

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NW 2089 v. Ruby*,
2019 BCSC 143

Date: 20190207
Docket: S199699
Registry: New Westminster

In the matter of:
City of New Westminster
Parcel Identifier: 026-416-085
Strata Lot 143 Suburban Block 10
New Westminster District Strata Plan NW 2089
(the "Property")

Between:

The Owners, Strata Plan NW 2089

Petitioner

And

**Ron Ruby
Royal Bank of Canada**

Respondents

Before: Registrar Nielsen

Reasons for Decision

Counsel for the Petitioner:

V. Chahal

The Respondent on his own behalf

R. Ruby

Place and Date of Hearing:

New Westminster, B.C.
November 7, 2018 and
January 17, 2019

Place and Date of Judgment:

New Westminster, B.C.
February 7, 2019

Table of Contents

INTRODUCTION 3
ISSUE 7
BACKGROUND..... 8
DISCUSSION..... 14
DISPOSITION..... 20

INTRODUCTION

[1] On February 21, 2018 the petitioner, The Owners, Strata Plan NW 2089 [hereinafter referred to as the “petitioner”] commenced a petition proceeding seeking the following orders:

1. A declaration that the certificate of lien registered at the New Westminster Land Title Office on November 9, 2017, under registration number CA6434980 (the “Lien”) charges the Property ranking in priority to the interests therein or claims thereto of the Respondents;
2. A declaration that the Respondent, Ron Ruby, has made default in payment of his share of common expenses due to the Petitioner, and that all monies secured by the Lien are now due and owing to the Petitioner;
3. Judgment against the Respondent, Ron Ruby, for the amounts owing under the Lien determined summarily or certified on an accounting, together with the Petitioner’s reasonable legal costs;
4. A declaration that the amount due and owing to the Petitioner is \$4,532.33 as of February 2, 2018, increasing by further unpaid strata fees, special levies, the Petitioner’s reasonable legal costs and other amounts that may be payable pursuant to sections 116 and 118 of the *Strata Property Act*, S.B.C. 1998, c. 43 and amendments thereto (hereafter described as “Amount Owing”);
5. An order setting the last day for payment of the Amount Owing at 30 days computed from the date of the order pronounced at the hearing of this Petition, or such other reasonable time period as this Honourable Court may order (the “Time to Pay”);
6. A summary determination of what will be due to the Petitioner under and by virtue of the Lien either forthwith or upon the expiration of the Time to Pay or, in the alternative, an order that an account be taken of, and the District Registrar of this Honourable Court at New Westminster, BC certify, what will be due to the Petitioner under and by virtue of the Lien on the expiration of the Time to Pay, and that such account be approved by an affidavit of an officer of the Petitioner;
7. Failing payment to the Petitioner of the Amount Owing within the Time to Pay, an order that:
 - (a) the Property be sold out of court by being offered for sale, free and clear of all encumbrances and charges of the Respondents and all persons claiming by, through or under them;
 - (b) the Petitioner be granted exclusive conduct of sale of the Property without the necessity of further application to this Honourable Court;

- (c) the Petitioner be at liberty to retain the services of and/or appoint a real estate agent of its choice to conduct the sale of the Property without the consent or approval of the Respondents;
- (d) the Petitioner, through the assistance of a real estate agent, have sole discretion to determine the listing price of the Property and be at liberty to reduce the listing price as necessary in order to sell the Property within a reasonable time;
- (e) the Respondent, Ron Ruby, the Respondent's agents or any person or persons acting on behalf of such Respondents, including any tenant or tenants in possession of the Property forthwith deliver to the Petitioner or their agent, all necessary keys to the Property and upon reasonable notice of at least twenty-four (24) hours, permit any duly authorized agent on behalf of the Petitioner to inspect, appraise, or show to any prospective purchaser the Property (including the interior of the Property) between the hours of 9:00 a.m. to 7:00 p.m. on any day of the week and to post signs on the Property noting that same is offered for sale;

