

CANADA / JUDGMENT

Bank of Montreal v. Zimmer

2012 BCSC 281

COURT

Supreme Court of British Columbia

DECIDED

27 February 2012

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2012 BCSC 281 Bank of Montreal v. Zimmer IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Bank of Montreal v. Zimmer, 2012 BCSC 281 Date: 20120227 Docket: 87019 Registry:

Kelowna Between: Bank of Montreal Petitioner And Clinton Zimmer, Anita Zimmer, Mabel Mary Jaworsky, by her Litigation Guardian, the Public Guardian and Trustee of British Columbia, Barry Zeolkowski, Shirley Zeolkowski Respondents Before: Master B.M. Young (as Registrar) Reasons for Decision Counsel for Petitioner: R.J. Ellis Counsel for the Respondents, C. Zimmer and A. Zimmer: J.R. Leverman Counsel for Verna Vivian Myers, Administrator Pendente Lite of the Estate of M.M. Jaworsky (Deceased): B.C. Lavallee Place and Date of Hearing: Kelowna, B.C. January 24, 2012 Place and Date of Judgment: Kelowna, B.C. February 27, 2012

- [1] An appointment was taken out by the Bank of Montreal to assess its bill costs in these foreclosure proceedings. Submissions took in excess of two hours, and therefore I reserved my decision due to lack of court time to deliver a decision on the hearing date.
- [2] The foreclosure proceedings deal with a two-acre property in Lake Country British Columbia which is owned by the first two respondents. The third respondent has a certificate of pending litigation registered against title to the property. The respondents Barry and Shirley Zeolkowski reside on the property. The subject property fronts onto Bottom Woods Lake Road and backs onto Highway 97 in Lake Country. It is apparently zoned RM2 multi-family. The lot is situated between the wildlife preserve to the north and the newer multi-family development to the south.
- [3] The respondent Mable Mary Jaworsky registered a certificate of pending litigation ("CPL") on title, and has brought a separate action in which she alleges that the title transfer to Anita Zimmer was improper. This action was brought after the Bank of Montreal's mortgage was registered on the title. The details of the dispute between the Zimmers and Ms. Jaworsky are not relevant to this appointment.
- [4] An order nisi with a six month redemption period was ordered on October 25, 2010. At that time the parties consented to a conduct of sale order to take effect at the end of the redemption period in order to avoid the expense of a further court appearance. The registered owners did not redeem during the redemption period. The property was marketed for a number of months. An application was brought by the petitioner in late

November 2011 to approve a sale. It was opposed by the first three respondents. The Zimmers did obtain refinancing and Ms. Jaworsky agreed to temporarily lift her CPL to register the new mortgage, so the Bank of Montreal's mortgage was paid out but its costs were not. An agreement on the quantum of the petitioner's costs could not be reached.

- [5] I will summarize the submissions made with respect to each tariff item on the bill of costs, and render my decision under each item of the bill of costs for clarity. Scale of Costs
- [6] The first portion of the bill of costs is claimed at Scale A. That scale was fixed in the order nisi, which I granted on October 25, 2010. There was no reservation in the order to increase the scale at a later date if necessary. I am told that on December 12, 2011 Master Tokarek ordered each party bear their own costs for the appearance on that day, but that the petitioner was entitled to its costs at Scale B for the hearings on November 28, December 1 and 2. I have not seen that order. I understand that it is not entered. I also understand that it is under appeal. The order remains valid until it is overturned, however I cannot certify costs at Scale B until I see an entered order. I advised counsel that I am prepared to assess the units, and once I have reviewed the entered order I will comply with that order as it relates to the scale of costs. Item 1 - Correspondence, conferences, instructions, investigations or negotiations by a party until the start of the proceeding, for which provision is not made elsewhere in this tariff
- [7] The petitioner claims 7 units, out of a possible maximum of 10 units, under this tariff item. Mr. Ellis made submissions as to the work performed on the foreclosure file. He did not give sworn testimony and did not swear an affidavit in support of costs. His legal assistant did provide an affidavit to prove disbursements. I did not require Mr. Ellis to swear or affirm that the evidence he would be giving was true. Had I known while Mr. Ellis was making his submissions that Mr. Lieberman was going to object to the fact that Mr. Ellis was not making those statements under oath, I certainly would have asked Mr. Ellis to swear or affirm. Usually one raises an objection prior to the evidence being lead, but Mr. Lieberman waited until Mr. Ellis concluded his submissions.
- [8] I am prepared to accept Mr. Ellis' statement of what occurred on the file as statements of fact. He is an officer of the court. He had firsthand knowledge of the work. It does not appear that many facts are in dispute in any event. Where they are in dispute, I will consider both positions and determine which statement I accept.
- [9] Mr. Ellis appeared on all applications. He described this foreclosure as "unusual" for a few reasons. Firstly, all of the applications were opposed. The property was not ordinary property, and two of the respondents were engaged in additional litigation related to this property. There were two counsel to communicate with, and they were not agreeing with one another. It was also necessary to identify the tenants on the property.
- [10] Mr. Lieberman submits that this was a standard foreclosure, and that a claim of 7 units for tariff item 1 is exorbitant. He submits that 2 units would be sufficient. Finding

