IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan K 27 v. Caron,* 2019 BCSC 1046

Date: 20190627
Docket: S57091
Registry: Kamloops

Between:

The Owners, Strata Plan K 27

Petitioner

And

Dean Gregory Caron,
The Public Guardian and Trustee of British Columbia

Respondents

Before: Master McDiarmid

Reasons for Judgment

Counsel for the Petitioner appearing by teleconference:	V.S. Chahal
Counsel for the Respondent, The Public Guardian and Trustee of British Columbia:	T.J. Decker
Place and Date of Hearing:	Kamloops, B.C. May 27, 29, and June 19,2019
Place and Date of Judgment:	Kamloops, B.C. June 27, 2019

[1] This is an assessment of the petitioner's legal costs, fees and other disbursements attributable to its enforcement of its bylaws.

[2] On November 5, 2018, the petitioner issued a Petition seeking declarations that the respondent, Dean Gregory Caron ("Dean Caron") has contravened bylaws and rules of the petitioner. The petitioner also sought an order that the respondent, Dean Caron stop contravening the bylaws, restraining him in certain ways as set out in the Petition. An order permanently removing him from the unit he owns, Unit 62 - 800 Southill Street, Kamloops, B.C. ("Unit 62"), an order restraining him from entering the rest of the strata plan KAS 27, and then several orders seeking other relief including requiring Dean Caron to sell Unit 62.

[3] The Petition particularizes the breaches. They are summarized in paragraphs 12-17 of the Petition as follows:

> 12. An Order that Dean Caron shall not purchase, lease, rent or reside in any other strata lot of Strata Plan K 27;
>
> 13. An Order that if Dean Caron fails to comply with any term of the Order granted at the hearing of this Petition, the Petitioner may move to enforce it on 48 hours' notice or as allowed by the Court;
>
> 14. An Order that Dean Caron pay an insurance deductible to the Petitioner in the sum of $2,500.00 within 15 days of the date of the order granted at the hearing of this Petition;
>
> 15. An Order that Dean Caron pay all reasonable costs incurred by the Strata Corporation to remedy contraventions of its bylaws pursuant to s. 133 of the *Strata Property Act*, including reasonable costs of this Petition;
>
> 16. An Order restraining Dean Caron and his occupants or visitors from loitering on the Petitioner's common property;
>
> 17. An Order that the Petitioner be entitled to register a certificate of pending litigation against Strata Lot 62;

[4] The Public Guardian and Trustee ("PGT") is the committee of the estate of Dean Caron under the provisions of the *Patients Property Act*, R.S.B.C. 1996, c. 349. Dean Caron suffered a traumatic brain injury in approximately 1996. After this injury, the PGT was appointed the committee of the estate of Dean Caron.

[5] For a number of years Dean Caron lived in Unit 62 with his mother. She relocated to Edmonton approximately five years ago.

[6] Dean Caron has a brother, Richard Caron.

[7] Many of the relevant facts which form the background to this costs assessment are found in the Petition and supporting documentation in Kamloops registry court file number 56894, wherein Dean Caron by his litigation guardian, the PGT brought a Petition against the brother, Richard Caron. The complaints of this petitioner, The Owners, Strata Plan K 27 ("the Strata Corporation") have generally been caused by the actions of Richard Caron and people he has invited to attend on the property and on to the Strata Corporation's property.

[8] By Notice of Hearing filed November 29, 2018, the Strata Corporation sought to have this Petition heard in New Westminster on December 13, 2018.

[9] The PGT retained counsel, Tara Decker. She was the lawyer who issued Kamloops registry Petition number 56894.

[10] Counsel for the Strata Corporation and counsel for the PGT agreed that it made sense to have both Petitions heard together. Both lawyers spoke to and signed a consent order before Madam Justice Brown on February 4, 2019, which transferred the Petition to the Kamloops registry for all purposes. The matters were then heard together before Madam Justice Burke on March 4, 2019.

[11] Neither Dean Caron nor the PGT filed any Response to this Petition.

[12] Although Madam Justice Burke's order is not a consent order, it is an order that was made without opposition. It confirmed that Dean Caron contravened the petitioner's bylaws 3, 4, 5 and 9 and contravened the petitioner's rules 4 and 10. It ordered Dean Caron to stop contravening the petitioner's bylaws and rules, and restrained and enjoined him from certain activities.

[13] Paragraph 6 of the order is as follows:

> 6. the Respondent, Dean Caron, will pay the Petitioner's reasonable legal costs for these proceedings to be assessed by a Registrar of the Supreme Court.

