space above grade."

In Mr Dietrich's First Report, Mr Dietrich stated that the \$400 figure was two thirds of \$600, which represented his estimate of the applicable replacement cost. During his cross-examination he confirmed that the estimate for replacement cost was based on his own knowledge and his discussions with the architect who had worked on the renovations to the Property (who had told Mr Dietrich that the replacement cost was between \$500 and \$700 per square foot). Mr Dietrich had also referred to the land value extraction analysis he had done in Mr Dietrich's Supplemental Report. He noted that Mrs Oliver and he agreed that the land value of the Property was approximately \$[REDACTED]. If the replacement cost of the above grade buildings and living space were added to that, even using \$[REDACTED] per square foot, the Property would only be valued at \$[REDACTED], which in his view was reasonable having regard to similar properties in the neighbourhood. In Mr Dietrich's Supplemental Report, Mr Dietrich had calculated the cost per square foot for the comparable properties after deducting from the purchase price the apportioned land value of the relevant property (assuming as a base case that the land at the Property was \$[REDACTED]). That produced a range



(for the improvement value attributable to the living area) of \$181 to \$750 per square foot and Mr Dietrich adopted the average of those figures (\$408).

The Petitioner's attorneys submitted that since the Property was one the most recently built, and is the only property subject to renovation – which was substantial – using an average of the other comparable properties was unjustifiable. A more reasonable approach was to give particular weight to the value attributable to 78 Beverly Park (Comparable 6) (the Petitioner's attorneys' written submissions referred to 76 Beverly Park but they must be referring to 78 which was included in the Land Value Extraction table in Mr Dietrich's Supplemental Report). This comparable property was the one most like the Property. It had an improvement value of \$750 square foot. While it was likely that the improvement value per square foot of the Property was equivalent if not greater than 78 Beverly Park at \$750 per square foot, the Petitioner's attorneys submitted that it would be reasonable to value square footage at \$600 per square foot.

- (vi) *basement*: the Petitioner's attorneys challenged Mr Dietrich's calculation of the value to be attributed to the Property's basement. They submitted that (once again) it was unreasonably low.

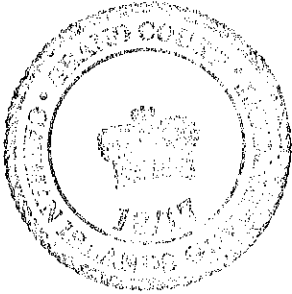
Mr Dietrich, in Mr Dietrich's Supplemental Report, stated that (changing the approach he had adopted in Mr Dietrich's First Report) he estimated the added value attributable to the basement at a maximum of \$150 per square foot. The contributing value of the basement was less than that for the above grade living area (\$400) because it was of a lower quality (it was not finished to same level of luxury) with less natural light. He had said (in footnote 13 on page 9, quoted above) that there had not been adequate sales data from which to extract an adjustment for the basement. He had therefore relied on information a valuation service, Marshall & Swift Valuation Service. This was a subscription cost estimating service that has been in business since 1932 that addressed over 30,000 building components and was updated monthly. Based on their figures for replacement of costs of high value

basements, adjusted to take account of the location in Los Angeles and Beverly Park, he arrived at his figure of \$150.

The Petitioner's attorneys criticised Mr Dietrich's approach and his reliance on (or application of) the Marshall & Swift Valuation Service analysis. They noted that (from the extract attached to Mr Dietrich's Supplemental Report) that Marshall & Swift provided four 'levels' of basements quality. The two things that distinguished the "Finished high-value" level that Mr Dietrich adopted from the other three were that it had something other than concrete walls and had a heating system. They submitted that this category applied to any basement room that had been fitted out in the same manner as any other room in the house. These values did not reflect the value of a basement room in a luxury mansion, but any basement with basic improvements. The location adjustment (of 120%) that Mr Dietrich had applied to take account of the property being in Los Angeles had reflected all of Los Angeles, but did not take into account any premium for Beverly Hills. While Mr Dietrich had applied his own premium of \$25 for this (increasing the value from \$125 to \$150) this was only a nominal amount that did not reflect the high-end and luxury nature of the Property.

The Petitioner's attorneys therefore submitted that it would be reasonable to increase the value per square foot and \$250 per square foot would be reasonable.

- (vii) *pool area*: the Petitioner's attorneys submitted that it was also reasonable to recognise and ascribe a value to the pool area of the Property. The pool area had a number of features that were not present in the comparable properties. Mr Dietrich had stated in evidence that most of the comparable properties had some type of outdoor living area, based on aerial photographs and listing information, but the appendices to Mr Dietrich's First Report did not provide evidence in support. Furthermore, Mr Dietrich had admitted that none of the comparable properties had have the river feature that is included in the Property. He had added no value for this because "*that's pretty taste specific*". It was submitted that this was insufficient to justify treating the



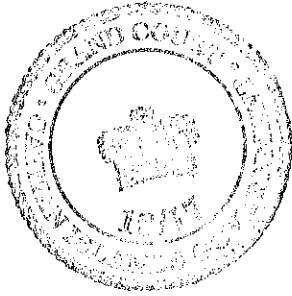
feature as valueless. In the circumstances, it would be reasonable to recognise that the pool features added value and \$ [REDACTED] was a reasonable estimate of that added value.

- (viii) *67 Beverly Park*: the Petitioner's attorneys submitted that Mr Dietrich had been wrong to exclude and give no weight to the listing price of 67 Beverly Park, particularly given that its basic characteristics are highly comparable to the Property (there is only 1,125 square footage difference between the two properties). In view of the similarity between the two properties, it was reasonable to consider the listing price. Mr Dietrich had taken into account some of the listed properties. A reasonable approach was to treat 67 Beverly Park as another comparable property but to apply a substantial discount to the listing price. Sixty per cent was reasonable. This was consistent with the approach Mr Dietrich had taken to discounting the listed properties he had relied on (Mr Dietrich has applied a 25% discount to 75 Beverly Park Lane (Comparable 9) because it had been listed for one year and 67 Beverly Park had been listed for over two years).

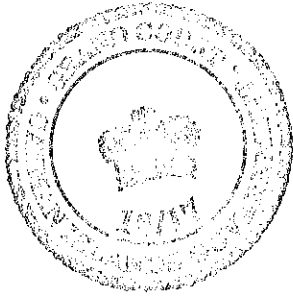
- (ix) *weighting comparable properties*: finally the Petitioner's attorneys submitted that Mr Dietrich's approach to adjusting value by reference to comparable properties was inconsistent with the guidance given in the Reference Book and the Appraisal and was flawed. He should have identified the comparable properties that were closest to the Property and given greater weight to them when valuing the Property.

