IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NW 2089 v. Ruby,* 2019 BCSC 1485

Date: 20190904
Docket: S199699
Registry: New Westminster

Between:

The Owners, Strata Plan NW 2089

Petitioner

And

Ron Ruby
Royal Bank of Canada

Respondents

Corrected Reasons for Decision: The text of the Reasons for Decision was corrected on September 12, 2019

Before: Master Muir
(As Registrar)

Reasons for Decision

Counsel for the Petitioner:	V. Chahal
The Respondent, Ron Ruby, appearing in person:	R. Ruby
The Respondent, Royal Bank of Canada:	No appearance at this hearing
Place and Date of Hearing:	Vancouver, B.C. August 16, 2019
Place and Date of Decision:	New Westminster, B.C. September 4, 2019

INTRODUCTION

[1] This is an assessment of costs of the petitioner, The Owners, Strata Plan NW 2089 (the "petitioner"), payable by the respondent, Ron Ruby ("Mr. Ruby"), for the legal costs of collecting an unpaid special levy.

[2] The unpaid levy was claimed at $4,532.33. The legal costs sought include the costs of filing the lien, the petition hearing, an assessment before Registrar Nielsen, an appeal of that assessment, and the assessment before me. The total amount claimed is $28,503.93.

[3] The costs stem from an order of Master Vos of October 19, 2018 (the "Vos Order"), confirming the lien that had been registered on title to Mr. Ruby's strata lot, granting judgment against him, and ordering payment of the lien amount within 30 days from the date of the Vos Order or sale of the property in question. Also granted in the Vos Order were "the petitioner's reasonable legal costs for the proceedings herein and other amounts that may be payable pursuant to ss. 116 and 118 of the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*] and amendments thereto".

[4] Sections 116 to 118 of the *SPA* provide:

> Certificate of Lien
>
> 116 (1) The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:
>
> (a) strata fees;
>
> (b) a special levy;
>
> (c) a reimbursement of the cost of work referred to in section 85;
>
> (d) the strata lot's share of a judgment against the strata corporation;
>
> (e) [Repealed 1999-21-25.]
>
> (2) The strata corporation may register a lien against any strata lot, but only one strata lot, owned by an owner as owner developer, by registering in the land title office a Certificate of Lien in the prescribed form if the owner developer fails to pay an amount payable to the strata corporation under section 14 (4) or (5), 17 (b) or 20 (3).
>
> (3) Subsections (1) and (2) do not apply if

(a) the amount owing has, under section 114, been paid into court or to the strata corporation in trust,

(b) arrangements satisfactory to the strata corporation have been made to pay the money owing, or

(c) the amount owing is in respect of a fine or the costs of remedying a contravention.

(4) On registration the certificate creates a lien against the owner's strata lot in favour of the strata corporation for the amount owing.

(5) The strata corporation's lien ranks in priority to every other lien or registered charge except

(a) to the extent that the strata corporation's lien is for a strata lot's share of a judgment against the strata corporation,

(b) if the other lien or charge is in favour of the Crown and is not a mortgage of land, or

(c) if the other lien or charge is made under the *Builders Lien Act*.

(6) On receiving the amount owing, the strata corporation must within one week remove the lien by registering in the land title office an Acknowledgement of Payment in the prescribed form.

Forced sale of owner's strata lot to collect money owing

117 (1) After the strata corporation has registered a Certificate of Lien against a strata lot, the strata corporation may apply to the Supreme Court for an order for the sale of the strata lot.

(2) If the strata corporation has obtained a judgment for the amount owing, the court may, after considering all the circumstances, make an order for the sale of the strata lot.

(3) If the strata corporation has not obtained a judgment for the amount owing, the court may try the issue and may

(a) order that judgment be entered against the owner in favour of the strata corporation for the amount of the lien or for an amount that the court, as a result of the trial, finds owing, and

(b) if judgment is entered against the owner, make an order for the sale of the strata lot after considering all the circumstances.

(4) An order for the sale of a strata lot must provide that, if the amount owing is not paid within the time period required by the order, the strata corporation may sell the strata lot at a price and on terms to be approved by the court.

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.

[5] The amount of the costs incurred, compared to the amount of the levy assessed against Mr. Ruby, should perhaps be a cautionary tale to both strata councils and owners of strata units.