[14] This order term is consistent with the wording of s. 118 of the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*], which is as follows:

> **Costs added to amount owing**
>
> 118 The following costs of registering a lien against an owner's strata lot under section 116 or enforcing a lien under section 117 may be added to the amount owing to the strata corporation under a Certificate of Lien:
>
> (a) reasonable legal costs;
>
> (b) land title and court registry fees;
>
> (c) other reasonable disbursements.

[15] The interpretation of s. 118, including its legislative history is found in the decision of the Court of Appeal in *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377, where Mr. Justice Fitch sets out the rationale for such an order term by analyzing the legislative framework, discussing the application of the legislative framework and then concluding that the strata corporation is to add reasonable legal costs of registering and enforcing a lien to the amount owing under the lien.

[16] Following his analysis, Fitch J.A. concludes at paras. 78-89 of the decision as follows:

> **(g) Protection from Excessive Charges under the Umbrella of the Lien**
>
> [78] In *Gies* at para. 12, the Court emphasized that the rights of third parties, usually mortgagees, are affected by the lien provisions of the *SPA*. The safeguards in the established taxation process were determined to be necessary and appropriate to protect third parties against "excessive charges under the umbrella of the lien". The concern is a legitimate one with respect to both third-party charge holders and delinquent strata owners. But I do not believe that this concern significantly informs the interpretation of s. 118(a).
>
> [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.

[81] Further, there exists a mechanism for the assessment of legal costs to ensure that what is added to the amount owing under the lien reflects only those costs reasonably necessary to register the lien and conduct the enforcement proceeding. In this regard, Rule 18-1 of the *Civil Rules* provides as follows:

> (1) At any stage of a proceeding, the court may direct that an inquiry, assessment or accounting be held by a master, registrar or special referee;
>
> (2) The court may direct that the result of an inquiry, assessment or accounting be certified by the master, registrar or special referee and, in that event, the certificate, if filed under subrule (9) is binding on the parties to the proceeding.

Rule 18-1(12) provides that the court may give special directions as to the manner in which an assessment is to be taken or made.

[82] Section 9 of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77 empowers this court to make or give any order that could have been made by the court appealed from.

[83] I would direct the registrar of the Supreme Court of British Columbia to conduct an assessment under Rule 18-1 of the *Civil Rules* as to whether the costs claimed by the Strata pursuant to s. 118 of the *SPA* were reasonably necessary to register the lien and conduct the enforcement proceedings. Further, I would direct that the registrar's assessment be certified and provided to a requesting party.

VI. Summary of Disposition

[84] For the reasons aforesaid, I would allow the appeal and set aside the orders made below.

[85] The proceeds of the sale of the unit are currently being held in trust.

[86] I would grant judgment in the appellant's favour for the "amount owing under the lien".

[87] The "amount owing under the lien" shall include the appellant's reasonable legal costs incurred in registering and enforcing the lien, land title and court registry fees and other reasonable disbursements.

[88] Assessment of the Strata's account for legal costs, fees and other disbursements attributable to the registration and enforcement of the lien is referred to the registrar of the Supreme Court of British Columbia pursuant to Rule 18-1. Legal costs, fees and other disbursements determined by the registrar to have been reasonably incurred in registering the lien and prosecuting the petition shall be allowed and added to the amount owing under the lien. The registrar's assessment shall be certified and the certificate provided to a requesting party.

[89] The respondent is entitled to notice of the assessment appointment.

[17] Accordingly, a strata corporation is entitled to add to the amount owing under any lien its actual legal costs subject to one qualification: those costs must have been reasonably necessary.

[18] In accordance with the Court of Appeal decision, this is a registrar's hearing to determine legal costs, fees and other disbursements which have been reasonably incurred in prosecuting the Petition.

[19] The Appointment filed May 3, 2019, set the date for hearing for the "review of the bill of the Petitioner".