The Reference Book stated that an essential aspect of the appraisal process was the step entitled 'Reconciliation'. It stated that the appraiser should, as the final step of the Sales Comparison Process:

"Reconcile the various value indications produced from the analysis of the comparables into a value consideration. A value opinion can be expressed as a single point estimate, as a range of values, or in terms of a relationship (e.g., more or less than a given amount)"



This required that after the comparison approach had been undertaken, the adjusted sale prices should be weighted. This was demonstrated in the example on page 389 of The Appraisal where the footnote stated:



"The final adjusted sale price of each transaction is a potential value indication for the subject property ... The sale that requires the least significant or lowest total adjustment (i.e. the absolute adjustment based on the sum of the adjustments regarding of sign) is often the most comparable and is frequently given the most weight in reconciling the value indications from the sales comparison approach. Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions..."

The Petitioner's attorneys submitted that the comparable properties with the lowest gross adjustments were 40 Beverly Park (Comparable 5) and 78 Beverly Park (Comparable 6). These should be given great weight. The best indicator of value was gross living area and these two comparable properties were the most comparable to the Property in terms of gross living area. By not undertaking reconciliation, Mr Dietrich has allowed his conclusion to be distorted by comparison to properties with substantially small gross living areas.

- (d) the result of the Petitioner's attorney's adjustments resulted in a range of adjusted sales prices from \$ [REDACTED] to \$ [REDACTED] and a range of adjusted listing prices from \$ [REDACTED] to \$ [REDACTED]. Using the reconciliation approach (and favouring the most comparable) in the manner they had advocated, they submitted that had Mr Dietrich not made the errors they had identified in their submissions he would have concluded that the range of values for the Property would be as follows: (i) low - \$ [REDACTED]; (ii) medium - \$ [REDACTED]; (iii) high - \$ [REDACTED].

The Respondent's submissions

50. The Respondent's submissions can be summarised as follows:

- (a) the Court should accept Mr Dietrich's evidence as being reliable and properly prepared in accordance with the Directions Order. Mr Dietrich is an extremely experienced and well-qualified professional in the field of property valuation, with



specific experience of appraising luxury residential properties in the Beverly Hills area. He had produced thorough expert reports for the purposes of these proceedings in accordance with relevant professional standards.

- (b) in contrast, Mrs Oliver's evidence was not prepared in accordance with the Directions Order and should be given no weight as a result. The Court had ordered that appraisal evidence as to the fair market value of the Property be produced. Mrs Oliver is not a qualified appraiser and her evidence does not provide an appraisal of the Property or an opinion as to the fair market value of the Property. Consistent with her qualifications as a real estate broker, Mrs Oliver's evidence focussed on and provided evidence as to the price the Property should be put on the market for by a seller and was not a reasoned analysis of the fair market price that the Property would probably sell for.
- (c) even if that was not right, and Mrs Oliver's evidence was to be given some weight, Mr Dietrich's evidence was to be preferred. Mrs Oliver's methodology was never properly explained or justified and her opinions on the value of the Property were unsupported, inconsistent and unsustainable.
- (d) the extensive challenges to Mr Dietrich's methodology and approach by the Petitioner's attorneys had no evidential basis and should be rejected. The challenges and the alternative adjustments were the views of the Petitioner's legal advisers and were not addressed or supported by the Petitioner's expert. There was no evidence to support them. Furthermore, the alternative formulations and adjustments set out in schedule 3 to the Petitioner's closing submissions were not put to Mr Dietrich in cross-examination at all or with sufficient particularity and therefore could in any event not be relied on.
- (e) the burden of proof was on the Petitioner to establish the fair market value of the Property in the amount, or range, it claimed for the purpose of establishing that she had standing to present the Petition. She had failed to do so. The Respondent's case as to the value of the Property, based on Mr Dietrich's opinion, and his range for the fair market value of the Property, was to be preferred.

51. The application and preliminary issue arose in connection with the Petition and the dispute as to the Petitioner's standing. The burden of proof was on the Petitioner to demonstrate



that she has sufficient interest in the winding up of NGI Cayman. Accordingly:

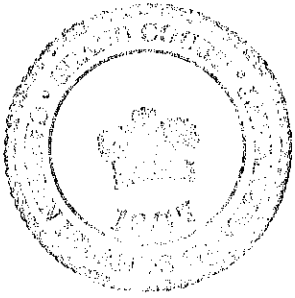
- (a) in order for the Petition to proceed, the Petitioner must prove, on the balance of probabilities, that the value of the Property exceeds the maximum amount of NGI Delaware's liabilities.
- (b) if the Petitioner is unable to prove, on the balance of probabilities, that the value of the Property exceeds the maximum amount of NGI Delaware's liabilities, the Petition cannot be heard without further directions allowing the Court to determine the amount of such liabilities.
- (c) if, when all of the evidence had been adduced by the parties, the party who had the burden had not discharged it, the decision must be against him.

52. Paragraph 9 of the Direction Order had directed that expert evidence be filed "*as to the fair market value of the [Property] (such evidence to provide if appropriate a range of values from the best case to the worst case and an indication of the variables, facts and matters which have a material effect on the market value of the property and an explanation of how they have such an effect).*" The Respondent submitted that Mrs Oliver's valuation was not evidence which complied with this direction and should be given no weight:

- (a) the definition of market value used by Mr Dietrich was an appropriate definition within the context of these proceedings and complied with the Directions Order. Mr Dietrich had set out his approach to the proper valuation method by reference to the relevant professional standards and guidance. He had provided a definition of market value in his stated assumptions by reference to the Appraisal. This was as follows:

"The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress."