BACKGROUND

[6] Marcel Bilodeau, the strata council president for the petitioner, deposed that the strata council's policy is to send letters to an owner if he or she is 30 days overdue in payment and at the 90-day overdue mark, they refer the matter to legal counsel for collection.

[7] The strata council referred the matter of Mr. Ruby's overdue special levy to its legal counsel on September 27, 2017. The lawyers sent a demand letter to Mr. Ruby by regular mail on September 29, 2017, claiming the amount owing and $800 in legal fees, but no response was received.

[8] I do not know the rationale for the $800 in legal fees claimed. The time records indicated that, at most, $266 was recorded in fees by that point, of which $216 was for "preparing lien warning letters".

[9] As no response was received from Mr. Ruby, the strata council instructed its lawyer to register a lien on title to Mr. Ruby's property, and that was done. On November 9, 2017, another letter was sent to Mr. Ruby by regular mail. On December 11, 2017, copies of all the demand letters were emailed to Mr. Ruby by Jennifer Joyce ("Ms. Joyce"), a legal assistant at the petitioner's lawyers' office.

[10] On December 12, 2017, Mr. Ruby emailed in response, apologizing, advising that he had been out of town for eight months and had not received any of the demand letters sent through regular mail. He said he was willing to immediately settle the matter, that he "had no idea it had progressed this far", and "thought the matter was still in limbo".

[11] In response, Ms. Joyce provided a further demand letter on December 14, 2017, claiming the amount owing and $1,950 in legal fees.

[12] Again, I do not know the justification for the legal fees claimed. The time recorded to that point was $1,052. That time included 3.2 hours, or $456, for preparing the demand letters.

[13] In response, Mr. Ruby emailed Ms. Joyce on December 18, 2017 as follows:

> I'll pay the amount of the special levy, but if you are asking me to pay an additional $2000, then I'll take my chances in court.

[14] Mr. Ruby is employed as a tour manager. His job requires him to be out of town for months at a time, sometimes six to eight months a year, often consecutively. Hence, he deposes that he has arranged to conduct all his affairs electronically.

[15] His evidence is that all of his past interactions with the strata council and their lawyers, including a previous dispute over a strata levy, have been conducted by email. He says that from the outset he registered with the strata manager to receive notifications by email.

[16] As a result, Mr. Ruby says both the petitioner and their lawyers should have known that letters by regular mail would not come to his attention and the whole matter could have been resolved by a simple email before legal counsel was retained.

[17] The petitioner, through the evidence of Mr. Bilodeau, denies that special arrangements had been made for Mr. Ruby to receive notifications by email.

[18] As Mr. Ruby refused to pay the legal fees claimed, the strata council instructed that the "forced sale" application proceed which was, as noted, heard by Master Vos on October 19, 2018.

[19] Mr. Ruby filed a response to the petition on April 3, 2018, which noted, 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 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.

[20] At that hearing, Mr. Ruby says that he did not dispute the lien amount, but tried to make submissions that the costs award should not be allowed.

[21] Mr. Ruby was self-represented at the hearing. He says Master Vos told him that if the only matter he was disputing was the amount of costs, that that would be a matter for the Registrar on assessment. As noted, the Vos Order included an order for costs to be paid by Mr. Ruby.

[22] Registrar Nielsen heard the costs assessment and provided reasons February 7, 2019, reported at 2019 BCSC 143, in which he disallowed all of the costs claimed by the petitioner. He noted, in part, as follows:

> [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.

…

[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.
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> …
>
> [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 [*The Owners, Strata Plan KAS 2428 v*. *Baettig*, 2017 BCCA 377]. 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.

[23] Mr. Ruby paid the special levy amount of $4,532.33 to the petitioner's lawyers on March 13, 2019.

[24] The petitioner appealed the order of Registrar Nielsen. The appeal was heard on March 13, 2019 by Justice Jackson, whose reasons are reported at 2019 BCSC 504. Justice Jackson held, in part, as follows:

> [16] Section 118 of the *SPA* deals with costs of registering a lien against an owner's strata lot, and states:
>
> > 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.