[20] Registrars routinely conduct "reviews" of lawyers' accounts pursuant to Part 8 of the *Legal Profession Act*, S.B.C. 1998 c. 9 [*LPA*]. *LPA* s. 71 sets out matters to be considered by the registrar on a review. Section 71 is as follows:

> **Matters to be considered by the registrar on a review**
>
> 71 (1) This section applies to a review or examination under section 68 (7), 70, 77 (3), 78 (2) or 79 (3).
>
> (2) Subject to subsections (4) and (5), the registrar must allow fees, charges and disbursements for the following services:
>
> (a) those reasonably necessary and proper to conduct the proceeding or business to which they relate;
>
> (b) those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.
>
> (3) Subject to subsections (4) and (5), the registrar may allow fees, charges and disbursements for the following services, even if unnecessary for the proper conduct of the proceeding or business to which they relate:
>
> (a) those reasonably intended by the lawyer to advance the interests of the client at the time the services were provided;
>
> (b) those requested by the client after being informed by the lawyer that they were unnecessary and not likely to advance the interests of the client.
>
> (4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including
>
> (a) the complexity, difficulty or novelty of the issues involved,
>
> (b) the skill, specialized knowledge and responsibility required of the lawyer,
>
> (c) the lawyer's character and standing in the profession,

> (d) the amount involved,
>
> (e) the time reasonably spent,
>
> (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
>
> (g) the importance of the matter to the client whose bill is being reviewed, and
>
> (h) the result obtained.
>
> (5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.

[21] The circumstances set out in s. 71(4) are essentially a codification of *Yule v. Saskatoon (City),* (No. 4) 1 D.L.R. (2d) 540. This decision of Chief Justice Martin of the Saskatchewan Court of Appeal confirmed the decision of Justice Thomson of the Saskatchewan Court of Queen's Bench, *Yule v. Saskatoon* (1955)*,* 16 W.W.R. (N.S.) 305, and sets out the principles for assessing remuneration of barristers and solicitors.

[22] Cost assessments, including assessments of special costs generally conducted in accordance with the *Supreme Court Civil Rules,* B.C. Reg. 56/2019. Rule 14-1(1)-(3) and (5) are as follows:

> **How costs assessed generally**
>
> (1) If costs are payable to a party under these Supreme Court Civil Rules or by order, those costs must be assessed as party and party costs in accordance with Appendix B unless any of the following circumstances exist:
>
> (a) the parties consent to the amount of costs and file a certificate of costs setting out that amount;
>
> (b) the court orders that
>
> (i) the costs of the proceeding be assessed as special costs, or
>
> (ii) the costs of an application, a step or any other matter in the proceeding be assessed as special costs in which event, subject to subrule (10), costs in relation to all other applications, steps and matters in the proceeding must be determined and assessed under this rule in accordance with this subrule;
>
> (c) the court awards lump sum costs for the proceeding and fixes those costs under subrule (15) in an amount the court considers appropriate;

(d) the court awards lump sum costs in relation to an application, a step or any other matter in the proceeding and fixes those costs under subrule (15), in which event, subject to subrule (10), costs in relation to all other applications, steps and matters in the proceeding must be determined and assessed under this rule in accordance with this subrule;

(e) a notice of fast track action in Form 61 has been filed in relation to the action under Rule 15-1, in which event Rule 15-1 (15) to (17) applies;

(f) subject to subrule (10) of this rule,

(i) the only relief granted in the action is one or more of money, real property, a builder's lien and personal property and the plaintiff recovers a judgment in which the total value of the relief granted is $100 000 or less, exclusive of interest and costs, or

(ii) the trial of the action was completed within 3 days or less,

in which event, Rule 15-1 (15) to (17) applies to the action unless the court orders otherwise.

Assessment of party and party costs

(2) On an assessment of party and party costs under Appendix B, a registrar must

(a) allow those fees under Appendix B that were proper or reasonably necessary to conduct the proceeding, and

(b) consider Rule 1-3 and any case plan order.

Assessment of special costs

(3) On an assessment of special costs, a registrar must

(a) allow those fees that were proper or reasonably necessary to conduct the proceeding, and

(b) consider all of the circumstances, including the following:

(i) the complexity of the proceeding and the difficulty or the novelty of the issues involved;

(ii) the skill, specialized knowledge and responsibility required of the lawyer;

(iii) the amount involved in the proceeding;

(iv) the time reasonably spent in conducting the proceeding;

(v) the conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the proceeding;

(vi) the importance of the proceeding to the party whose bill is being assessed, and the result obtained;

(vii) the benefit to the party whose bill is being assessed of the services rendered by the lawyer;

> (viii) Rule 1-3 and any case plan order.
>
> …
>
> **Disbursements**
>
> (5) When assessing costs under subrule (2) or (3) of this rule, a registrar must
>
> (a) determine which disbursements have been necessarily or properly incurred in the conduct of the proceeding, and
>
> (b) allow a reasonable amount for those disbursements.

[23] As can be seen, sub-sub Rule 14-1(3)(b) contains language somewhat analogous to the *LPA* s. 91(4), utilizing some of the factors set out in the *Yule* decisions.