- (b) Mrs Oliver, on the other hand, had not explained her methodology or what definition of "market value", if any, she had used. In Mrs Oliver's First Report (in paragraph 17) she stated that she understood that the Court had indicated that it "*would like to receive evidence of the fair market value of the Property*" but she had then just gone

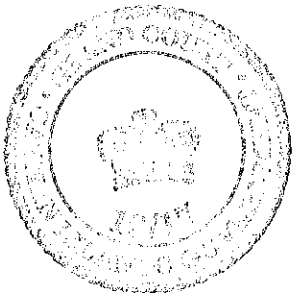


on to propose her worst-middle-best case valuations by reference to a number of properties which were selected without any explanation as to why they were appropriate. She had not explained what she meant by “*market value*” and earlier parts of Mrs Oliver’s First Report suggested that she was concerned with a marketing price. In paragraphs 13 and 15, she suggested that in valuing the Property she would be following the approach she had identified for marketing ultra-high-end properties, which involved “*finding a realistic price level at which to pitch the property [in question].*”

- (c) in Mrs Oliver’s Supplemental Report, she had stated that she had, like Mr Dietrich, adopted the Sales Comparison Approach in her valuation of the Property. However, it was clear her approach was very different from that of Mr Dietrich. When it was put to Mrs Oliver in cross-examination that, in order to be consistent with the Sales Comparison Approach, adjustments needed to be made to comparable properties, Mrs Oliver’s evidence was that her approach (i.e. taking an average of the sales or listing prices per square foot contained in her dataset) was an adjustment. This was plainly incorrect as a matter of appraisal practice. Mrs Oliver had accepted on cross-examination that she was not an appraiser and that she had not conducted the same type of adjustment exercise carried out by Mr Dietrich.
- (d) it was unsurprising that Mrs Oliver, as a salesperson, would focus on price. She was not criticised for doing so. However, her valuation was not evidence of the kind that the Court had directed the parties to adduce. The Court had asked for evidence concerning the fair market value of the Property, which was a different concept altogether from “price” used by Mrs Oliver. The Respondent did not seek to exclude Mrs Oliver’s evidence, despite the fact that she did not have the requisite expertise and understanding to give an opinion as to the fair market value of the Property. Instead, Mrs Oliver’s evidence should be given no weight.

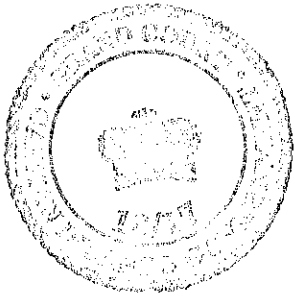
53. The Respondent also submitted that Mrs Oliver’s evidence was unreliable:

- (a) Mrs Oliver’s career was in a different field to property valuation. She is a real estate agent and did not have any professional valuation qualifications. None of the work Mrs Oliver had done as a property manager during the period 2001-2011 was relevant to valuing real estate. In addition, her experience as a salesperson was only



tangentially relevant insofar as she may be asked by her clients from time to time for her view on (for example) an appropriate listing price, or the price at which a seller might be persuaded to sell a given property.

- (b) the fact that Mrs Oliver has abandoned the 2018 Report undermined her credibility as a reliable expert witness. Mrs Oliver had used the same methodology in her reports in these proceedings as she had used in the 2018 Report, but had just selected different properties. She had provided no explanation of why her recent valuation in the 2018 Report was no longer to be relied on and what justified her changing her valuation and approach.
- (c) Mrs Oliver's valuation of the Property adopts a simple unadjusted price per square foot calculation. This was an inadequate comparator and measure of comparative values on its own, without the further adjustments that Mr Dietrich had made. As a result, Mrs Oliver's worst, middle and best case valuations were all fundamentally unreliable. Without limiting the force of that challenge, there were other problems with these three valuations.
- (d) Mrs Oliver's worst-case valuation was flawed. She had relied solely on a price per square foot measure and selected as comparable properties two significantly smaller properties at 25 Beverly Park Circle (approximately 15,450 square feet) and 56 Beverly Park Drive (16,000 square feet). These properties were approximately one third of the size of the Property. This was an inappropriate methodology because the price per square foot of smaller properties could not be used to value larger properties without further adjustments. At paragraph 6 of the Joint Report, Mrs Oliver and Mr Dietrich had agreed that adding square footage to a property reduces the total value of the property price per square foot. So reducing square footage to a property must increase the total value of the property price per square foot. Mrs Oliver had been unable during cross-examination to properly explain or justify her approach. The two properties selected were inappropriate and should not have been used in a worst-case analysis.
- (e) Mrs Oliver's middle-case valuation was also flawed. Mrs Oliver had been unable satisfactorily to explain during cross-examination the methodology she had used. Even assuming that she had calculated the average price per square foot using all the



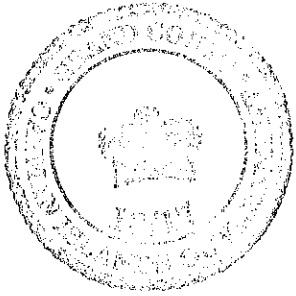
Appendix 5 Properties including 67 Beverly Park, this was an unreliable approach. It was based on five (out of ten) listings and gave equal weight to listings and sales. It also gave equal and unadjusted weight to the listing of 67 Beverly Park. It was not appropriate, for the reasons given by Mr Dietrich, to rely on unadjusted listing prices and to give them the same weight as completed sales or to give any weight to the asking price for 67 Beverly Park.

- (f) Mrs Oliver's best-case valuation was unreliable. She had failed to explain her methodology in either of her reports and had then during cross-examination for the first time mentioned 75 Beverly Park (an on-market listing at \$2,968.75), 26 Beverly Park (an off-market listing at \$3,135.00) and 49 Beverly Park (an off-market listing at \$2,936.00). Exclusive reliance on off-market listings resulted in a highly speculative and unreliable valuation.

54. The Respondent also submitted that since the Property would need to be marketed and sold by a liquidator of NGI Cayman, the market price of the Property should be calculated on the assumption of a distressed sale. Mr Dietrich's market value range was not prepared on that assumption and his valuation therefore in effect represented a best-case outcome (namely one in which, contrary to the facts of this case, there was no pressure on NGI Delaware to liquidate its sole asset).