8. An order that the sale of the Property be subject to the approval of this Honourable Court unless otherwise agreed by all parties;

9. An order that the following will be paid directly from the proceeds of sale of the Property as follows:

- (a) first, outstanding taxes, water and sewer rates, utilities, interest and penalties thereon;
- (b) second, all real estate commissions due and owing of not more than 7% on the first \$100,000.00 of the gross selling price, and 2.5% on the balance;
- (c) third, all necessary costs and expenses required to complete the sale;
- (d) fourth, the Amount Owing to the Petitioner;
- (e) fifth, the amounts due and payable to the Respondent, Royal Bank of Canada;
- (f) sixth, the balance remaining, if any, be paid into the Court to the credit of this action to be held pending further order of this Honourable Court;

10. Reasonable legal costs;

11. An order for all such accounts, directions and inquiries as may be necessary for the purposes aforesaid; and

12. Such further and other relief as this Honourable Court may deem just and proper.

[2] The respondent, who was self represented, filed a response to the petition which provided, in part:

- 1 I do not dispute a lien was registered. I do dispute the legitimacy of it having been done.
- 2 I do not dispute there are expenses owing. I dispute them having gone into default as no notice of monies owing was provided. As such I was not given the opportunity to pay the funds by the due date. (\$4414.82 by my calculation.)
- ...
- 4 I do not dispute the special assessment owing, only the significant extra costs being demanded.
- 5 I am willing to pay the special assessment immediately. Only the demand for extra costs is in dispute.
- 6 I only dispute the total amount due for the reasons already set out.
- 7 There will be no failure to pay once the amount due has been determined. No further action will be required.
- 8 As there will be no failure to pay, an order to force the sale will not be required.
- 9 As there will be no need to force the sale, this will also not be required.
- 10 There should never have been any legal involvement or associated costs as outlined in Point 3. As such strata council should absorb their own legal costs for engaging in mean-spirited and bullying behavior in an effort to extract and an [sic] excessive penalties and using the court as an instrument of their bullying.
- 11 I am unsure as to the nature of this demand.
- 12 If strata had sent one email notification, no legal costs would have been incurred.

[3] On October 19, 2018 the petitioner obtained the following orders at the hearing pursuant to sections 116, 117 and 118 of the *Strata Property Act*, S.B.C. 1998, c. 43 [hereinafter referred to as the “SPA”]:

1. the last day for payment of the Amount Owing is 30 days from the date of the Petitioner's reasonable legal costs being assessed before a Registrar of the Supreme Court of British Columbia (the "Time to Pay");
2. failing payment to the Petitioner of the Amount Owing within the Time to Pay:
 - (a) the Property be sold out of court by being offered for sale, free and clear of all encumbrances and charges of the Respondents and all persons claiming by, through or under them;
 - (a)[sic] the Petitioner be granted exclusive conduct of sale of the Property without the necessity of further application to this Honourable Court;
 - (b) the Petitioner be at liberty to retain the services of and/or appoint a real estate agent of its choice to conduct the sale of the Property without the consent or approval of the Respondents;
 - (c) the Petitioner, through the assistance of a real estate agent, have sole discretion to determine the listing price of the Property and be at liberty to reduce the listing price as necessary in order to sell the Property within a reasonable time;
 - (d) the Respondent, Ron Ruby, the Respondent's agents or any person or persons acting on behalf of such Respondent, including any tenant or tenants in possession of the Property forthwith deliver to the Petitioner or their agent, all necessary keys to the Property and upon reasonable notice of at least twenty-four (24) hours, permit any duly authorized agent on behalf of the Petitioner to inspect, appraise, or show to any prospective purchaser the Property (including the interior of the Property) between the hours of 9:00 a.m. to 7:00 p.m. on any day of the week and to post signs on the Property noting that same is offered for sale;
3. the sale be subject to the approval of this Honourable Court unless otherwise agreed by all parties;
4. judgment be granted against the Respondent, Ron Ruby, in the sum of \$4,532,33, together with the Petitioner's reasonable legal costs for these proceedings; [underlining added]
5. the signature of the Respondent, Ron Ruby, is not required for approval of the form of this Order; and
6. the Petitioner may apply for all necessary accounts, directions, approvals and inquiries as may be necessary for the purposes aforesaid.