[24] As is apparent from wording of the Appointment and from Fitch J.A.'s reasons, this hearing is not a costs assessment pursuant to Rule 14-1, nor is it a *LPA* review.

[25] Although this is not an assessment of special costs, I was assisted in my assessment by reviewing the principles applicable to special costs assessments set out by Registrar Cameron, as he then was, in *567 Hornby Apartment Ltd. v. Le Soleil Hospitality Inc*., 2016 BCSC 1340.

[26] One of the issues faced by Registrar Cameron was the necessity or alternatively the propriety of certain disbursements, and in particular, the disbursement in that case for real time reporting.

[27] At paras. 115-122, Registrar Cameron writes as follows:

> [115] In support of the charge for real time reporting, counsel for Le Soleil relied upon Mr. McFee's opinion that in a lengthy trial, where credibility of the parties and key witnesses is central to the issues before the court, real time reporting and daily transcripts can be a necessary and proper disbursement and were in this case, given the nature and complexity of the factual issues.
>
> [116] Counsel also referred to the observations of Justice Dickson on the importance of credibility to the outcome of the case.
>
> [117] Counsel for Le Soleil made reference to the following authorities:
>
> - In *Carlson v. Tylon Steepe Development Corp*., 2008 BCCA 179, the Court of Appeal found that if the standard of necessity is met, the cost

of real time transcripts will be ordered, and the Court relied on Madam Justice Boyd's comments in C.(I.R.) v. C.(S.), 2005 BCSC 1640, in respect of the standard of necessity that must be met (para. 43) (emphasis added):

> [27] I agree that in many cases, the ordering of real time reporting is a sheer luxury and ought not to be considered a necessity. However here, the real time reporting was of particular importance, since the outcome turned on a precise and extensive cross examination of each of the plaintiffs and a comparison of their individual accounts with those of the psychologist and each other. In my view, while counsel's longhand or computer trial notes of witnesses, other than the plaintiffs, were likely sufficient (particularly with two defence counsel in attendance), the ordering of real time reporting of each of the plaintiffs was indeed justifiable. The defendants will be entitled to real time reporting of the plaintiff's evidence.

- In *ICBC v. Eurosport Auto Co. Ltd.*, 2008 BCSC 935 Mr. Justice Parrett considered Carlson and allowed disbursements for real time reporting on as follows:

> [32] This is a case in which the exact words uttered at various stages of the trial and the pre-trial proceedings were frequently of substantial moment. This was the case in which attempts were made to force the withdrawal of counsel for the plaintiff for a variety of reasons, and it was a case in which the defendants sought to use each and every advantage. The detail in this case, the extent to which on occasion the defendant's position seemed to alter and the fact that plaintiff's counsel were dealing with in-person litigants who were adopting those techniques all dictated, in my view, the necessity of extreme caution.

[118] In my view, Justice Parrett's comments are very apposite to this case and I allow the real time reporting charges as claimed.

[119] In allowing this disbursement, I have also taken into account that I determined that it was not necessary to have three counsel attend at trial. Effectively, the real time reporting served as "another set of ears" to aid counsel with preparation during the trial.

[120] As for the charges for the experts retained by Le Soleil to provide computer analysis and to provide an opinion as to the economic losses suffered due to the loss of use of the hotel strata units, I am satisfied that the amounts claimed are reasonable in the absence of any evidence to the contrary.

[121] I have also taken into account that while these accounts for the two experts are significant that the amount as stake is a factor that I should properly consider. (*Kern Chevrolet Oldsmobile v Canadian Pacific Ltd.* (1986) 7 B.C. L. R. (2d) 170 (C.A.)

[122] I will not embark upon a detailed analysis of the remaining disbursements in issue, other than to say that I find that some modest reduction is proper to account for the possibility that some of these charges

> should be reflected as being related to the other litigation and to account for duplication or inefficiency in copying and scanning that is almost impossible to avoid in lengthy and complex litigation. In this case, in particular, a greater number of copies might have been made due to the number of counsel involved for Le Soleil and for internal purposes.