- [11] There are factors in this foreclosure proceeding that make it somewhat unusual. Litigation between the two parties and the fact that those two parties were not of the same mind is a fairly common occurrence in foreclosure cases. It likely adds some additional work for the petitioner who has to notify the separate parties and possibly negotiate with them separately. It is not uncommon to have tenants on the property and to have to identify the tenants. I do not have any evidence of the extensiveness of the correspondence and conferences prior to filing the petition. For a standard unopposed foreclosure, 2 units would usually be awarded. I am prepared to allow 4 units for this item, recognizing that there was additional communication required. Item 2 - Correspondence, conferences, instructions, investigations or negotiations by a party after the start of the proceeding to the completion of the trial or hearing, for which provision is not made elsewhere in this tariff
- [12] The petitioner claims 20 units out of a possible 30 units for this tariff item. The submissions were similar to those made under tariff item number 1. Mr. Ellis had to deal with two counsel who did not have a joint position. 20 units would suggest to me a very large volume of correspondence. It is my finding in this case that the correspondence was more extensive than ordinary, but certainly not a very large volume. I will allow 10 units out of a possible 30 units. Item 3 - Correspondence, conferences, instructions, investigations or negotiations by a party after the trial or hearing to enforce any final order obtained in that trial or hearing, for which provision is not made elsewhere in this tariff
- [13] The petitioner claims 7 out of a possible maximum of 10 units under this tariff item. Mr. Ellis takes the position that the "trial" referred to in the item description is the order nisi hearing. Order nisi is considered a final order, so I agree with this position. In this case there was no separate application to obtain a conduct of sale order, because the respondents consented to the conduct of sale order being included in the order nisi order. Mr. Ellis dealt with the listing of the property on a weekly basis and with the issue of attempting to value the property to determine an appropriate listing price. These efforts are not compensated anywhere else in the tariff, however the application for approval of sale is compensated for elsewhere in the tariff. Finding
- [14] Mr. Ellis' work in marketing the property is not something that the respondents should be required to pay under the tariff. Ordinarily those costs are incurred by the realtor and paid to the realtor in the form of commission. In this case Mr. Ellis has an agreement with the realtor that he receives one percent commission from the realtor. This agreement does not impact the respondents' costs, but compensates Mr. Ellis for his marketing efforts. I do not see this as justification for increasing the number of units claimed under tariff item number 3. I will allow 2 units under item number 3. Item 4 - Instructions to an agent to appear at a trial, hearing, application, examination, reference, inquiry, assessment, or other analogous proceeding, if necessary or proper, and if held more than 40 km from the place where the instructing lawyer carries on business