[17] The meaning of "reasonable legal costs" in s. 118 of the *SPA* was addressed by the British Columbia Court of Appeal in *The Owners, Strata Plan KAS 2428 v. Baettig,* 2017 BCCA 377 [*Baettig*]. Writing for the Court, Justice Fitch noted at para. 34:

> … In my view, and for the reasons that follow, interpreting s. 118(a) of the *SPA* to permit a strata corporation to add the actual reasonable legal costs it incurs in registering and enforcing a lien to the amount owing under the lien accords with the words of the provision, its legislative history, its evident purpose and its statutory context.

[18] At para. 61 of *Baettig,* the Court continued:

> As noted earlier, s. 118 entitles strata corporations to add certain costs incurred in registering and enforcing a lien to the amount owing under the lien, including “reasonable legal costs”. The costs added to the amount owing under the lien pursuant to s. 118 gain priority against other charges previously registered against the strata lot.

[19] In his order, Master Vos made declarations with respect to the lien, including:

> … the amount due and owing to the Petitioner is $4,532.33 as of May 1, 2018, increasing by further unpaid strata fees, special levies, interest the Petitioner's reasonable legal costs for the proceedings herein and other amounts ...[Jackson J.’s emphasis.]

[20] Master Vos ordered that judgment be granted against the respondent in the sum of $4,532.33 together with the petitioner’s reasonable legal costs for these proceedings.

[21] The policy reasons for reasonable legal costs referred to in s. 118 of the *SPA* encompassing the actual legal costs was also addressed by the court in *Baettig* at para. 62:

> …Consistent with the philosophy underlying the *SPA*, the objectives of Part 6 include: (1) keeping the strata corporation whole as to the reasonable costs it incurs; and (2) protecting compliant owners from the financial burden of taking recovery steps against delinquent owners who are unable to pay or otherwise refuse to pay their fair share in strata fees.

[22] At paras. 65-66 of *Baettig*, Fitch J. went on to state:

> 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.
>
> 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*.
>
> [23] The assessment of costs ordered by Master Vos was to be considered in light of the interpretation of the Court of Appeal in *Baettig* and the assessment of costs by Registrar Nielsen was to be undertaken in a manner that was harmonious with the remedial nature of the provision. Specifically, "reasonable legal costs" is to be given a fair, large, and liberal construction and interpreted as best ensures the attainment of its objects.
>
> [24] In my view, the question of whether it was reasonable for the petitioner to involve legal counsel is a matter that goes to the entitlement of costs, which was decided by Master Vos when he made his order. Master Vos had the jurisdiction, which he exercised, to make the decision with respect to entitlement to costs and awarded costs to the petitioner. In assessing the reasonable legal costs under s. 118 of the *SPA*, Registrar Nielsen was to consider the reasonableness of the quantum claimed for the legal work undertaken, not whether he viewed the petitioner's choice of involving legal counsel as being reasonable.

POSITIONS OF THE PARTIES

The Petitioner's Position

[25] The position of the petitioner was that it is entitled to its actual reasonable legal costs of filing the lien, the petition hearing, the two assessment hearings before Registrar Nielsen, the appeal hearing before Jackson J., and the assessment hearing before me.

[26] There was no evidence from counsel involved in the legal proceedings against Mr. Ruby, other than that contained in submissions of Mr. Chahal, counsel for the petitioner, at the hearing.

[27] Mr. Chahal's evidence, which was not sworn, but which I received as he is an officer of the court, was, in general, that he was the lawyer in charge of the day-to-day dealings on this file and that all of the fees and disbursements in the claimed $28,503.93 were either necessary or reasonable in the circumstances.

[28] The formal evidence produced was that of the legal assistant, Ms. Joyce, in five affidavits. Included in the exhibits to her affidavits are two accounts, the first

dated April 30, 2018 from Hammerberg Lawyers in the amount of $4,038.07 and the second, a “draft” account from Hamilton & Company dated July 17, 2019. The pre-bills for the two accounts showing the time spent, the person involved, and the fee amount for each time entry are also attached as exhibits.

[29] The first account is for work done while counsel was with Hammerberg Lawyers and covers the period from September 27, 2017 to April 12, 2018, thus, from the lawyers’ retainer through to the drafting and service of the petition materials. The amount claimed is $2,685 in fees, $75 file opening charge, $920.03 in disbursements, and $358.04 in taxes for a total of $4,038.07.