[28] Another decision which I considered is the decision of Master Chamberlist, as he then was, in *Allen v. Homan*, 45 B.C.L.R. (3d) 211. That was an assessment of party party costs in a situation where the successful party had retained out of town counsel. At paras. 13-20, Master Chamberlist writes:

> [13] As a result, the remaining issues to be determined are - Firstly, the use of the agent solicitor relative to his attendances to file a reply in the Supreme Court Registry in Prince George, attending the registry to file the reply, and delivering a copy to the solicitors for the defendants; Secondly, the solicitor agent's fees for appearing in Supreme Court Chambers to speak to the trial list and reporting; Thirdly, the units claimed under item 36 representing travel by a solicitor to attend at any trial, hearing, application, examination, reference, inquiry, assessment or other analogous proceeding where held more than 40 kilometers from the place the solicitor carries on business for each day the solicitor travels and the expenses claimed relative to that travel and the disbursements being some $2,327.37.
>
> [14] Relative to the solicitor agent's fees for $79.47, I am of the view that the engagement of a solicitor to attend to file the reply was not a reasonable expenditure and it is therefore disallowed. It could have been done by mail without the engagement of an agent and in the absence of any urgency, a copy could have been mailed or faxed to defence counsel. Given the date of the agent's work, I assume that this was the reply to the written argument provided by the defendant which had been ordered by the trial judge.
>
> [15] The balance of this decision, will deal solely with the issue of the plaintiffs' use of non-resident counsel, including attendance to speak to the list and attendance at trial.
>
> [16] Relative to this issue, the defendants submits that the defendants should not be called upon to pay costs associated with Mr. Daley's attendance at the various interlocutory proceedings, discoveries, appointments, and at trial. Relative to item 36 of the tariff, the defendants submit that if I do allow the number of units contemplated under this tariff item, being 2 units per day, then I am to be governed by the decision of this court in *Streifel v. First Heritage Savings Credit Union*, [1992] B.C.J. No. 1459, June 24, 1992, No. C855732, Vancouver (S.C.). In that case, the court said, at page 5, line 8:
>
> > In earlier days there was some justification for awarding a fee for travel while counsel sat waiting in a distant town outside court hours. He was away from his desk and unable to work for other clients. Today that is less likely to be the case. The appearance of the lap top computer has made the office portable from place to place so that

> files can be worked on away from the office. If the learned Registrar allowed for more than two days of travel, then absent authority I think that was an error in principle. . . .

[17] In applying this principle, I am of the view that if the cost of retaining out-of-town counsel is to be borne in whole or in part by the defendant and item 36 applies, then only the actual days of travel ought to be allowed. By the same token, if any of those days of travel are allowed, then pursuant to item 36, a reasonable disbursement should also be allowed. Relative to this point, Justice Spencer in *Streifel,* supra, said at page 4, line 23:

> I had thought there were cases on the point from earlier days when counsel went from their home towns to assize centres or to the larger cities where appeal courts sat and travel was a slower business than it is now. I had in mind particularly cases of appeals to the Supreme Court of Canada or to the Privy Council and the fee items that were allowed to counsel while away from their homes. My search however has failed to locate any authorities, nor have counsel been able to assist me with them. . . .

[18] In British Columbia Practice, McLachlin & Taylor, relative to item 36, units and disbursements thereunder, at Appendix B - 83, the learned authors say:

> Travel time and travelling and subsistence expenses will not be allowed where there is absolutely no connection between the place of business of the lawfirm and any factor relevant to the law suit. In the absence of good reason (e.g., absence of competent counsel at the place of trial) for retaining counsel near the place of trial, the extra costs resulting from the lack of proximity to the place of trial must be borne solely by the client: *Cordick v. Gibbs*, unreported, August 8, 1986, No. F841797 New Westminster Registry, (SC-Registrar); *Metecheah v. Achla*, unreported, June 22, 1992, No. 6301 Fort St. John Registry (SC-M); and *Swyers v. Drenth*, [1995] B.C.J. No. 2184, October 17, 1995, No. 9068 Prince Rupert Registry (SC).
>
> Where the plaintiff moved from Quesnel to the lower mainland and retained counsel there for a trial in Prince George, travel costs were allowed because the plaintiff had been advised by her former counsel in Quesnel (to whom she had been unable to provide the retainer requested) to retain representation in her area of residence and because it would not be reasonable to require the plaintiff to journey to Quesnel to instruct local counsel: *Moore v. Dhillon*, unreported, July 25, 1992, No. 01043 Quesnel Registry (S.C.).

[19] These cases are relied upon by the defendants in support of its contention that travel time and expenses related thereto and the retention of agents to appear at the call day should not be borne by the defendants.

[20] A review of the *Cordick* decision and the *Metecheah* decision indicates, in both instances, out-of-town counsel were retained in circumstances where there was a clear finding by the assessing officer that there were competent counsel available in the locale of trial. In both cases, units claimed under Item 36 and relative disbursements were disallowed.