55. The Respondent rejected the Petitioner's attorneys' challenges to and criticisms of Mr Dietrich's calculation of his adjustments. Their responses can be summarised as follows:

- (a) the Respondent argued that the nine challenges to Mr Dietrich's adjustments and evidence were wholly unsupported by evidence. They were formulated by the Petitioner's attorneys but not addressed in the Petitioner's expert evidence. While it was open to the Court to choose what expert evidence to accept, it cannot form a view on an issue requiring expert evidence that was based on no evidence at all. That would be pure speculation. The Petitioner was required to adduce sufficiently cogent evidence in support of these challenges and positions and had failed to do so.
- (b) furthermore, where there is a challenge to the evidence of a witness, that challenge must be put to the witness. A number of authorities were cited in support of this proposition and of the importance of giving a witness whose credit or evidence was challenged an opportunity to provide an explanation of his position (in particular



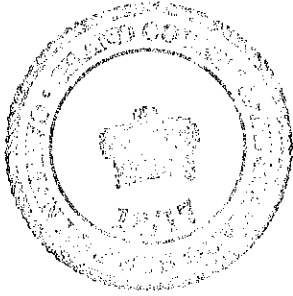
Browne v Dunn (1893) 6 R.67 and *Edwards Lifesciences v Boston Scientific* [2018] EWCA Civ. 673. The Respondent submitted that the criticisms made by the Petitioner's attorneys of Mr Dietrich's evidence went to his professional standing and integrity and it was therefore particularly important, as a matter of fairness, that he be given a clear opportunity to answer them. In particular, the Petitioner's attorneys had failed to put to Mr Dietrich during cross-examination any of their new, alternative, adjustments (included in the figures contained in schedule 3 to the Petitioner's Closing Submissions) which were to be incorporated into Mr Dietrich's valuation evidence (fundamental aspects of their closing case). He had not been given an opportunity to explain whether such adjustments could be used in his valuation without further consequential or other changes and to provide his response to what was proposed. This was a serious omission and in the circumstances, it would be wrong and unfair for the Court to use the adjustments in coming to a view on the fair market value of the Property.

(c) where the Petitioner's attorney's had challenged Mr Dietrich's analysis during cross-examination, he had given satisfactory and convincing responses.

(i) *renovations*

Mr Dietrich had made a 5% adjustment to those comparable properties that were built before 2000 on the basis that the Property was built in 2003 and remodelled in 2013. Whilst much was made of the fact that considerable sums had been spent on renovating the property and that those sums did not appear to have been reflected in Mr Dietrich's valuation or specifically addressed in his report, Mr Dietrich's response to this line of questioning was consistent and robust. He had said first, that the cost of renovating a property did not necessarily equate to an increase in value; and secondly, that the renovations that had been made were design-specific and did not, in his opinion, in fact increase the fair market value of the Property. There was a perfectly plausible set of rationales for Mr Dietrich's position.

First, Mr Dietrich was appraising the fair value of the Property as at 19 March 2019. This required an assessment of its current condition and a selection of the appropriate methodology. Even had Mr Dietrich used a cost-based



approach (an alternative valuation method) he would have assessed the renovations as being functionally obsolete for valuation purposes. The Property was unable to increase its above grade space and thus because the renovations did not (and could not) improve this aspect of the Property, they were regarded as largely cosmetic (and arguably could depress the value because a new buyer was likely to have to remove and recast much of what is present).

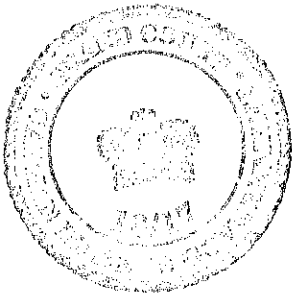
Secondly, Mr Dietrich had acknowledged that this aspect of his valuation may have been brief however, he had clearly taken the impact of the renovations into account and his conclusion and approach (that the proper adjustment to be made in light of the renovations was to increase the life of the property and consider it as a newer build) were reasonable.

Thirdly, in relation to Mr Dietrich's oral testimony concerning the renovations issue, he was unmoved in his opinion that the cost of the renovations did not affect his assessment of value beyond the 5% adjustment made to comparable properties built prior to 2000. The Respondent submitted that there was no evidence from Mrs Oliver to contradict, counter or undermine Mr Dietrich's position and thus in light of the fact that his evidence did not change and that such an opinion was not plainly wrong or perverse, it was to be accepted on this issue.

(ii) *views*

Mr Dietrich had fairly accepted that in Mr Dietrich's First Report he had incorrectly stated that he had not made adjustments for views (he had in fact made adjustments in respect of Comparable properties 2, 3, 4, 7 and 9). It could not be said that Mr Dietrich's First Report was misleading: the adjustments for views can clearly be seen in Mr Dietrich's adjustment grids.

Mr Dietrich was cross-examined regarding the basis on which he had made adjustments for views, including the information sources used and the reasons for Mr Dietrich adjusting by 5%. The thrust of the Petitioner's attorneys' line of questioning had been that Mr Dietrich's adjustments for views were made on the basis of a limited data set and notwithstanding that



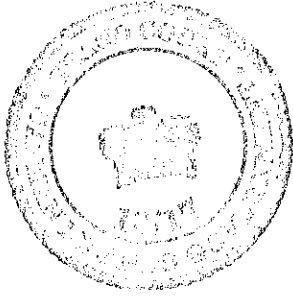
Mr Dietrich had not visited each of the comparable properties in relation to which he made an adjustment.

However, the Respondent submitted that Mr Dietrich's evidence in relation to views was to be accepted. He had explained that the data sources that he had used included the MLS website, Google Earth and other sources. He also explained that a colleague of his, Mr Jeffrey Stutz, had conducted research in relation to views on ParcelQuest. It was not clear which, if any, other sources the Petitioner says Mr Dietrich ought to have used in addition to these sources, aside from speaking to the listing agent for each comparable property and/or visiting each of the comparable properties himself (which the Respondent submitted would not have been proportionate and may not have been possible in any event, absent the permission of the owners of those comparable properties). No other suggestions were put to Mr Dietrich. Mr Dietrich's evidence concerning the basis on which he adjusted for 5% (as opposed to a different figure) was unchallenged and there was no evidence from the Petitioner's expert on the point. It was not put to Mr Dietrich that, in fact, he should not have made adjustments to views. Rather, it was put to him that the adjustments he had made for views were incorrect. Mr Dietrich did not in any event accept that the adjustments he made for views were incorrect.

(iii) *design and appeal – 78 Beverly Park Lane (Comparable 6)*

The Respondent submitted that Mr Dietrich had maintained his position during his cross-examination. He did not accept that it was appropriate to remove the adjustment he had applied in respect of design and appeal for this property.

It was reasonable for Mr Dietrich to rely on the views of an informed listing broker for the purposes of making an adjustment for design and appeal. Furthermore, there was no contrary evidence from Mrs Oliver. She did not adduce any evidence concerning 78 Beverly Park Lane, which had not been mentioned in either of her reports.