- [15] It was agreed by the parties at the hearing that this item was claimed in error. No agent was hired. Mr. Ellis travelled to Kelowna for the hearings, and should have made a claim under tariff item 48. I will allow zero units under item 4, and I will deal with the claim under tariff item 48 below in these reasons. Item 6 - All process, for which provision is not made elsewhere in this tariff, for commencing and prosecuting a proceeding
- [16] The petitioner claims 8 units out of a possible 10 units for issuing a petition in the foreclosure proceeding. I have reviewed the petition, and do not find that it is complex or unusual. It is a six-page document which appears to be a standard form where the identity of the parties has been inserted.
- [17] Paragraph 9 describes Mabel Mary Jaworsky as being joined as a respondent in this action by virtue of her CPL. That is the only paragraph dedicated to her claim. It does not add sufficient complexity to the document to warrant a substantial increase in units. Finding
- [18] I will allow 2 units under tariff item 6. Item 17 - All process and correspondence associated with retaining and consulting all experts for the purposes of obtaining opinions for use in the proceeding
- [19] The petitioner claims 5 units under this tariff item out of a maximum of 10 units. The petitioner retained an appraiser to appraise the property, but never released a copy of the appraisal to the respondents because the appraiser could not find true comparable properties and therefore relied on what he described as "dissimilarly zoned properties". The subject property is zoned RM2. The comparables are zoned R1 (single family), R3 (medium density residential), R5+R1 (high density residential), RH3 (multi-family), and A1 (agricultural).
- [20] The appraiser appraised the property at \$1.2 million. The petitioner was applying for court approval of an offer for \$380,000. This offer was accepted after the property had been listed for a long time, starting with a listing price of \$1.8 million. After no offers the listing price was dropped to \$1.2 million, and later dropped to \$600,000, with no accepted offers. Given that the registered owners themselves had listed the property at \$549,000, I think it is fair to say that the appraisal was considered way out of line. The petitioner did not use the appraisal or disclose that it had been obtained. They did pay for it. Counsel for the Zimmers objects to this item, because the appraisal was never disclosed.
- [21] The fact that the report was not disclosed in a list of documents (or in chambers) is not a bar to the recovery of the disbursement (*Mathwig v. Backmaier* (1990), 51 B.C.L.R. (2d) 389 (C.A.), cited in *Practice Before the Registrar*, (Continuing Legal Education Society of British Columbia, 2010 Update) at p. 2-45).

- [22] In the case of *Van Daele v. Van Daele* (1983), 56 B.C.L.R. 178 (C.A.) the Court of Appeal found that expenses for obtaining an expert report may be allowed if the report was necessary and proper when it was ordered. Whether at the time the disbursement or expense was incurred it was a proper disbursement in the sense of not being extravagant, negligent, mistaken or a result of excessive caution or excessive zeal, judging by the situation at the time when the disbursement or expense was incurred.
- [23] In *Dinunzio v. Gill* (1986), 5 B.C.L.R. (2d) 189 the Supreme Court said: When the taxation is before the registrar, the fact that the report may not have been used by the parties in effecting settlement or at the trial for the judgment finally rendered is irrelevant, provided the disbursement when it was incurred, meets the criteria of being a full and proper preparation of a party's case... Finding
- [24] It is standard procedure for petitioners to obtain an appraisal of property prior to either applying for conduct of sale or applying for approval of sale. I find it was proper preparation of the petitioner's case to commission the report. As with any other expert opinion in litigation, a party is not obliged to rely on the expert opinion. There is no provision in a petition proceeding for the preparation of a list of documents, so there was no obligation to disclose the existence of the report. Mr. Ellis did not submit that he had no appraisal. What he submitted in the application before Master Tokarek was that it was agreed by all parties that there were no comparables to rely on in assessing the value of this property. He relied on the report of the listing realtor and on the listing history instead.
- [25] The respondents say that they should not have to pay for a report that was never relied on. That is not the law. If the petitioner incurred the cost of obtaining a report in preparation of its case and the registrar finds that it was reasonable to do so, the law is that this is a legitimate expense which should be reimbursed. Finding
- [26] I do find that it was reasonable to request an appraisal. I will allow this tariff item at 1 unit. I have selected a fairly low number of units because I assume there was little interaction between Mr. Ellis and the author of the appraisal. The appraisal was ordered by the property security company. If there had been more communication during its preparation, it is likely that a written appraisal would never have been prepared. Item 26 - Preparation for an application or other matter referred to in Item 27, for each day of hearing: (a) if unopposed; (b) if opposed A. October 25, 2010 - opposed
- [27] The petitioner seeks 2.5 units for preparation for hearing the opposed petition. The hearing of the petition was consented to by counsel for the Zimmers and opposed to by counsel for Mabel Mary Jaworsky. Her counsel said in his response to the petition: The respondent does not consent to the granting of any of the relief set out in the petition but states that, if relief is granted under the petition, such relief must not include an order for foreclosure of the mortgage on the subject property but must order the sale of the subject property since the value of the property greatly exceeds the sum owing on the mortgage. There must also be an order for the payments into court of the net proceeds of the sale pending the conclusion of

the respondent's action against the respondent Anita Zimmer in the Supreme Court of British Columbia, Action No. S-084789, Vancouver Registry.