[29] Paragraphs 49-50 are as follows:

> [49] Ultimately, the question is -- Is it reasonable in all of the circumstances of a particular case to have costs associated with the retention of out-of-town counsel visited upon the unsuccessful party?
>
> [50] In the circumstances of the facts of this case, I have concluded that the plaintiffs have established the onus of demonstrating the necessity and reasonableness of continuing to utilize the services of Mr. Daley in the prosecution of her case. Mr. Daley had been her counsel at the inception of the case, and the case was vigorously defended both as to liability and quantum. The cost to the client in having to engage new counsel would have been prohibitive and given the stage of the proceedings when Mr. Daley relocated to Kelowna would, in my view, have most certainly resulted in a loss of the reserved trial date.

[30] Some statutes have rules requiring local venue. Section 21 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [*LEA*] and s. 27 of the *Builders' Lien Act,* S.B.C. 1997, c. 45 [*BLA*], which incorporates s. 21 of the *LEA* are two examples.

[31] There is no such local venue requirement in the *SPA*.

[32] Counsel for the respondents properly conceded that the inquiry before me was to determine reasonable legal costs, including disbursements, to be assessed in accordance with Fitch J.A.'s decision and in particular para. 88 of that decision.

[33] At the June 19, 2019 hearing, Mr. Chahal, on behalf of the petitioner clarified that the petitioner was seeking total legal costs in the amount of $38,343.28.

[34] This was broken down as set out in a letter sent to the registry and to Ms. Decker on June 16, 2019 as follows:

> The total reasonable legal costs sought pursuant to the Order of the Honourable Madam Justice Brown are as follows:

Total legal fees from May 7, 2018 to March 4, 2019:		$24,589.00
Total legal fees to prepare, review and argue costs:	+	$3,790.50
Subtotal of legal fees:	=	$28,379.50
Tax on legal fees:	+	$3,405.54
Total legal fees including tax:	=	$31,785.04
Total disbursements claimed:	+	$6,558.24

Total reasonable legal costs claimed in assessment: = $38,343.28

All of which is respectfully submitted.

[35] The binder provided to me for this assessment contained the Appointment, a copy of Madam Justice Burke's order, and then the following accounts attached to the Appointment:

	Date:	**Fees:**	**Total Amount:**
a	June 5, 2018	$630.00	$710.88
b	July 3, 2018	$630.00	$714.53
c	August 7, 2018	$180.00	$210.53
d	September 5, 2018	$925.00	$1,105.91
e	November 2, 2018	$4,700.00	$5,572.52
f	December 13, 2018	$2,595.00	$4,410.74
g	January 11, 2019	$3,000.00	$4,115.15
h	February 4, 2019	$2,600.00	$3,288.16
i	March 8, 2019	$8,800.00	$12,589.27

[36] Also attached to the Appointment were five pages printed out from the petitioner's law firm's computer setting out a description of work done, hours and fees billed the file commencing with an entry of May 7, 2018 and concluding with an entry of March 4, 2019, with several additional entries for anticipated time. Also attached to the Appointment and included in the five pages of computer printouts were two pages of additional time details and disbursement details commencing with an entry on February 28, 2019, concluding with a time entry on May 2, 2019 and then some disbursement details from May and June of 2018, which I assume were put on simply because they were on the same page as what is referred to as "page 10" of the computer printout.

[37] In addition, I was provided with the third affidavit of Vivien Hsu, made and filed May 3, 2019. Vivien Hsu is a legal assistant employed by Hamilton and Company, counsel for the petitioner. She set out the three orders which were made in this file, affidavits filed by the petitioner and then summarized work done on the file. The affidavit proved the disbursements claimed in the sense of proving expenditures where actual monies were paid, such as for airfare, and also proved

the in-house disbursements, such as photocopying, by explaining how they are tracked and providing proof that what was billed to the petitioner was accurate.

[38] I was also provided with the affidavit of G. Stephen Hamilton, made May 23, 2019 and filed May 24, 2019. Mr. Hamilton was the lawyer primarily responsible for conduct of the petitioner's case. His email set out the history of dealing with counsel for the respondents, including the request by Ms. Decker, lawyer for the PGT, made on December 12, 2018 to agree to adjourn the hearing of the petition scheduled for the following day. The affidavit set out that the petitioner and the respondents consented to have the proceedings transferred to the Kamloops Supreme Court Registry.

[39] Mr. Hamilton also set out correspondence dealing with some of the disbursements contested by the respondents, including the costs associated with Mr. Hamilton's travel expenses incurred as a result of his appearance in the Kamloops Supreme Court.