[4] The summary of relief sought at the hearing was described as follows:

1. Amount owing as of May 1, 2018: \$4,532.33
2. Time to pay amount owing: 30 days
3. Personal Judgment against: Ron Ruby
4. Costs: reasonable legal costs
5. Order for conduct of sale by Petitioner: yes
6. Right to apply for a further accounting: yes

[5] This matter came before the registrar November 7, 2018 by way of appointment to assess the petitioner’s “reasonable legal costs”. I was advised the petitioner’s claim for fees on that date was \$13,340, exclusive of disbursements. By the end of the registrar’s hearing the costs claimed had escalated to \$17,195.84.

[6] The respondent is an individual owner of a unit in the petitioner’s strata. He was self represented during the November 7, 2018 hearing. He was also self represented during the hearing resulting in the court’s order that he pay the petitioner’s reasonable legal costs.

[7] During the course of the November 7, 2018 registrar’s hearing the respondent made factual allegations which, if substantiated, would be relevant to the issues arising. The hearing was adjourned to allow the respondent to file appropriate affidavit material and for the petitioner to file any affidavit material in response. The respondent availed himself of this opportunity as did the petitioner. The respondent swore an affidavit dated November 14, 2018, which was filed herein November 21, 2018. The petitioner also had Mr. Marcel Bilodeau, Strata Council President, swear an additional affidavit on December 10, 2018 and filed same on December 12, 2018.

ISSUE

[8] The issue on this assessment is to determine the petitioner’s reasonable legal costs.

BACKGROUND

[9] The factual basis alleged in the petition giving rise to the order for reasonable costs states:

1. The Petitioner is a strata corporation duly organized and subsisting pursuant to the provisions of the *Strata Property Act*, S.B.C. 1998 c. 43 and amendments thereto, with an address for service for these proceedings at 1220 - 1200 West 73rd Avenue, Vancouver, BC.
2. The Respondent, Ron Ruby, is the registered owner in fee-simple and in possession of the Property.
3. The Lien was registered by the Petitioner pursuant to section 116 of the *Strata Property Act*.
4. The amount due and owing to the Petitioner by the Respondent, Ron Ruby, is \$4,532.33 as of February 2, 2018 accruing by the sum of \$231.56 on the first day of each month thereafter, together with the Petitioner's reasonable legal costs and other amounts which may become payable pursuant to sections 116 and 118 of the *Strata Property Act*.
5. The Petitioner has demanded from the Respondent, Ron Ruby, payment of all monies due and owing, but Ron Ruby has not paid the sum demanded or any part thereof.
6. The Respondent, Royal Bank of Canada, is a mortgagee under registration number BB269019.

[10] The respondent's circumstances are somewhat unique. He works as a tour manager. His job requires that he be away from his residence on average six months every year, sometimes more, and sometimes consecutively. During the year in which the special levy in the amount of \$4,532.33 arose, the respondent was away for eight months as it was Canada's 150 year anniversary and he was more busy than usual.

[11] Due to the nature of his employment, the respondent conducts his financial affairs electronically as much as possible. The respondent attests that when he purchased his strata unit over 10 years ago, he registered with the strata to make all his payments electronically, and requested to receive notifications by email.

[12] The respondent attests that he had a verbal conversation with petitioner's former strata manager, Mr. Drebit, explaining his employment situation and the need

to communicate by email. The respondent recalls providing Mr. Drebit with his email address however, due to the passage of 10 years, could not locate this email exchange on his computer server. The respondent was able to locate some examples of correspondence with the petitioner, via email, going back 10 years.