- [28] An affidavit was sworn by Verna Vivian Myers, administrator pendente lite of the estate of Mabel Mary Jaworsky. Finding
- [29] I find that the tariff does not give a range of units for preparation for contested applications. If the matter is opposed, the appropriate claim for units is 2.5 units for preparation for a half-day contested application. I will allow 2.5 units. Item 27 - Hearing of proceeding, including petition, special case, proceeding on a point of law, stated case, interpleader or any other analogous proceeding, and applications for judgment under Rule 7-7 (6), 9-6 or 9-7, for each day A. October 25, 2010 - opposed
- [30] The petitioner claims 5 units for a one-half day appearance at a contested hearing of the petition. For the reasons set out above, I will allow 5 units. Item 41 - Process relating to entry of an order or a certificate of costs when Item 30 or 44 does not apply
- [31] The petitioner claims 1 unit for entry of the order nisi. I allow the 1 unit claimed. Item 21 - Preparation for an application or other matter referred to in Item 22, for each day of hearing if hearing begun: (a) if unopposed; (b) if opposed Item 22 - Application, other than an application referred to in Item 23 or 27, for each day: (a) if unopposed; (b) if opposed A. November 28, 2011 - opposed
- [32] The petitioner claims 1.5 units to prepare for the application on November 28, 2011. The tariff allows 3 units to prepare for a full-day opposed hearing. The hearing on November 28, 2011 did not take place due to lack of judicial time. The parties agreed to adjourn the matter for hearing in Vancouver later that week. Section 4(4) of the tariff authorizes me to allow units for preparation of an activity that does not take place. Accordingly, 1.5 units are allowed for preparation for the hearing on November 28 2011.
- [33] As for hearing time, since no hearing took place due to lack of court time, inconveniencing all parties, I think it would be unfair to award any time to the petitioner. Tariff item number 37 allows 3 units to attend at a trial or a hearing where the party is ready when the trial or hearing is not started. Because this item falls under the category entitled "Trial" and allows a substantial number of units, I interpret it to only refer to trials or registrars hearings and not interlocutory applications. B. December 1, 2011 - opposed
- [34] On December 1, 2011, the parties appeared in Vancouver at 10 a.m. and waited most of the day to be heard. The application was heard after 3 p.m. I rely on the practice for calculation of time described in Practice Before the Registrar, s. 2.30, p. 2-25: In calculating attendance time, lunch breaks are not counted. But where an application is scheduled for hearing at 10 a.m., and counsel are not heard until later in the day, the time spent waiting is included in the calculation, even if counsel have been able to occupy themselves on matters while they wait.

- [35] The petitioner is entitled to 3 units for preparing for a full-day contested hearing, and 5 units for appearance at an opposed hearing. C. December 2, 2011 - opposed
- [36] The application took less than a half day and therefore the petitioner is entitled to 1.5 units for preparation and 2.5 units for attendance at the hearing. Item 48 - Travel by a lawyer to attend at any trial, hearing, application, examination, reference, inquiry, assessment, or other analogous proceeding if held more than 40 km from the place where the lawyer carries on business, for each day on which the lawyer travels
- [37] The petitioner claims 6 units under this tariff item for travelling on three occasions to Kelowna for hearings.
- [38] This is the most contested portion of the assessment, because travel disbursements to attend in Kelowna on three occasions are quite high.
- [39] I have to determine whether it was reasonable in all of the circumstances to hire out-of-town counsel to appear on these applications.
- [40] In *Allen v. Homan* (1998), 45 B.C.L.R. (3d) 211 (S.C.), Master Chamberlist, as he then was, outlined at paragraph 41 the following principles when considering whether to allow the cost of retaining out-of-town counsel under tariff item 36, which is now tariff item number 48:
1. The tariff of party and party costs is predicated on there being a traditional review of all costs and disbursements claimed by the successful party and the allowance of those items found to be reasonable and necessary in the particular circumstances of the case before they are properly visited upon the defendant.
 2. The particular circumstances of each case will determine if particular cost items and related disbursements should be borne by the unsuccessful party.
 3. The assessing officer's review of Item 36 claims (out-of-town counsel) and related disbursements should be no different than the assessing officer's review of any other item and related disbursement, the sole question being reasonableness and necessity.
 4. Relative to Item 36 and related disbursements, there should be no set rule that a successful party will be denied indemnification relative to these costs unless exceptional circumstances are shown to exist.
 5. The reasonableness of the decision to engage out-of-town counsel must be demonstrated by the party submitting the bill, the onus remaining with him or her as it is with he or she demonstrating the necessity and reasonableness of any other disbursement incurred in the prosecution of the case for which indemnification from the unsuccessful party is claimed.