(iv) *non-adjustment in respect of special features*

Mr Dietrich's reasons for not making adjustments in relation to special features were clearly explained and, the Respondent submitted, were reasonable. His professional opinion was that a number of these special features, such as the main office with glass floor and diorama of Los Angeles, were design or taste specific. There was no basis on which to challenge that opinion on the evidence.

(v) *basement*

The Respondent submitted that the appropriate treatment of basement space was clearly explained in Mr Dietrich's Supplemental Report. He had calculated the added value of basement space using the Marshall Swift Service. He did not apply the same value to basement space as he did to above grade living area. This was consistent with the sources to which Mr Dietrich referred in Mr Dietrich's Supplemental Report, including Fannie Mae and The Appraisal of Real Estate.

It was put to Mr Dietrich during cross-examination that he had undervalued the basement. However, the basis on which that question was put was unclear. Aside from the acknowledgement by Mr Dietrich that he had not been into any luxury basements in North Beverly Park, there was very little on which the Petitioner could rely in order to substantiate the assertion that Mr Dietrich had in fact undervalued basement space. That assertion would, in any event, contradict the reputable and respectable authorities on which Mr Dietrich has relied.

(vi) *off-market listings*

The Respondent submitted that Mr Dietrich's evidence concerning off-market listings was reasoned and reasonable and should be accepted.

Analysis

The issues for decision

56. The following issues arise:

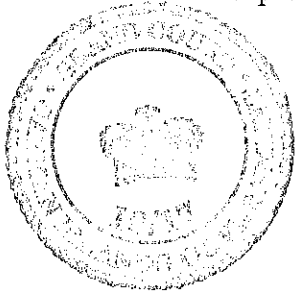
- (a) the basis on and purpose for which the Property is to be valued.
- (b) the status of and weight to be applied to Mrs Oliver's expert opinion and evidence.
- (c) assuming that some weight is to be given to Mrs Oliver's expert opinion, is Mr Dietrich's expert opinion to be preferred?
- (d) should any of the Petitioner's attorneys' challenges to Mr Dietrich's evidence be considered and if at least some should be, do they require the Court to reject or modify Mr Dietrich's opinion as to value?

The basis on and purpose for which the Property is to be valued

57. The value of the Property is an issue in dispute in the proceedings on the Petition. The Respondent has challenged the Petitioner's standing to present the Petition. The Petitioner can only establish her standing by showing that she has a tangible interest, that is a sufficient interest in having NGI Delaware wound up. The burden of proof is on the Petitioner. A contributory can establish a tangible interest by showing that she is likely to receive something – usually a distribution – in the winding up. In paragraph 6 of the Petition, the Petitioner avers that she “*presently understands that the Company is solvent. In the event of liquidation, there will be a distribution not only to the Company's creditors but also to its contributories including the Petitioner.*” In its Points of Defence, the Respondent avers that (a) the open market value of the Property is about \$ [REDACTED] (on the assumption of a willing buyer and seller and before taking account of and deducting selling costs) and (b) there will be no distribution from NGI Delaware to NGI Cayman because the liabilities of NGI Delaware exceed the value of the Property. There are therefore two separate factual issues to be determined. First, what are NGI Delaware's liabilities and secondly, the Value Issue - what is the value to be attributed to NGI Delaware's only asset, the Property?

58. The question, therefore, is what is the value to be attributed to the Property for the purpose of determining the Petitioner's standing to present the Petition? In the circumstances of this case, the question becomes what is the Property likely to realise when sold (will the proceeds

of sale be likely to exceed and facilitate the payment in full of the sums owed by NGI Delaware)? This requires expert evidence of the market value of the Property. The Directions Order therefore gave directions for the filing of such evidence. As I have explained, paragraph 9 of the Directions Order stated that:



"9. *Each of the parties have leave to file and serve expert evidence as to the fair market value of the property owned by New Generation Ideas LLC (such evidence to provide if appropriate a range of values from the best case to the worst case and an indication of the variables, facts and matters which have a material effect on the market value of the property and an explanation of how they have such an effect"*

[underlining added]

59. The direction referred to "fair market value" which I regard as referring to a proper market value having regard to the circumstances affecting the Property. The need for a range of values was optional. It was a matter for the expert valuer to decide whether a range of values was needed in order to capture and express the fair market value of the Property. Both Mrs Oliver and Mr Dietrich chose to provide a range of values.

The status of and weight to be applied to Mrs Oliver's expert evidence

60. The Respondent, as I have explained, did not seek to exclude Mrs Oliver's evidence but submitted that it should be given no weight.

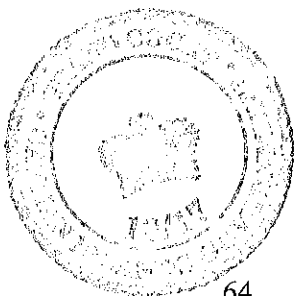
61. The Directions Order contemplated the filing of evidence by someone with sufficient expertise to be able to offer a reliable opinion on the market value of the Property. It did not specify what expertise was needed or the form and content of the expert's opinion. The usual expert for this type of case would be someone qualified to provide a formal valuation (an "appraisal" as that term is used and defined in the USPAP) and the form of the evidence would be a report setting out the expert's analysis and the factual basis and reasons for her opinion. However, the Directions Order did not limit the permitted expert evidence to such a person or such a format.

62. The fact that Mrs Oliver was a real estate broker and not a qualified appraiser did not of itself prevent her evidence from being admissible in accordance with the Directions Order. Her experience as a broker (involved in giving advice on the sale of high-value residential real estate, particularly in the market in which the Property is located) gave her sufficient



expertise to be able to provide an opinion on the market value of the Property. I found Mrs Oliver's evidence as to the difference between an appraisal and her valuation advice to clients unclear. I also did not fully understand how she could issue the 2018 Opinion without being qualified as an appraiser (I had sought to clarify her answers in the exchange I had with her, as set out above). The difference appeared to relate to the basis on which the valuation advice was prepared (her advice to clients was not prepared in accordance with the high and detailed professional standards required of appraisers) and the context in which her advice was given (she was advising clients in the context of fixing a listing price or deciding what offer to make for a property). I was also concerned that, as a regulatory matter, Mrs Oliver would probably be unable to give a formal opinion as to the market value of the Property in US proceedings as such an opinion would appear to be an appraisal. However, since her ability to give such an opinion under applicable state and federal law was not properly dealt with in argument or evidence I have not assumed that she would be unable to give expert evidence on market value in a US court (Mrs Oliver did say in evidence that she had never given expert evidence in proceedings before). In the circumstances, I do not consider that Mrs Oliver's lack of qualification as an appraiser is on its own fatal to her evidence or credibility and reject the Respondent's submission that Mrs Oliver's evidence should (automatically) be given no weight by reason of her not being a qualified appraiser.