[13] The respondent located an email chain between that the petitioner and the respondent dating back to June 16, 2008, which involved a special levy. This email discussion appears to have been initiated by the petitioner through their former strata manager, Mr. Drebit.

[14] The respondent was also able to locate an example of correspondence with the petitioner, via email, going back to June 29, 2009. The June 29, 2009 email was a request from the petitioner to the respondent, requesting he pay a special levy in the amount of \$606.85 by July 10, 2009. This email exchange was between the respondent and the petitioner through the petitioner's accountant, Mr. Chan.

[15] The respondent further attests that he had always provided his email contact to the building caretaker. This contact person has been used in the past by the petitioner to gain access to the respondent's strata unit during the respondent's absences.

[16] The respondent has provided evidence of an email exchange between the petitioner and respondent from September 28, 2016 involving a special levy. That email exchange involves the petitioner's current strata manager, Mr. Jadavji, who has sworn affidavits in the within proceeding.

[17] The respondent was also able to provide an email exchange from Mr. Jadavji who wanted to gain access to the respondent's strata unit. Apparently the request for access had been initiated by regular mail but the respondent did not immediately respond due to his absence from his unit. During a subsequent email exchange arising from this incident, the respondents advises he is "better reached by email".

[18] The respondent attests that he has had the same email address longer than he has owned his strata unit.

[19] The petitioner sent the notice of the current special levy in the amount of \$4,532.33 to the respondent by letters dated September 29, 2017 and November 9, 2017. The petitioner did not send an email. The respondent was out-of-town during this time period and did not receive notice of the special levy or respond to it. When the petitioner did not receive any response from the respondent to their letters, they turned the matter over to their lawyers.

[20] The petitioner's lawyers, using an email address provided to them by the petitioner, contacted the respondent by email dated December 11, 2017. The email reads:

Ron,

Attached please find our letters to you dated September 29, 2017 and November 9, 2017.

To date we have not received a response from you and we now have instructions from the strata corporation to commence forced sale proceedings in the Supreme Court of British Columbia. If you would like to deal with this matter in advance of litigation being commenced please contact me by December 15, 2017. failing which, we will proceed with the collections process.

Regards,

[21] Within 24 hours of sending the email to the respondent, the respondent replied by email dated December 12, 2017. The December 12, 2017 email of the respondent offered to pay the special levy immediately. The email reads:

Hi Jennifer,

I apologize, I've been out of town for most of the last 8 months and have not received any mail from you.

The last I heard on this was that the matter was still being disputed as to who would pay how much for this.

I'm willing to settle this immediately. I had no idea it had progressed this far. I had not noticed any work being done on the elevators when I had been in the building and thought the matter was still in limbo.

How shall we proceed?

[22] The evidence of the respondent in this regard is confirmed by that of the petitioner. In an affidavit of the petitioner's paralegal sworn October 25, 2018, the paralegal confirms that she was provided with the email address of the respondent, by the petitioner, after which she emailed the respondent. The petitioner's paralegal attests "I received a response from the respondent, Ron Ruby, advising that he was out-of-town for the past eight months, has not received any mail from our office, was under the impression that the special levy was being disputed, and that he would like to settle the matter immediately".

[23] Apparently, the dispute involving the special levy was whether the commercial tenants of the strata would have to pay a share of the special levy for elevator upgrades. The commercial tenants' argument was, since they occupied the ground floor, they ought not to be required to contribute. It was the respondent's belief that this aspect of the special levy had not yet been decided, which added to the overall confusion, although it is not directly relevant.

[24] By email dated December 14, 2017 the petitioner provided the respondent with a payout statement which included a demand for the special levy and lien charges in the amount of \$ 4,637.33, and a further \$1,950 in legal costs. Again, the respondent offered to pay the entire levy, but refused to pay legal costs.

[25] By email dated January 26, 2018 the respondent advised the petitioner as follows:

Hi Jennifer,

I signed up with Baywest's website, asking to receive notifications by email.

I also provide Mina with my phone and email contact information, since I am away from home so often. She has used this to contact me in the past.