6. In determining the reasonableness of the submitting party's decision to retain out-of-town counsel, the assessing officer should objectively attempt to determine whether or not the decision to retain the out-of-town counsel was reasonable and necessary in all of the circumstances. And further, at paragraph 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?
- [41] Courts have recognized that mortgagees have a duty to keep costs reasonable, as those costs are to be added to the amount owed by the mortgagor. *Saskatchewan Trust Co. (Liquidator of) v. Dion*, [1994] S.J. No. 713 (Q.B.) addressed the cost of hiring out-of-town counsel in a foreclosure proceeding. Wimmer J. of the Saskatchewan Court of Queen's Bench said a mortgagee may, of course, select any firm of lawyers it wishes, but there is a duty to be prudent if the entire expense is to be charged to the mortgage account. The mortgage does not contemplate that a mortgagor may be burdened with unwarranted costs of enforcement.
- [42] In British Columbia, Master Chamberlist said in *Bank of Nova Scotia v. Sloan*, [1997] B.C.J. No. 2954 (S.C.): 33 ...It is generally accepted in this Province that travel time and travelling and subsistence expenses will not be allowed where there is absolutely no connection between the place of business of the law firm and any factor relative to the lawsuit. If, as is the case with these proceedings, there is no good reason disclosed (for example - absence of competent counsel in the Prince George area) for retaining out-of-town counsel, the extra costs resulting from the lack of proximity to the place of hearing must be borne solely by the client (*Cordick v. Gibbs*, unreported, August 8, 1986, New Westminster Registry No. 841797; *Matechea v. Achla*, unreported, June 22, 1992; and *Swyers v. Drenth*, [1995] B.C.J. No. 2184, October 17, 1995, Prince Rupert Registry No. SC9068). 34 In addition, the local venue rules relating to foreclosure proceedings has as one of its reasons for existence the desire by the court to have costs associated with foreclosures maintained at minimum expense to the respondent owners and subsequent encumbrances. My knowledge of this file and the abundance of competent practitioners in and about the City of Prince George who would have been available to prosecute these proceedings, leads me to conclude that the agency costs incurred by the petitioners should not be borne by the respondent owner and subsequent encumbrances. Finding
- [43] I do not find any connection between the place of business of counsel for the petitioner's law firm and this case. The Bank of Montreal may prefer to have their own counsel appear on its applications, but the question is: Should the respondents bear these costs? The petitioner has not satisfied me that this case is so unique or complicated to require this additional expense when experienced able counsel are available to appear as agents. Relying on the authorities listed above, I am denying any claim under tariff item 48 and I am denying any travel disbursements. Disbursements (Taxable) Law Society Trust Transaction Fee
- [44] The petitioner claims \$10.00 for a Law Society trust transaction fee. I will allow this disbursement. Process Server