63. The Respondent also submitted that Mrs Oliver's evidence should be given no weight because her reports had failed to address and provide an opinion on *market value*. She had instead provided her opinion as a broker and salesperson and addressed *marketing price* – the price which a seller would be advised to ask for the Property and at which the Property should be marketed. The Respondent submitted that Mrs Oliver's First Report, Mrs Oliver's Supplemental Report and Mrs Oliver's evidence in cross-examination had failed to make clear and demonstrate that she understood how market value was to be established and that the basis of her valuation remained unclear. While it was unhelpful that Mrs Oliver had failed to explain in her reports what she meant by market value or her methodology, it seems to me that she did give her opinion on market value (see in particular paragraph 17 of Mrs Oliver's First Report and paragraph 7 of Mrs Oliver's Supplemental Report) and had in mind that she was required to provide her opinion on what the Property was likely to sell for (see her evidence in cross-examination regarding her focus on a real world selling price). I therefore reject the Respondent's submission that Mrs Oliver's evidence should be given



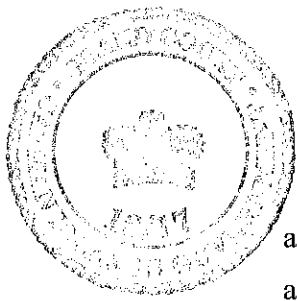
no weight by reason of her failing to offer an opinion on the (fair) market value of the property.

64. But I do consider that the failure of Mrs Oliver properly to explain her methodology; her failure to construct a detailed analysis of market value by reference to the standards required by the relevant professional bodies and her failure to test, justify, calibrate and adjust her analysis of a real world selling price by reference to other factors and data points seriously diminishes the weight to be attached to her evidence. Mr Dietrich did do these things in a careful and detailed manner and in accordance with the standards required by the relevant professional bodies. As a result, his opinion and analysis is more convincing, to be given more weight and is generally to be preferred where his evidence conflicts with that of Mrs Oliver. As Jacob L.J. said in the Court of Appeal of England and Wales in *Technip France SA's Patent* [2004] EWHC Civ 381 at [14]:

"What really matters in most cases is the reasons given for [an] opinion. As a practical matter a well-constructed expert's report containing opinion evidence sets out the opinion and the reasons for it. If the reasons stand up the opinion does, if not, not."

In the areas covered by both experts, is Mrs Oliver's opinion to be preferred to Mr Dietrich's opinion?

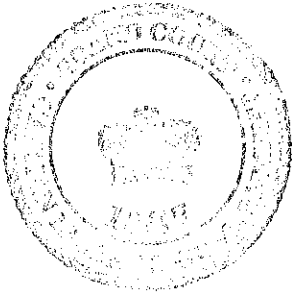
65. In my view, the Respondent's criticisms of Mrs Oliver's worst-case, middle-case and best-case valuations (as summarised above) are justified. Mrs Oliver relied on comparisons with a limited number of properties; which were selected from a pool of listed and sold properties without a clear explanation as to why they were selected or appropriate to be used for the relevant case analysis; she relied solely on one, unadjusted, data point (price per square foot of the living area) and frequently on unadjusted asking prices in listings (which were given the same weight as sales). Her valuations, as a result, were insufficiently supported by detailed evidence and analysis and were often speculative. Mrs Oliver clearly has substantial experience of selling luxury homes similar to the Property and had formed a view as to the price level that could be achieved for the property. However, she was unable to demonstrate the reasonableness of her opinion or show that it was based on a balanced and comprehensive (rather than arbitrary) assessment of the available information and consistent with the approach and standards established by the local professional bodies. Accordingly, subject to the challenges made to Mr Dietrich's opinion by the Petitioner's



attorneys (rather than Mrs Oliver), which I discuss below, I consider Mr Dietrich's evidence as to the fair market value of the Property to be more reliable and preferred.

66. Mr Dietrich's methodology was clearly explained, based on a reliable data set and the approach and standards established by the local professional bodies. It appeared to me to be reasonable and consistent with those standards. As regards the main challenges to his methodology made by the Petitioner, I would comment as follows:

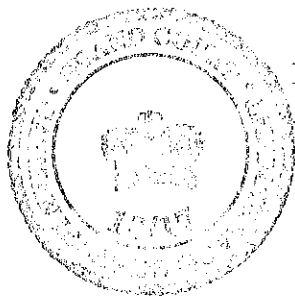
- (a) in my view Mr Dietrich's approach to the use of listings (both on-market and off-market) is to be preferred. I note that the Appraisal includes listings as being relevant and to be included in the Sales Comparison Approach (see page 377) however it seems to me to be right to treat asking prices in listings with caution and to adjust them to reflect the fact that listing prices may be aspirational and not translated into the sale price. Mr Dietrich's approach to listings appeared to be balanced and measured. He included two listings in his nine comparable properties but adjusted them in accordance with a clear and logical analysis. Accordingly, he did not completely ignore the listings but was selective and made a reasonable and reasoned judgment as to which listings were reliable and at what price level. Mrs Oliver relied for her best-case valuation exclusively on off-market listings; and
- (b) Mr Dietrich decided not to include or place any weight on the listing price for 67 Beverly Park. Mrs Oliver had used 67 Beverly Place for her middle case valuation. Obviously, because the asking price for this property is so high, its inclusion or exclusion as a comparable property was likely to have a significant impact on the valuation of the Property. Accordingly, care is needed to test the reasons why it was not considered. However, it seems to me that Mr Dietrich's approach was reasonable. As can be seen from my summary of his approach in both of his reports, Mr Dietrich had considered whether 67 Beverly Park should be included in his list of comparable properties, whether adjustments could be made to the asking price and weight given to the adjusted asking price. But he concluded that it was not a reliable data point. I do not see how his conclusions can be regarded as unreasonable or unreasoned or beyond what a reasonable value applying proper appraisal methodology could be expected to adopt. Mrs Oliver has not explained why this is an unreasonable approach. The case against Mr Dietrich's approach is put forward