Finally, I have provided Munaz with my contact information and asked him to communicate with me by email. I have all of our previous email correspondence. I also have correspondence with other members of strata by email dating back ten years.

To say that strata did not have my email or instructions to communicate with me by email is just silly. That's the ONLY way strata has ever communicated with me in the past.

Nothing was sent to me by regular mail.

Ron

[26] The January 26, 2018 email was followed up by a further email dated January 30, 2008 which reads in part:

Hi Jennifer,

Mina is the caretaker for the building. Sometimes situations come up where access to owner's units is required, and because I am away so much, I have left Mina my contact information should something come up in my absence. She has contacted me in the past, by both phone and email, and I have been able to accommodate these requests for access my unit, or what have you. Getting in contact with me has never been an issue in the past.

Of course I do not expect strata to be calling every unit for every correspondence. Email is the logical choice. It's trivial to set up an email mailing list, and it would save strata money.

...

Strata usually communicates by delivering rolled up pieces of paper to the units. They are left in the handle of the door. I've attached a photo. I have raised this issue in the past as this essentially advertises owners absences from their units. When owners are away for protracted periods, as I often am, these pieces of paper seem to go astray.

Strata also communicates with owners by posting signs in elevators. This is how I usually become aware of issues that require my attention. The date for the last meeting regarding the elevator issue was posted, and I attended that meeting.

In that meeting there were lawyers representing 3 different sides. The commercial units did want to pay for the repair of the elevators that they did not use, and the meeting was concluded in total confusion. I expected there would be further postings to indicate what the next step would be.

There has been nothing posted, and I saw nothing happening with the elevators until quite recently. I saw nothing to suggest that there was anything that required my attention. Your initial email to me was the first I heard anything about this, and now I am essentially being asked to pay approx \$2000 in legal fees because it was too much trouble for strata to send ONE email to bring the matter to my attention.

May I ask how strata council contacted you to retain your services? Did they do so with a printed letter sent by Canada Post? Or did they perhaps call you or send you an email? I'm guessing it was one of the latter. I have a long history of correspondence with strata council because of the piping issue, as I'm sure you're well aware. That lengthy correspondence was all by email.

Strata knows how to contact me if they need to. Surely they could have sent me ONE email? I'm really not trying to be difficult or a pain for strata council, but I don't think it's unreasonable to ask that a simple email be sent in those exceptionally rare situations when they urgently need to reach me, and I haven't received their printed correspondence.

Please understand that as I work in the travel industry, I am away at least 6 months out of every year, and sometimes several months consecutively. As 2017 was Canada's 150th, it was a very busy year for me and I was away more than usual. I simply cannot be reached with regular mail or letters rolled up and put in my door handle. As I said before, I think this an incredibly mean spirited, and even vindictive approach by strata to retain your services rather than reach out to me with just ONE email.

I really don't think I'm being unreasonable here.

[27] In a further email dated February 4, 2018, the respondent states in part:

Hi Jennifer,

Apologies for the slow reply, I have a lot on my plate with work right now

I did reply to your request for the email in which I mentioned that email was the best way to contact me. I replied: "To say that strata did not have my email or instructions to communicate with me by email is just silly. That's the ONLY way strata has ever communicated with me in the past."

I've had the same gmail address for longer than I've owned my unit. Gmail does not delete, but rather archives old messages. So all of my communication will be in my archives. I've also had the same job for longer than I've owned this unit, and I've been telling people to communicate with me by email since I've been in this industry. If you call my phone, my voicemail says to send me an email rather than leave a message, as that's best way to reach me. Those messages will be in my gmail archives. It will take time to locate them, but since you say it's important, I will do so.

I received no paper correspondence from strata. Nor were an [sic] notices posted to let me know that the elevator repair were going ahead (until very recently). I was unaware that there was any money owing until you contacted me - BY EMAIL!