[30] The second account is from Hamilton & Company and covers the period from April 30, 2018 to July 17, 2019, thus, after the service of the petition materials to the finalization of the materials on this assessment. The amount claimed is $16,853.50 in legal fees, $3,033.48 in disbursements, and $2,168.43 in taxes for a total of $22,108.11. I note that an amount for mileage appears to have been included in this total twice and, therefore, the actual amount of the account should be $22,055.41.

[31] In addition, the petitioner claims $1,928 plus tax for anticipated legal fees, which would total $2,159.36.

[32] I note too, that Ms. Joyce deposes that certain amounts were included in the disbursements for anticipated costs, including court services online, filing fees, agent fees, photocopies, postage, and scans. These total $188.50 for taxable disbursements and $200.32 for non-taxable disbursements.

[33] The total of those invoice amounts and the anticipated fees appears to me to be $28,305.54, not $28,503.93. I cannot reconcile the difference of $198.39.

Mr. Ruby’s Position

[34] As for Mr. Ruby, he repeated what I assume were the submissions made to Registrar Nielsen that this entire proceeding was unnecessary had the strata council

done what they should have done and sent him an email before sending this to the lawyers for collection.

[35] As Mr. Ruby had not read the reasons of Jackson J., I summarized them for him and he made submissions about them. His position was that Master Vos had told him to take his argument about costs to Registrar Nielsen, who agreed with him. If that was wrong, then Master Vos was wrong not to have received his argument about costs in the first place. Why, he asked, should he be responsible for the error of two decision-makers, when it was plain that had the strata council simply sent him an email, none of this would have been necessary.

[36] The short answer, as I explained to Mr. Ruby at the hearing, is that it is not my mandate and I did not have jurisdiction to consider those questions. That my only duty here is to assess what costs incurred by the petitioner in those proceedings were reasonably incurred to enforce the strata's lien.

[37] The considered answer, however, is that many serious matters, including some legal proceedings, allow for service by regular mail. Prudence requires everyone to ensure that regular mail is dealt with in his or her absence. As can be seen from this action, failure to do so can have serious consequences.

[38] Service by regular mail is specifically allowed by s. 61 of the *SPA*, which 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.

[39] Mr. Ruby was of the view that his alleged instructions to the petitioner to communicate with him by email and the history of email communications with the petitioner was sufficient to require notice to be given by email and not regular mail.

[40] In keeping with the reasons of Jackson J., which are, of course, binding upon me, I must assume that Master Vos considered Mr. Ruby's position, concluded that the petitioner was legally entitled to provide notice by regular mail and that the failure of Mr. Ruby to respond to those notices was sufficient justification for the lien, hence a costs award was made.

[41] In keeping with my mandate, I urged Mr. Ruby to make submissions on the reasonableness of the charges advanced by the petitioner.

[42] Specifically, he questioned the following:

a) The need for all of the pre-hearing correspondence and other actions that were not directed at having the petition heard. He pointed out that he specifically told counsel for the petitioner that he would not agree to the legal fees and the matter should proceed to court.

b) The costs associated with the adjournment of the petition hearing. The adjournment was sought by counsel for the petitioner who said he had not received Mr. Ruby's materials, whereas Mr. Ruby had a fax delivery sheet indicating the materials had been sent in a timely way. He argued he should not be held responsible for an error in counsel for the petitioner's office.

c) The costs associated with the extensive and unnecessary correspondence from counsel for the petitioner to him—which Mr. Ruby characterized as harassment and bullying. He said he was repeatedly harassed about coming into the office or dealing with other matters when he was out of town. He indicated that this had had a significant negative impact on his health. He characterized these actions as constituting harassment and hence illegal, and argued that counsel for the petitioner should not profit from such actions.

d) As an example of the latter, in order to attend at the hearing before me, Mr. Ruby advised that he had to decline an entire work trip—resulting in a loss to him of about $6,000. He had to do so because counsel for the petitioner refused to have this matter heard in October when Mr. Ruby was free and said they would proceed without him if he did not attend.

ANALYSIS

[43] The seminal decision regarding the entitlement of a strata corporation to costs in these circumstances is *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377.

[44] The rationale from *Baettig* for actual reasonable legal costs being recoverable by strata corporations enforcing arrears is quoted in the reasons of Jackson J. set out above.