[40] Respondents' counsel submits that with respect to the fees charged, some of the fees and the hourly rate should be reduced because they result from the retention by the Strata Corporation of out of town counsel.

[41] Counsel for the respondents also submits that I should disallow or reduce some of the disbursements on the same basis. Included in this submission is the cost of the flights from Kamloops to Vancouver and return, which total $601.30.

[42] The respondents submit that the RCMP invoice for $740.00 is not reasonable, but is an extravagance.

[43] Finally, the respondents submit that if I determine that the RCMP account is an extravagance, the photocopying claim should be reduced, since the exhibits attached to the second affidavit of Vivien Hsu, made February 6, 2019, as Exhibits C, D, E and F (documents from the RCMP relating to Unit 62 for years 2016, 2017, 2018 and the first 16 days of 2019) are also unnecessary and are what would be considered an extravagance or luxury.

[44] While the petitioner has the obvious right to obtain counsel of its choice, it is only entitled to be reimbursed legal fees and disbursements which are reasonably incurred.

[45] The cost of flights from Kamloops to Vancouver and return was $601.30. The other associated travel costs include taxis to and from Vancouver Airport in the amount of $120.11, a hotel bill of $88.92 and what is noted on invoice number 12255 (the March 8, 2019 account as “travel expense – car $55.21”).

[46] As noted above, there is no local venue rule; the petitioner’s counsel started this proceeding in the registry nearby to where the law firm is located. Had the petitioner’s counsel not consented to have the proceedings heard at the same time in Kamloops, it is probable that the respondents’ counsel would have had to come to New Westminster and would have incurred approximately the same disbursements. Accordingly, those disbursements are allowed as claimed.

[47] The petitioner is claiming the cost of obtaining RCMP records, for which they were billed $740.00. The petitioner is also claiming 3,774 photocopies and laser prints at $.25 per copy and 812 pages of scanning at $.15 per page.

[48] The respondent says that the obtaining of the RCMP records was a luxury or the result of over zealousness, and that it is not reasonable for Dean Caron to have to reimburse the petitioner for expenses associated with obtaining the RCMP file and attaching it to an affidavit.

[49] During submissions, I reviewed the court file. The second affidavit of Vivien Hsu, made February 6, 2019, filed February 7, 2019, attaches as Exhibit A, a copy of Master Caldwell’s order pronounced January 16, 2019, ordering production of the records, and then attaches as Exhibit B, C, D, E, F and G a covering letter from the RCMP, documents relating to Unit 62 for year 2016, documents relating to Unit 62 for year 2017, documents relating to Unit 62 for year 2018, documents relating to Unit 62 for first sixteen days of 2019, and a copy of Dean Caron’s statement of

account with the Strata Corporation together with copies of cheques from the PGT. Exhibits B - F go from exhibit pages 5-369, so 365 pages from the RCMP.

[50] The application in front of Master Caldwell was filed December 21, 2018, along with an affidavit from a legal assistant at Hamilton and Company attaching the Petition filed by the PGT on behalf of Dean Caron seeking relief against his brother and the affidavit of Lyndsey Todoruk sworn and filed in that proceeding. Lyndsey Todoruk is a case manager employed by the PGT. He set out in his affidavit his history of the involvement of the PGT with Dean Caron resulting from being Dean Caron's traumatic brain injury in March of 1997. The PGT apparently became involved according to the Todoruk affidavit on November 30, 1999.

[51] By the time the application for RCMP records was filed, the petition and supporting affidavits, all of which are dated November 5, 2018 had been filed and served, the initial hearing had been set for hearing in New Westminster, no response had been filed to the Petition (from my review of the file, no Response has ever been filed; the respondents have not at any time contested the Petition) and there were no affidavits filed in either proceeding which required the obtaining of RCMP records.

[52] The affidavits from other residents of Strata Plan K 27 established the significant number of problems emanating from Unit 62.

[53] Case law dealing with assessment of disbursements consistently refers to looking at when the disbursement was incurred, as opposed to looking with hindsight at whether obtaining the disbursement was helpful or not. At the time that disbursement was sought, so at the time the Notice of Application was prepared along with the supporting materials, it was unnecessary. It added nothing to the petitioner's case, which was proceeding unopposed.

[54] I reviewed the RCMP records. They have been succinctly summarized in effect by the residents of the Strata Corporation who provided affidavits. Those affidavits were never contradicted. I do not fault counsel for the PGT for consenting to the application to obtain those records since it would have only increased costs to

do anything other than consent. But the records did not add to the uncontested evidence.