How did you get my email address? Of course it was given to you by strata. So basically, instead of sending me a friendly email to let me know that I had a payment due, strata retained your services, and demanded 50% more. That's just not nice and was completely unnecessary.

[28] By letter dated February 6, 2018, petitioner's counsel wrote to the respondent advising that the legal costs claimed had increased to \$2,700, and if the respondent did not pay the special levy, fines, and legal costs claimed by February 13, 2018, the

petitioner would commence forced sale proceedings and that they anticipated this would raise the legal fees claimed to the range of \$5,000 to \$10,000.

[29] The respondent did not agree to pay legal costs, and therefore the petition was filed February 21, 2018.

DISCUSSION

[30] At no time prior to the commencement of proceedings did the respondent refuse to pay the special levy sought. Indeed, he made repeated attempts to do so but the petitioner would not accept payment unless it was accompanied with the payment of all legal costs claimed. It was conceded by the petitioner, during the course of the assessment, that the purpose of commencing the forced sale proceeding was to obtain an order for legal costs, not the payment of the special levy, which the respondent accepted responsibility for, and agreed to pay.

[31] The affidavit of the current strata president takes issue with some of what the respondent alleges. The current strata president has held that office for the past two years, and before that he was on the strata council for seven years. It is his belief that there was never an online system that permitted owners to receive notice by email. He further attests that it is his belief that notices of special levies and notices to delinquent owners are always sent via regular mail.

[32] Section 61 of the *SPA* provides the legislative direction concerning the manner by which notices are to be given by a strata corporation. It provides:

Notice given by strata corporation

- 61 (1) A notice or other record or document that the strata corporation is required or permitted to give to a person under this Act, the bylaws or the rules must be given to the person,
 - (a) if the person has provided the strata corporation with an address outside the strata plan for receiving notices and other records or documents,
 - (i) by leaving it with the person, or
 - (ii) by mailing it to the address provided, or

- (b) if the person has not provided the strata corporation with an address outside the strata plan for receiving notices and other records or documents,
 - (i) by leaving it with the person,
 - (ii) by leaving it with an adult occupant of the person's strata lot,
 - (iii) by putting it under the door of the person's strata lot,
 - (iv) by mailing it to the person at the address of the strata lot,
 - (v) by putting it through a mail slot or in a mailbox used by the person for receiving mail,
 - (vi) by faxing it to a fax number provided by the person, or
 - (vii) by emailing it to an email address provided by the person for the purpose of receiving the notice, record or document.
- (2) The notice, record or document may be addressed to the person by name, or to the person as owner or tenant.
- (3) A notice or other record or document that is given to a person under subsection (1) (a) (ii) or (b) (ii) to (vii) is conclusively deemed to have been given 4 days after it is left with an adult occupant, put under the door, mailed, put through the mail slot or in the mailbox, faxed or emailed.

[33] The strata is not restricted to a single method of delivery. Multiple delivery methods are permissible, and may be warranted in particular circumstances.

[34] The current strata president attests that the respondent has a prior history of not paying special assessments on time. The petitioner has produced a ledger showing special levies being in arrears in the past. The respondent explained that he, and a group of 29 owners, had opposed a particular special levy in the past. That matter was eventually settled and the levy paid. During the period of dispute however, the special levy went unpaid which appears on the ledger. Once the dispute was settled, the levy was paid and that was the end of the matter.

[35] The current strata's president attests that the building's caretaker was not a contact person on behalf of the strata, nor was she instructed to act on its behalf with respect to the respondent or other owners of the strata. They produced a job description of the caretaker to illustrate her circumscribed duties.

[36] The strata is comprised of 110 units and has, according to its current president, a "fairly large operating budget".

[37] The affidavit of the current strata president does not directly address the past email chains between the petitioner and respondent, or provide any explanation why they did not attempt to contact the respondent by email prior to handing the matter over to their lawyers.