[45] *Baettig* is also instructive on the protections afforded the owner from excessive charges being recovered “under the umbrella of the lien”:

> [78] In [*Canada Trust Mortgage Co. v. Gies*, 2001 BCSC 1016] 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. [Emphasis in original.]
>
> [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.

[46] Thus, pursuant to s. 118 of the *SPA*, the reasonable legal costs of the petitioner in registering and enforcing the lien are recoverable. Of course, there are many other tasks that legal counsel may undertake or be instructed to pursue that would not be recoverable under that section.

[47] In preparing for costs assessments, counsel should ensure that they are aware of what are considered to be the best practices or standard procedures. One respected source that sets out the accepted practices and procedures is *Practice Before the Registrar*, published by the Continuing Legal Education Society, 2017 update. In that volume, the following comments are found about the evidence expected:

> F. Affidavits Providing Claimed Costs [§2.14]
>
> Oral evidence is not usually adduced on an assessment of costs. There must, however, be an evidentiary basis for the bill of costs. Facts are usually agreed or statements of counsel or parties are accepted but if the party opposing the assessment is self-represented, it is more likely that matters will be contentious and that simple statements of counsel will not be enough to justify the costs claimed. If tariff items are in dispute, it is better practice for counsel to provide an affidavit in advance of the hearing to support the claimed amounts.
>
> …
>
> An affidavit proving claimed costs is generally sworn by counsel and states that it was his or her judgment as counsel that the disputed expense was necessarily or properly incurred in the conduct of the proceeding and that the amount expended was reasonable.
>
> A registrar is not bound to accept counsel's opinion or the opinion of an expert about the need to incur any particular expense for the purpose of a proceeding. The registrar must weigh the evidence adduced against any evidence to the

> opposite effect (*Bell v. Fantini (No. 2)*, 1981 CanLII 614 (BC SC); *Deo v. Chang*, 2005 BCSC 1335 (Master)).
>
> …
>
> C. Evidence at the Assessment of Costs [§2.18]
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> …
>
> Usually assessments are conducted without sworn evidence, either because facts are agreed or because statements of counsel or parties will be sufficient; however, if the amounts involved are significant or the party against whom the costs are to be assessed is self-represented, *viva voce* evidence or cross-examination on counsel's affidavit is becoming increasingly common.

[48] As noted, I specifically inquired as to whether counsel had considered providing such an affidavit. It would have greatly assisted the analysis of what constituted reasonable legal costs. It is, of course, for the petitioner to prove that the costs incurred were reasonable. I have Mr. Chahal's opinion that all of the costs incurred were reasonable and necessary, but there are many questions raised by the evidence presented.

Hammerberg Lawyers' April 30, 2018 Account

[49] I had some serious concerns with all of the time records provided. I will not detail each, but will set out some of the issues as illustrative of my concerns.

[50] As a starting point, there is no evidence as to why the calculation of the lien amount, which Ms. Joyce deposes came from the ledger provided by the client, took 1.1 hours of legal assistant time, charged at $187.50, and reviewing the certificate of lien took .3 hours of counsel time charged at $75.

[51] Nor is there any evidence as to why, as noted above, the preparation of three standard form demand letters to Mr. Ruby required 3.2 hours, or $456. Or why drafting a letter to Mr. Ruby with the payout amount being demanded, after the time had already been spent in figuring out the lien amount, took 1.3 hours of legal assistant time, charged at $195.

[52] 1.3 hours of legal assistant time and .2 hours of Mr. Chahal's time for a total of $275 were charged for inquiring with the petitioner about Mr. Ruby's claim that he was entitled to notice by email.

[53] Mr. Chahal charged 2 hours or $500 to prepare the petition materials. The petition itself is a standard form. The affidavit in support will similarly be uncomplicated.

[54] None of these amounts, on their face, are reasonable. Absent evidence as to why so much time was consumed by these and other straightforward tasks, I conclude that the amount claimed is not reasonable.

[55] These time entries alone amount to $1,688.50 of the $2,682 in legal work claimed on the first account.

[56] Similar criticisms can be levelled at other time records. It is not possible to parse through each entry and determine arithmetically what a reasonable amount would be for the first invoice, which, as noted, covers the time from the file opening to the service of the petition materials.