- [45] The petitioner claims \$375.60 for process service. I will allow this disbursement. Faxes
- [46] The petitioner claims for faxes in the amount of \$59.60 at \$.35 per page, and \$36.20. Counsel for the Zimmers submits that the necessity of sending a fax must be justified by the evidence. An affidavit of Shelly Johal, legal assistant for Mr. Ellis, was filed January 24, 2012 to prove disbursements. There is nothing in that affidavit, or in Mr. Ellis' submissions, to support the necessity of fax correspondence. The claim for fax expenses is denied. Travel Costs, Mileage, Flight and Hotel
- [47] As stated above, I have disallowed the travel costs, mileage, flight and hotel expenses claimed by counsel for the petitioner. BC Online
- [48] BC Online expenses of \$158.50 is claimed, but not explained. I assume that a search was obtained prior to filing the petition in order to determine the identity of the respondents. Likely, a further BC Online search was done prior to appearing at the order nisi application to ensure that no further charges were registered prior to the filing of the certificate of pending litigation. I do not know what the cost of a search is, and Ms. Johal's affidavit is of not assistance in that regard. On reviewing the file, I see that there is also a BC assessment roll report. I will allow this claim. Postage
- [49] Postage claimed in the amount of \$16.80 is allowed. Registration of Documents at Court Registry
- [50] It is unclear what "registration of documents at Court Registry" in the amounts of \$36.00 and \$11.50 refers to. The court registry filing fees are set out below, under non-taxable disbursements. This could be for the agent's fees in taking the documents to the registry for filing. The invoices were not attached to Ms. Johal's affidavit, and so I have no way of determining what these charges are for. I will not allow these claims. Photocopying and Documentation
- [51] Mr. Lieberman objects to \$175 for photocopying at \$.25 a page. Although it is a large number of photocopies, there were five respondents who had to be served with all of the initiating documents. Affidavits of service were prepared. Further documents were circulated for the application to approve the sale. I find that \$175 is not excessive, and I will allow it. Courier
- [52] The petitioner claims \$92.17 for courier charges. Although there is no proof of any urgency in the evidence before me, I am aware that chambers records have to be filed within a fairly restricted window of time and registries will not accept the records earlier. Failure to meet this window of time might result in the matter being struck from the chambers list. I will allow the courier charges. Disbursements (Non-Taxable) Court Registry/Land Title Office Filing Fees
- [53] The petitioner's claim for Court Registry/Land Title Office filing fees in the amount of \$282.90 is allowed. Property Manager's Expenses (Includes GST)

- [54] The petitioner claims for property manager expenses in the amount of \$2,055.20 (including GST).
- [55] The charge of \$44.80 for the initial security check of the property is reasonable and necessary and is allowed.
- [56] The property manager incurred courier costs to send the property tax cheque, to avoid a tax sale. That disbursement of \$28.00 is allowed.
- [57] The cost of weekly security checks of the house on the property in the amount of \$1,646.40 is opposed. The house on the property is described by all, including Mr. Ellis in his submission to Master Tokarek, as a "tear down". The house was occupied by Anita Zimmer's parents. This fact was communicated to Mr. Ellis on October 21, 2010 by Mr. Lieberman, in a letter which says: ...perhaps you could just tell your property manager that the residence is being cared for and that regular inspections will not be necessary. In any event, there is no apparent prejudice to your client's security even if it was vacant.
- [58] The value of the house on the property was estimated in the tax assessment at about \$11,000. The value of the land was in excess of \$380,000. The balance owing on the bank's mortgage at the order nisi hearing was \$182,000. The presence of the home was a negative factor in valuing the property, as it would have to be torn down at some expense if anyone wished to develop the property. The realtor on whom the petitioner relied in valuing the property said that the house and outbuildings looked to be in a poor state of repair, but represented a significant cost for demolition and clearing the site.
- [59] I am disallowing the \$1,646.40 for security checks on this property, which amounted to someone driving by the property on a weekly basis. This seems to be an unnecessary extravagance to inspect a tear down when the bank was adequately secured and the property was occupied. No evidence is supplied by the petitioner to support the necessity for weekly checks. The respondent should not bear the cost.
- [60] The petitioner claims for the cost of obtaining an appraisal, in the amount of \$336.00. I will allow the cost of one appraisal. Summary of Results
- [61] In summary, I have allowed the following:
- | Item | Description | Claimed | Allowed |
|------|--|---------|---------|
| 1 | Correspondence, conferences, instructions, investigations or negotiations by a party until the start of the proceeding, for which provision is not made elsewhere in this tariff | 7 | 4 |
| 2 | Correspondence, conferences, instructions, investigations or negotiations by a party after the start of the proceeding to the completion of the trial or hearing, for which provision is not made elsewhere in this tariff | 20 | 10 |
| 3 | Correspondence, conferences, instructions, investigations or negotiations by a party after the trial or hearing to enforce any final order obtained in that trial or hearing, for which provision is not made elsewhere in this tariff | 7 | 2 |
| 4 | Instructions to an agent to appear at a trial, hearing, application, examination, reference, inquiry, assessment, or other analogous proceeding, if necessary or proper, and if held more than 40 km from the place where the instructing lawyer carries on business (abandon at | | |