[38] The respondent was able to demonstrate specific examples of communications between the petitioner and himself via email regarding past special levies. These involve email exchanges between the respondent and the petitioner's former strata manager, Mr. Drebit, in June 2008; the petitioner's accountant, Mr. Chan, in June 2009; and, the petitioner's current strata manager, Mr. Jadavji.

[39] In addition to email exchanges regarding special levies, there are email exchanges involving Mr. Jadavji requesting access to the respondent's strata unit by "Fire Pro" and "Design Roofing" for strata purposes, access which the respondent provided.

[40] The respondent also had a history of dealing directly with the petitioner's building manager by email. Whether or not the building manager had actual authority to do so, she did communicate with the respondent, via email, for strata purposes. There is an email from Mr. Jadavji thanking the respondent for leaving a cheque payable to the strata with the building manager.

[41] On all of these occasions the respondent replied to the petitioner's email correspondence in a timely fashion. Indeed, the respondent replied within 24 hours to the petitioner's lawyer's email regarding the special levy at issue in the within proceeding.

[42] The respondent's evidence is that, over 10 years ago, he requested the petitioner's former strata manager, Mr. Drebit, contact him by email given the nature of his job. While this specific email has been lost with the passage of time, the email evidence available indicates a pattern going back almost 10 years whereby the petitioner, through its various representatives, regularly communicated with the respondent, by email, for strata purposes.

[43] Other than the petitioner's current president indicating its policy to communicate via regular mail, there is no explanation offered by the petitioner as to why the respondent was not contacted by email, on this occasion, prior to handing the matter over to their lawyers. It is ironic that the petitioner's lawyers, once retained, contacted the respondent by email, the address of which was given to them by the petitioner. It begs the question why the petitioner did not contact the respondent themselves, by email, prior to retaining counsel, as they had in the past through their accountant on at least one occasion, or their strata managers, as they had on multiple occasions in the past.

[44] The respondent immediately offered to pay the special levy upon receipt of the first email. There is no reason to believe he would not have done so if the first email had come from the petitioner directly, through their accountant, strata manager, building manager, or anyone else with authority.

[45] In all the circumstances, the decision by the petitioner to hand the matter over to their lawyers before attempting to make email contact was not reasonable. Those circumstances include the respondent's unique situation of being absent from his strata unit for extended periods of time by reason of his employment; the petitioner's knowledge in this regard; the respondent's past dealings with the petitioner regarding special levies and access to his unit, via email; and, the petitioner's failure to contact the respondent via email prior to putting the matter into the hands of their lawyers. In my view, the legal costs which flow from that decision were likewise unreasonable in their entirety.

[46] In *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377 the court considered the phrase “reasonable legal costs” in s. 118(a) of the *SPA*.

[47] The court held that s. 118 entitles a strata corporation to add the actual legal costs incurred in registering and enforcing a lien to the amount owing under the lien, provided those costs are reasonable. The costs recoverable as “reasonable legal costs” were to include both those costs incurred before, and during the proceeding. Underlying this approach was the court’s view that strata owners who comply with the bylaws and rules of the strata corporation ought not to be burdened with remedying infractions committed by non-compliant owners. In *Baettig*, supra, the Court of Appeal stated:

42 In my view, the words of s. 118(a) of the *SPA*, when examined in light of the section’s legislative history, purpose, and context, support an interpretation that permits a strata corporation to add the actual reasonable legal costs of registering and enforcing a lien to the amount owing under the lien.

...

50 It is clear that “reasonable legal costs” in s. 118(a) applies to both costs incurred in registering a lien out of court and those incurred enforcing a lien in court. In my view, the legislature’s decision to amend s. 118 in this way supports the view that the quantum of legal costs that may be added to a lien is now the same in both contexts.

...

63 Division 6 of Part 6 of the *SPA* provides the framework by which strata corporations can address the failure of a strata owner to meet his or her shared obligations. The *SPA* is premised on the fair division of expenses by statutory formula. As the appellant points out, “each owner must pay amounts assessed to satisfy common expenses which are intended to manage and preserve the investments of all owners in their collective best interests”. The strata corporation has no authority to forgive arrears owed by a delinquent owner and has an obligation to ensure that compliant owners are not unfairly burdened by contributions that exceed their lawful share.