[57] I conclude that a reasonable legal fee for giving notice, preparing, filing and serving the lien and the petition materials would be $1,000.

[58] Turning to disbursements, $75 was charged for file opening with no explanation. I consider that to be properly an overhead charge of the law firm and not a reasonable cost of registering or enforcing a lien and it is disallowed.

[59] The rest of the disbursements claimed are unremarkable except for document scanning and black and white laser prints. In submissions, counsel for the petitioner advised me that these had been charged in the accounts rendered at $0.25 per page in accordance with the registrar's customary rates.

[60] A review of Ms. Joyce's affidavit #8 sworn July 18, 2019 reveals that, for the second account, there were 4,255 pages of photocopies and black and white prints. The internal accounting system bills these at $0.50 per page. At $0.25 per page that amounts to $1,063.75. The account rendered charges $102 for photocopies and $2,052.50 for black and white prints. Thus, I conclude that counsel erred in his submissions, but accepted that $0.25 was the appropriate rate for these charges.

[61] Similarly for scans, which are normally charged out by the law firm at $0.35 per page. Ms. Joyce's evidence is that there were 466 pages scanned, which at $0.25 would be $116.50, not the $163.10 charged.

[62] I accept that for the purposes of this action, scans, photocopies and laser printing were all reasonable expenses, as did Registrar Nielsen in *Schroeder v. McGivern*, 2015 BCSC 362 at para. 17.

[63] These pages, however, must first be reduced to $0.25 per page. Thus, for the first account, scans are calculated as follows: amount claimed = $25.20. Divided by $0.35 and multiplied by $0.25 = $18.

[64] Black and white laser prints charged at $97 must be similarly reduced: $97 divided by $0.50 and multiplied by $0.25 = $48.50.

[65] Of course, as noted by Registrar Nielsen in *Schroeder*:

> [18] The cases also make clear that not every copy made in the litigation will be necessary. The more detailed the evidence concerning copies made, the more likely that the charges will suffer less of a discount, if at all. …

[66] There is no evidence as to what the scans and laser prints were required for in the first account. Nevertheless, the charges appear reasonable and are allowed at $18 and $48.50 respectively.

[67] The taxable disbursements are thus reduced to $406.17. The non-taxable disbursements are allowed as claimed at $383.16.

[68] The amount of the Hammerberg Lawyer's April 30, 2018 account reasonably necessary for the filing and execution on the lien is, therefore, allowed as follows:

Legal Fee:	$1,000.00
Tax (12%):	120.00
Taxable disbursements:	406.17
Tax (12%):	48.74
Non-taxable disbursements:	383.16
Total:	**$1,958.07**

Hamilton & Company's July 17, 2019 "draft" Account

[69] The time records of the July 17, 2019 "draft" account (the "draft account") were broken down into four sub-groups by counsel for the petitioner.

1) The first sub-group was generally for the hearing of the petition, up to the Vos Order. The time claimed was 21.4 hours for all legal assistant and lawyer time for a total of $4,400.

2) The second sub-group was for the two assessment hearings before Registrar Nielsen. The first hearing was adjourned to allow Mr. Ruby to file appropriate affidavits and to allow the lawyers a response. The time and charges for the first appearance were 6.4 hours at $1,290. The time and charges for the second appearance were 12.4 hours at $2,622. The total of two appearances were 18.8 hours charged at $3,912.

3) The third sub-group was the appeal heard by Jackson J. The total time claimed is 16.7 hours, charged at $4,386.

4) The last sub-group was for the assessment before me. The time and charges for it were 14.6 hours at $2,499.70. This includes time through July 17, 2019.

[70] The total fee for these four matters is $15,197.

[71] There is time in the draft account over and above that was attributed to these four matters. In my view, if the time cannot properly be allocated to the actions taken to enforce the lien, they are not reasonably incurred for that purpose and should not be allowed.

[72] In addition, as noted, the petitioner claims $1,928 plus tax for anticipated legal fees.

[73] I will review each of the sub-groups of the draft account in the next section.

The Petition Hearing

[74] I have similar problems with the time claimed on the pre-bill for the draft account as I did with that of the Hammerberg Lawyers' April 30, 2018 account.