by the Petitioner's attorneys, who say, in effect, that Mr Dietrich's approach is inconsistent with the approach he adopted to other listings (which I have summarised above). They say that to be consistent (and in order to adopt a reasonable approach) Mr Dietrich should have included (and the Court should when determining the fair market value of the Property include) the asking price for 67 Beverly Park with a substantial discount, which should be 60%. Mr Dietrich had based his discount for the listings he had included on how long the listed property had been on the market for (properties in the area that had been on the market for a long period eventually sold at a discount to the asking price) and the price (a high asking price itself suggested the listed property was over-priced). There was no reason to exclude 67 Beverly Park completely. But 67 Beverly Park was listed at a very much higher price (\$165 million) than the highest listing that Mr Dietrich had relied on (\$47.5 million for 75 Beverly Park, Comparable 9) that on its face made it an outlier among all the comparable properties. Furthermore, it had been on the market for a long time - for almost two years at the date of Mr Dietrich's First Report. It was also a special (in his words "unique" property) in view of the size of the lot that did not make a strong candidate for a close comparison with the Property. This seems to me to give reasonable grounds for Mr Dietrich's approach. In the absence of any obvious error in Mr Dietrich's evidence and opinion, I do not see how the Court can prefer the unsupported submissions and views of the Petitioner's legal advisers to the expert evidence of the Respondent's qualified expert.

- (c) Mrs Oliver based her valuation on the gross living area of the property concerned. She did not differentiate between or apply a different value to the different types of accommodation within that area. Mr Dietrich compared the Property with the comparable properties by identifying and comparing the above grade and below grade areas and attributing a lower value to the below grade areas than to the above grade areas.

As I have explained, the Joint Report noted that the approximately 48,000 square feet of gross building area in the Property included an above-grade living area of 29,785 square feet, a basement area of 11,612 square feet and a garage of approximately 6,603 square feet (including a drivers' lounge of 600 square feet). Mr Dietrich treated the basement and garage areas as below grade.



In Mrs Oliver's Supplemental Report, she had responded to the different approach taken by Mr Dietrich as follows:

"....it is not in my view appropriate to seek to value a property based on a method that divides it into different constituent parts, attributing a different value per square foot in each area. I do not think that it would be practical to attempt to do so, as valuations expressed on a per foot basis are invariably based on a composite sales figure of comparable properties. Such sales figures do not make any distinction between different areas of the property sold: they are not subdivided into (for example) lounges plus bedrooms and bathrooms being worth X, basements being worth Y and garages being worth Z."

But this response misses the point. The issue is not whether property valuations separately value the constituent parts of the property but whether when the valuation of a property is being based on the comparable sale method, so that the valuation is based on the sale or asking price of another property, it is appropriate for the purposes of comparison to identify and compare the different types (and grades) of accommodation and buildings. It seems to me that Mr Dietrich's approach is consistent with that set out in the Appraisal, where the key determinant and justification for a particular point of comparison is whether the market makes a distinction in the sale price based on the presence or absence of a particular feature or characteristic. I note, by way of example, the following extract from the Appraisal:

"Often a basic element of comparison is broken down into subcategories that specifically address the property factor being analysed. For example, physical characteristics may be broken down into subcategories for age, condition, size and so on.....There is no limit to the number of elements of comparison that may be found in a market, so it is important to remember that another line can always be added to an adjustment grid for an additional item recognised in the market. For example, an appraiser may need to add "deck" as an element of comparison if the market makes distinctions in sale price based on the presence or absence of a deck...."

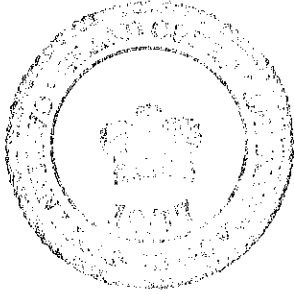
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The judgment as to whether a particular feature or characteristic is relevant to the market and the assessment of comparative values is obviously properly one for and within the expertise of each expert. Mrs Oliver's evidence fails to explain why – and certainly to justify the view that – the distinction between above-grade and



below-grade areas would have no market impact or significance and I consider that Mr Dietrich's approach is both reasonable and to be preferred.

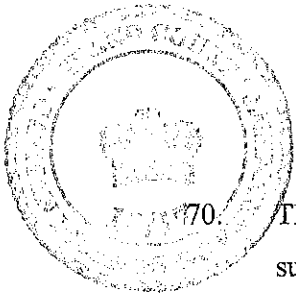
- (d) the Petitioner's attorneys also argued that the proper approach that Mr Dietrich should have adopted in order to comply with the applicable professional standards (in particular the guidance given in the Reference Book and the Appraisal) was to identify the comparable properties that were closest to the Property and give greater weight to them when valuing the Property. They submitted that 40 Beverly Park (Comparable 5) and 78 Beverly Park (Comparable 6) should have been given additional weight since they were the most comparable to the Property in terms of gross living area. Comparable 5 had a selling price of \$32 million while Comparable 6 had a selling price of \$38 million. So simply giving greater weight to the selling prices would not have materially affected Mr Dietrich's valuation range. However, the position would be different if the price per square foot of the gross living area was used to calculate the value of the Property. Comparable 5 had a gross living area per square foot of \$1,408 (giving a price for the Property, using 48,000 square feet, of \$67.58 million) while Comparable 6 had gross living area per square foot of \$1,580 (giving a price for the Property, using 48,000 square feet, of \$76 million). However, this would be based on the assumption that Mrs Oliver's approach of using as the sole comparator the price per square foot of the gross living area was the preferred methodology, which I have already held it was not. In any event, and more importantly, the approach advocated by the Petitioner's attorneys was not in accordance with Mrs Oliver's evidence and was based on their own views. The Petitioner's legal advisers are, to state the self-evident, unqualified to express such a view and their views therefore could not be preferred to those of Mr Dietrich. In my view, it would have been open to Mr Dietrich to adopt this approach but he was not required to do so by the applicable professional standards. For my own part, I could see the merits of an approach which gave some added weight to the adjusted price of Comparable 6 which is almost next door to the Property and was sold relatively recently (in November 2017). It is slightly smaller than the Property (24,000 square feet gross living space compared to 29,785 square feet for the Property and 99,023 square feet plot size compared to 101,295 square feet). The gross living area of the Property is approximately 1.2 times larger than Comparable



6 and the lot size of the Property is approximately 1.02 times that of Comparable 6. If the sale price of Comparable 6 is multiplied by 1.2 (for the difference in gross living area) the Property would be valued at \$45.6 million and by 1.02 (for the difference in the lot size) the Property would be valued at \$38.76 million. This might have been an approach which the Petitioner's expert adopted but she did not. In the absence of expert evidence to support it, it is not an approach open to me to adopt. In any event, it would also have been subject to a challenge based on a failure adequately to compare the two properties by reference to other adjustment criteria and because reliance on only one comparable property would result in too narrow a data set. I note, however, that even if this approach were adopted it would produce a valuation for the Property substantially less than the Petitioner's attorneys' middle-case valuation.