...

65 Sections 116-118 of the *SPA* are remedial. They shift the burden of costs associated with collecting strata arrears to the delinquent owners who have failed to meet their obligations. Accordingly, the provision must be given “such fair, large and liberal construction and interpretation as best ensures the attainment of its objects”: *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 8.

66 In my view, it is consistent with the remedial objective of ss. 116-118 and with the purposes of the SPA as a whole to interpret s. 118 as providing a strata corporation with the means to recover costs reasonably incurred in registering and enforcing a lien against a delinquent strata owner. If actual reasonable legal costs are not included in s. 118(a), legal fees not covered by the tariff must be borne by non-delinquent strata owners by way of increased common fees. This would further increase the financial burden on owners who are paying their share. In my view, this interpretation would be inconsistent with the philosophy and scheme of the SPA.

...

68 In my view, the same legislative intent underlies both ss. 133 and 118 of the SPA -- that strata owners who comply with the bylaws and rules of the strata corporation should not have to shoulder the financial burden of remedying infractions committed by non-compliant owners.

[48] In *Baettig*, supra, the BC Court of Appeal further emphasized that “reasonable legal costs” encompassed only those costs which were “reasonably necessary”. The term reasonable legal costs provides protection from excessive charges under the umbrella of the lien. The court states:

79 Further, it is my view that adequate safeguards are built into the SPA. Section 118(a) provides that only reasonable legal costs may be added to the amount owing under the lien. In other words, a strata corporation is entitled to add to the amount owing under the lien its actual legal costs subject to this qualification: those costs must have been reasonably necessary. I note, in this regard, that a similar conclusion has been reached in a similar context and on similarly worded legislation in Ontario: see, for example, *Mancuso v. York Condominium Corporation No. 216*, 2008 CanLII 31418 (Ont. S.C.J.) at para. 6; *York Condominium Corporation No. 345 v. Qi*, 2013 ONSC 4592 at paras. 14-19, 22.

80 In my view, safeguards against the inclusion of excessive legal charges under the umbrella of the lien are built into the wording of the SPA. Only reasonable legal costs may be added to the amount owing under the lien.

[49] Supreme Court Civil Rule 1-3 provides that the object of the Supreme Court Civil Rules is to secure the just, speedy, and inexpensive determination of every proceeding on its merits, and in doing so, the notion of proportionality must be considered. What is just, speedy, and inexpensive, is to be proportionate, so far as practicable, to the amount involved in the proceeding, the importance of the issues in dispute, and the complexity of the proceeding.

[50] In my view, this entire proceeding could have been avoided had the petitioner sent a single email to the respondent, demanding payment of the special levy, as it had in the past, before handing the matter over to their lawyers and incurring legal costs. The respondent was not a “delinquent owner” in the context of *Baettig*, supra. Upon receipt of the first email demanding payment of the special levy the respondent promptly acknowledged his liability and agreed to pay. He did not agree to pay legal fees which he felt were needlessly incurred. Regretfully, he was not permitted to pay the special levy unless it was accompanied by full payment of the legal fees claimed. The escalating claim for legal fees became a club to cow the respondent into submission.

[51] The legal proceeding that was eventually initiated was meant to obtain an order by which the petitioner could secure the payment of their legal costs which the respondent refused to pay. Legal costs became an end in itself. The legal costs incurred by the petitioner in this matter were not reasonable, or proportional, in the circumstances. Section 118(a) of the *SPA* is not a *carte blanche* entitlement to full legal indemnity regardless of the circumstances and conduct giving rise to the proceeding.

DISPOSITION

[52] The legal costs claimed by the petitioner are disallowed in their entirety.

[53] The respondent is entitled to his costs of the registrar’s hearing which are assessed at \$750 inclusive of disbursements.

“REGISTRAR NIELSEN”