[75] 1 hour was spent and charged at $150 on June 5, 2018 for attending at the office of the petitioner's property manager to have an affidavit sworn. While that may be a convenience for the petitioner, it does not seem a reasonable legal cost to enforce the petitioner's lien.

[76] Preparing two enclosure letters to the respondents with the filed requisition apparently took .3 hours.

[77] Additional time was spent again investigating the allegation made by Mr. Ruby that he was entitled to email service.

[78] Time was spent dealing with requests from Mr. Ruby for the email addresses of council members, getting instructions, and responding. While these are certainly appropriate tasks to undertake for the petitioner, they are not properly incurred to enforce the petitioner's lien.

[79] The petition came on for hearing on July 18, 2018. There it was discovered that Mr. Ruby had filed and allegedly served response materials, but the law firm did not seem to have them. The matter was adjourned generally.

[80] The petitioner and its counsel then considered Mr. Ruby's materials and Ms. Joyce swore her affidavit #2 in response. That seems to have taken 2 hours for the legal assistant and 1.3 hours for Mr. Chahal to review. That time appears excessive.

[81] In addition, however, there is time claimed on August 7, 2018 for preparing and reviewing, presumably, a second affidavit of the property manager. No such affidavit was filed for the petition hearing and I have not seen a second affidavit from the property manager in this action. Perhaps this time was charged to the wrong file, or consideration was given to such an affidavit, but counsel decided against it. Either

way, I do not see these charges as reasonable for the enforcement of the petitioner's lien.

[82] There were numerous time entries that were simply "review email from" and all charged at .1 hours. While I appreciate that .1 is the smallest unit of timekeeping, I doubt that any of these emails required 6 minutes to read. A small thing, but one that adds up.

[83] The time spent by counsel for the petitioner in preparing for the first petition hearing was .7 hours. It is unclear what became of the materials that Mr. Ruby served. He had, at the hearing before me, a fax cover sheet that indicated the documents had been served. The time spent by counsel preparing for this hearing was partially wasted.

[84] The time spent by counsel for the petitioner in preparing for the second hearing was 1.8 hours. I consider that excessive, particularly given the preparation for the prior hearing, and I must consider that although position being taken by Mr. Ruby was unusual, the only issue on the hearing was costs.

[85] The time spent at the two hearings appears to be 2.5 hours charged at $625 and 2 hours charged at $500.

[86] Again, it is not possible to parse through these pre-bill entries and determine what a reasonable charge would have been for the petition hearings. Looking at what I consider to be the necessary time and adding a component for contingencies brings me to the conclusion that $2,000 was a reasonable legal fee for the work needed to obtain the Vos Order.

The Assessment Hearings Before Registrar Nielsen

[87] In preparation for the first assessment hearing held November 7, 2018 before Registrar Nielsen, counsel for the petitioner prepared two further affidavits of Ms. Joyce, being her affidavits #3 and #4.

[88] The first assessment hearing was adjourned, as noted in Registrar Nielsen's reasons:

> [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.

[89] In preparation for the second assessment hearing before Registrar Nielsen, counsel for the petitioner charged time for preparing another two affidavits for Ms. Joyce, being her affidavits #5 and #6. They also prepared the affidavit for Mr. Bilodeau referred to above.

[90] I have the same problems with the time entries as for the earlier items. I will not parse each one. Examples include:

a) On November 7, 2018, a legal assistant spent .2 hours on the phone updating the lender. Then he or she spent .3 hours on the same day receiving and responding to an email from the bank's lawyers asking for an update. There is no explanation of this duplication.

b) Again, time was spent attending the office of a council member to swear an affidavit. In my view, time not reasonably incurred to enforce the petitioner's lien.

c) The legal assistant charged for drafting the invoice and preparing time entries. That, in my view, is properly included in overhead.

[91] I have reviewed these time entries in detail and concluded that a reasonable fee for the first hearing would be $1,000 and $2,000 for the second hearing.

[92] I am bolstered in this view by the recent conclusion of Master Taylor in *The Owners, Strata Plan VR 812 v. Yu*, 2019 BCSC 1382, where he concluded that the reasonable legal fees for a more complicated assessment that proceeded over two days and required written submissions, were $3,500 plus taxes.