hearing) 1 0 6 All process, for which provision is not made elsewhere in this tariff, for commencing and prosecuting a proceeding 8 2 17 All process and correspondence associated with retaining and consulting all experts for the purposes of obtaining opinions for use in the proceeding 5 1 26 Preparation for an application or other matter referred to in Item 27, for each day of hearing: (a) if unopposed; (b) if opposed

- application for hearing of the petition, October 25, 2010 - opposed 2.5 2.5 27 Hearing of proceeding, including petition, special case, proceeding on a point of law, stated case, interpleader or any other analogous proceeding, and applications for judgment under Rule 7-7 (6), 9-6 or 9-7, for each day: (a) if unopposed; (b) if opposed
- hearing of petition, October 25, 2010 - opposed 5 5 41 Process relating to entry of an order or a certificate of costs when Item 30 or 44 does not apply 1 1 21 Preparation for an application or other matter referred to in Item 22, for each day of hearing if hearing begun: (a) if unopposed; (b) if opposed
- November 28, 2011 1.5 1.5 22 Application, other than an application referred to in Item 23 or 27, for each day: (a) if unopposed; (b) if opposed
- November 28, 2011 2.5 2.5 21 Preparation for an application or other matter referred to in Item 22, for each day of hearing if hearing begun: (a) if unopposed; (b) if opposed
- December 1, 2011 3 3 22 Application, other than an application referred to in Item 23 or 27, for each day: (a) if unopposed; (b) if opposed
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- December 2, 2011 1.5 1.5 22 Application, other than an application referred to in Item 23 or 27, for each day: (a) if unopposed; (b) if opposed December 2, 2011 2.5 2.5 48 Travel by a lawyer to attend at any trial, hearing, application, examination, reference, inquiry, assessment, or other analogous proceeding if held more than 40 km from the place where the lawyer carries on business, for each day on which the lawyer travels 6 0 Total units 78.5 43.5 Taxable Disbursements Claimed Allowed LSBC trust transaction fee 10.00 10.00 Process server 375.60 375.60 Faxes (\$59.60 + \$36.20) 95.80 0 Travel costs, mileage, flight and hotel October 25, 2010 and November 28, 2011 1,632.07 0 BC Online 158.50 158.50 Postage 16.80 16.80 Registration of documents in Court Registry (\$36.00 + \$11.50) 47.50 0 Photocopying at \$.25 per page 175.00 175.00 Courier 92.17 92.17 HST at 12% 312.41 99.37 Non-Taxable Disbursements Court Registry / Land Title Office filing fees 282.90 282.90 Property Manager's Expenses (including GST) Initial security check 44.80 44.80 Courier charge to pay outstanding property taxes 28.00 28.00 Security checks 1,646.40 0 Obtaining updated appraisal 336.00 336.00 Total Disbursements \$5,253.95 \$1,619.14 Costs of Registrar's Hearing Item 29 - Preparation for attendance referred to in Item 30, for each day of attendance Item 30 - Attendance before a registrar to settle an order or to assess costs, for each day

- [62] The petitioner neglected to include these units in its bill of cost, and made an oral application at the hearing to include these units. The petitioner claims 2 units for preparation, and 4 units for attendance, with respect to the hearing on January 24, 2012.
- [63] The parties commenced their submissions at approximately 11:30 a.m. and did not conclude submissions until after the lunch break (approximately 3:15 p.m.). It was therefore a full-day attendance.
- [64] The petitioner presented a bill of costs for \$11,021.95. I have allowed costs at substantially less than that. I cannot fix an exact amount until I receive a copy of Master Tokarek's entered order of December 12, 2011 fixing the scale of costs for the three hearings.
- [65] I do conclude that the respondents have been successful at this assessment. The petitioner is therefore denied its costs for preparation and attendance at this hearing. "Master Young" Master B.M. Young

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