[55] I agree with submissions made on behalf of the respondents that the obtaining of the RCMP records was in this case an extravagance. The cost of obtaining those records is not allowed.

[56] The assessment of photocopies by registrars generally employs what is referred to as “rough justice”. A substantial amount of actual photocopies billed, usually in the area of 20–30% is deducted from party party bills because the photocopies include photocopies directly connected with the litigation, which are allowed, as well as photocopies which are not directly connected with the litigation for which party party costs are not awarded.

[57] However, this is not an assessment of party party costs.

[58] It appears from the materials that the RCMP file was provided by a CD disk, which required scanning, but did not cause a substantial amount of photocopies and laser prints. I am allowing the photocopies and laser prints at $800.00, a reduction of $143.50. I am allowing the scans at $67.05, a reduction of 365 pages.

[59] Included in the disbursements being claimed are agent’s fees in the amount of $1,058.14 and monies paid to Forward Law in the amount of $523.44. One of the agent’s fees in the amount of $287.18 was with respect to the RCMP records. That amount is disallowed. The Forward Law account includes meetings with various deponent residents of the Strata Corporation and then a billing for returning the materials to Hamilton and Company.

[60] Someone had to meet with the deponents, and that would have added to the fees charged no matter what. There is no explanation as to why the charge for travelling to and meeting with one of the deponents was $146.25 more than the other $60.00 charges. I allow the Forward Law account at $323.44 plus applicable taxes, a reduction of $200.00.

[61] To summarize the disbursement reductions, I have allowed photocopying up to March 4, 2019 at $800.00, a reduction of $143.50. I disallow the $771.50 ($740.00 plus $31.50 GST on a portion of the total bill which was in total $771.50) charge for the RCMP. I have allowed scanning at $67.05, a reduction of $54.75. I reduced the Forward Law account by $200.00. I reduced the agent's fees by $287.18 ($273.50 plus GST of $13.68). If my arithmetic is correct, and looking at exhibit page 92 of the third Hsu affidavit which set out the summary of disbursements, and backing out the anticipated costs of $1,179.90 for costs of the assessment, the subtotal for disbursements to March 4, 2019 is allowed at $3,170.48.

[62] The non-taxable disbursements are reduced by $80.00 which is the charge of filing the Notice of Application for RCMP records; they are allowed at $428.00. That includes the non-taxable disbursements for this costs assessment.

[63] The legal fees billed between May 7, 2018 and March 4, 2019 as submitted during the hearing on June 19, 2019, was submitted to be $24,589.00. When I added up the actual fees billed, based on the invoices rendered, my total for legal fees was $24,060.00.

[64] I have disallowed the disbursement for RCMP records production on the basis of extravagance and perhaps over zealousness. That disallowance also applies to the time billed for the preparation for and attendance at the hearing of the Notice of Application for production and the subsequent preparation of the affidavit material incorporating the records.

[65] In her submissions, counsel for the respondent submitted that another factor that I should take into account is the hourly rate charged. Mr. Hamilton's rate which was initially billed at $450.00 per hour and then increased to $475.00 per hour is substantially higher than rates charged by counsel with his experience. I was advised that he was called to the bar in 1992.

[66] I agree with counsel for the respondents that a reasonable hourly rate for senior lead counsel would be in the range of $350.00 per hour for counsel practicing in the Kamloops area.

[67] This was, then, an uncontested one-day hearing. It was uncontested in large part probably due to the thorough preparation. However, it was uncontested, and not particularly complex.

[68] Taking all of this into account, I allow legal fees from May 7, 2018 to March 4, 2019 in the amount of $15,000.00, plus applicable taxes.

[69] The petitioner is claiming legal fees of $3,790.50 to prepare, review and argue costs. The initial estimate of disbursements set out on exhibit page 92 of the Hsu affidavit anticipated agent's fees and travel expenses, which have not been incurred as the hearing was conducted with petitioner's counsel appearing by telephone. I allow disbursements for the assessment in the amount of $200.00 for taxable disbursements plus the $148.00 non-taxable disbursements anticipated as set out on page 92.

[70] Reasonable legal fees for preparation, reviewing and arguing the costs, which involved some issues as well as some novelty in that as far as I know, there are no previously reported decisions on these sorts of costs, are allowed at $2,500.00 plus applicable taxes.

[71] Counsel should prepare a certificate reflecting these reasons.

"Master R.W. McDiarmid"

MASTER MCDIARMID