Appeal Before Justice Jackson

[93] Similar concerns with the time entries are evident in this section of the pre-bill for the draft account.

[94] The notice of appeal is a two-page form that sets out the grounds for the appeal. The statement of argument on appeal here is four pages long and cites four cases.

[95] Mr. Chahal spent almost 6 hours, charged at $265 per hour, for research and drafting these two documents.

[96] He then spent a further 2.8 hours reviewing, analyzing, and indexing the case authorities. Followed by 3.2 hours in preparation for the appeal hearing.

[97] The time spent on the day of the hearing was 4.5 hours, charged at $1,192.50.

[98] The time spent in preparation, in my view, is simply unreasonable. I have concluded that a reasonable fee for the conduct of this appeal was $3,000.

Preparation and Conduct of the Present Assessment

[99] Again, there are concerns with the times recorded in the pre-bill for this part of the proceeding.

[100] On March 14, 2019, time spent by a legal assistant for drafting the appeal order, a letter and an email to Mr. Ruby asking him to execute the order and provide assessment dates took him or her .5 hours. Yet, one day later, on March 15, 2019 .4 hours were charged for essentially the same things.

[101] On March 26, 2019, drafting a letter to JC Wordassist Ltd., the transcript reporting service, enclosing payment was recorded at .3 hours.

[102] More time was spent dealing with Mr. Ruby wanting to or actually contacting the strata council directly.

[103] Of course, this was the third assessment hearing and much preparation had already been done for the assessments before Registrar Nielsen. There was, however, new material that needed to be addressed for this assessment given the appeal and the simple passage of time. Ms. Joyce's affidavit #8 was provided in that regard.

[104] I have concluded that the preparation for and attendance at this assessment was on a par with the second assessment hearing before Registrar Nielsen. Therefore, I would similarly allow $2,000 as the reasonable fee of preparing and attending this hearing.

Anticipated Legal Fees

[105] Much of what is included in the anticipated legal fees is covered by the reasonable cost of preparing and attending the assessment hearing.

[106] There is a claim for time in preparing written submissions, which was not done.

[107] There will be costs incurred in finalizing matters, including removing the lien and certificate of pending litigation from Mr. Ruby's property. These would seem to be reasonable costs of enforcing the lien and I will allow an additional $100 for these matters.

[108] Accordingly, the total legal fee allowed for the draft account is $10,100.

Disbursements

[109] The first disbursement issue is mileage, which, as I noted above, is included twice in the account rendered. I am of the view that mileage is properly an overhead cost and, accordingly, covered by the lawyer's fee.

[110] Next is photocopies, scans, and black and white prints. As noted above, photocopies and black and white prints should have been included at $0.25 per page, not $0.50 per page, which reduces the amount claimed to $1,063.75. As for scans, the amount is reduced to $116.50.

[111] That does not end the analysis, however, as not every photocopy, scan or print will have been reasonable in filing or executing on the lien.

[112] As a rough and ready estimate, I will allow the photocopies and black and white prints at $800 and the scans at $100.

[113] Postage is claimed at $69.65. I am of the view that postage is an overhead amount, and this is not allowed.

[114] There is a trust administration fee of $15 claimed because the cheque delivered by Mr. Ruby for payment of the strata levy was deposited by the lawyers and held in trust. That was not necessary, in my view, and this charge is disallowed.

[115] There is a charge for parking in the amount of $33.32. Just as with mileage, my view is that this is covered in the lawyer's overhead.

CONCLUSION

[116] The Hammerberg Lawyers' April 30, 2018 account is allowed at:

Legal Fee:	$1,000.00
Tax (12%):	120.00
Taxable disbursements:	406.17
Tax (12%):	48.74
Non-taxable disbursements:	383.16
Total:	**$1,958.07**

[117] The Hamilton & Company's July 17, 2019 draft account is allowed at:

Legal Fees:	$10,100.00
Tax (12%):	1,212.00
Taxable Disbursements:	1,327.56
Tax (12%):	159.31
Non-taxable disbursements:	240.00
Total:	**$13,038.87**

[118] Thus, I have concluded that the reasonable costs, disbursements and taxes recoverable by the petitioner from Mr. Ruby under s. 118 of the *SPA* for registering and enforcing its lien are $14,996.94.

"Master Muir"