Should any of the challenges to Mr Dietrich's evidence made by Petitioner's attorneys be considered or accepted?

67. I accept the Respondent's submissions that the attempt made by the Petitioner's attorneys to rely on their own adjustments to Mr Dietrich's valuation must fail (save for adjustments resulting from calculation or other manifest errors which can be corrected by reference to Mr Dietrich's own evidence).
68. This is for the two reasons put forward by the Respondent. First, because there is no expert evidence to support them. Secondly, because the figures that the Petitioner's attorneys now rely on and which they have used in the valuation of the Property were never put to Mr Dietrich during his cross-examination and it would be wrong and unfair to him (and the Respondent) to use them without Mr Dietrich being given an opportunity to set out his position on the amendments to his own valuation.
69. These problems apply to all the challenges made by the Petitioner's attorneys to Mr Dietrich's evidence save the challenge based on the alleged calculation error in relation to the adjustment to be made in respect of lot size for Comparables 2, 3, 5, 6, 8 and 9. In all other cases, the Petitioner's attorneys were relying on an alternative valuation methodology, which they said was to be preferred to Mr Dietrich's approach, without any supporting expert evidence from Mrs Oliver or a correction to Mr Dietrich's evidence based on a calculation and figures that had not been put to Mr Dietrich during his cross-examination.



70. The Petitioner's attorneys argued strongly that the expensive renovations *must* have substantially increased the market value of the Property but they had no evidence to support their submissions. Their suggestion that Mr Dietrich's views were based on inadequate or unreliable data or irrelevant personal preferences were also in my view unsustainable.

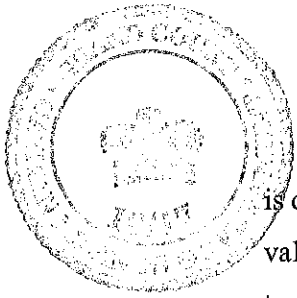
71. As regards the asserted error with respect to the calculation of the lot size for the comparable properties mentioned above, Mr Hoffman accepted, during his oral closing submissions, that there had indeed been a calculation error. As I have noted above, the effect of the necessary corrections was to increase the adjusted price of Comparable 3 from \$ [REDACTED] to \$ [REDACTED] and of Comparable 9 from \$ [REDACTED] to \$ [REDACTED]. The adjusted price of Comparable 2 would be reduced from \$ [REDACTED] to \$ [REDACTED]. The adjusted price of Comparable 5 would be reduced from \$ [REDACTED] to \$ [REDACTED]. The adjusted price of Comparable 6 would be reduced from \$ [REDACTED] to \$ [REDACTED]. The adjusted price of Comparable 8 would be reduced from \$ [REDACTED] to \$ [REDACTED]. As a result, the upper end of Mr Dietrich's range would have increased, when rounded, to \$ [REDACTED] but the lower end of the range would not have changed.

Conclusions

72. I have therefore concluded that Mr Dietrich's valuation opinion is to be preferred to Mrs Oliver's opinion and that the challenges made by the Petitioner's attorneys to Mr Dietrich's analysis and conclusions are to be rejected – save for the calculation error relating to lot size.

73. It seems to me that the Court should take into account this correction when forming a view on the (fair) market value to be attributed to the Property for the purpose of the Petition. As a result of the correction, Mr Dietrich's range becomes \$ [REDACTED] for his worst-case valuation and \$ [REDACTED] for his best-case valuation. This results in a (middle-case) market value of \$ [REDACTED].

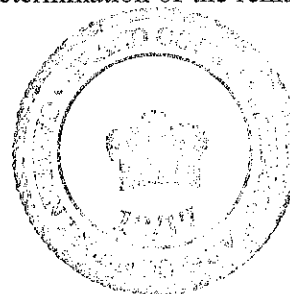
74. I have concluded that the right approach on this application, having regard to the expert evidence filed and the procedural context and purpose of the application, is to determine the (fair) market value of the Property by reference to a range of values. The Directions Order did not, as I have explained, require that the experts provide a range of (fair) market values but this is what both experts have done. Furthermore, the evidence has demonstrated that it



is difficult to rely on a single figure in this case. This is usually the position where property valuations are based on appraisals and expert opinions where there had been no market testing. In addition, the Value Issue arises in the context of a contested Petition where the critical question is whether the value of the Property exceeds the quantum of NGI Delaware's liabilities. In the absence of a sale of the Property, which would definitively fix the (fair) market value of the Property, and in view of the uncertainties surrounding appraisal based valuations to which I have referred, I consider it best to use a range that will establish an upper limit for the value of the Property. I propose to adopt Mr Dietrich's adjusted range of \$ [REDACTED] - \$ [REDACTED] - \$ [REDACTED], so that the upper limit of the (fair) market value of the Property for the purpose of the Petition will be \$ [REDACTED] (as at 19 March 2019). This is the gross (fair) market value before deducting sale costs and any applicable taxes.

75. This means that if the liabilities of NGI Delaware are established to be greater than \$ [REDACTED] [REDACTED] (adjusted to take into account relevant costs and taxes) then NGI Delaware will, for the purpose of the Petition, be treated as having a deficiency and unable to make a distribution to NGI Cayman. This is perhaps subject to one further qualification. Since the expert evidence involved valuations as at 19 March 2019, it *may* be necessary to consider whether further, updated, expert evidence should be admitted if there is any significant delay before any further hearings in the Petition to determine the liabilities of NGI Delaware (or other means by which the liabilities of NGI Delaware are determined for the purpose of the Petition). This issue suggests that the necessary procedural steps to resolve the liabilities issue be taken as soon as possible.

76. I will now invite the Petitioner's and the Respondent's attorneys to consider what further directions are appropriate to allow for the determination of the remaining issue arising on and the disposition of the Petition.



Mr Justice Segal
Justice of the Grand Court, Cayman Islands
25 September 2019