

CANADA / JUDGMENT

Strata Plan LMS 2154 v. 0752737 B.C. Ltd.

2021 BCSC 1343

COURT

Supreme Court of British Columbia

DECIDED

9 July 2021

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2021 BCSC 1343 Strata Plan LMS 2154 v. 0752737 B.C. Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Strata Plan LMS 2154 v. 0752737 B.C. Ltd., 2021 BCSC 1343 Date: 20210709 Docket: S1711597 Registry: Vancouver Between: The Owners, Strata Plan LMS 2154 Petitioner And 0752737 B.C. Ltd. and Westminster Savings Credit Union Respondents Before: Master Bilawich (as Registrar) Reasons for Decision Counsel for the Petitioner, by teleconference: B. Scheidegger No other appearances Place and Date of Hearing: Vancouver, B.C. April 16, 2021 Place and Date of Judgment: Vancouver, B.C. July 9, 2021

- [1] The petitioner has taken out an appointment to assess its reasonable legal costs and related disbursements as against the respondent 0752737 B.C. Ltd. in respect of Strata Property Act (the "SPA") proceedings to collect outstanding arrears of strata fees. The costs were awarded in the order of Master Taylor made May 30, 2018.

Background

- [2] The petitioner, The Owners, Strata Plan LMS 2154, is a strata corporation. The respondent, 0752737 B.C. Ltd., is registered owner of one of the strata units.
- [3] On June 16, 2016 the petitioner's strata manager wrote to 0752737 B.C. Ltd. requesting payment of outstanding arrears of \$5,356.59.
- [4] On September 8, 2016 the strata manager wrote to 0752737 B.C. Ltd. again, advising that outstanding arrears were \$5,406.59.
- [5] On June 7, 2017, the petitioner filed a SPA Lien #CA6050473 on title to the respondent's strata unit, claiming that the amount owing was of June 2, 2017 of \$7,467.89.
- [6] By September 27, 2017, strata manager retained Access Law Group to pursue collection of the arrears. The law firm issued a formal demand to 0752737 B.C. Ltd. for payment of a special levy and arrears of maintenance fees totalling \$9,988.33 plus legal fees in the sum of \$450.00. The latter sum related to the cost to have legal counsel issue the demand letter. The deadline for payment was October 16, 2017, failing which the petitioner would commence legal proceedings without further notice.

- [7] On October 13, 2017, Access Law, issued a first account to the petitioner in the sum of \$450.00 relating to the initial demand letter.
- [8] On or about October 27, 2017, 0752737 B.C. Ltd. paid the outstanding arrears in full plus \$450.00 towards the petitioner's legal fees. Unfortunately, by this time additional unbilled legal costs had been incurred and the petitioner took the position that the respondent was obliged to pay those as well, which it declined to do.
- [9] On December 15, 2017, the petitioner filed a Petition to the Court. Also named as respondents were Westminster Savings Credit Union, which had a mortgage and assignment of rents registered on title to the unit, and John Doe and/or Jane Doe, representing suspected tenants whose identities were not known to the petitioner. Part 2, paragraph 9 of the Petition states that the amount due and owing to the petitioner as of December 12, 2017 was \$2,040.10.
- [10] In January 2018, Access Law corresponded with one of the principals of 0752737 B.C. Ltd. regarding the balance owing. The owner asked the petitioner to waive the unpaid balance of legal fees, which request was declined.
- [11] By letter dated January 22, 2018, Access Law wrote to 0752737 B.C. Ltd. confirming the respondent had made a direct payment to the petitioner in the sum of \$3,066.36 in full payment of strata fee arrears plus \$450.00 towards legal fees. Counsel noted the petitioner had commenced legal proceedings and that all legal fees the petitioner had incurred must be paid. The balance claimed as remaining due was \$2,669.10. This consisted of as yet unbilled legal expenses and disbursements. Payment in full was demanded by February 9, 2018, failing which the petitioner would proceed with a view to obtaining an order for costs, which would empower the petitioner to sell 0752737 B.C. Ltd.'s strata unit to pay the amounts owing plus increased legal costs for the hearing of the petition.
- [12] In February 2018, Access Law prepared and filed a second affidavit of its designated paralegal.
- [13] On May 30, 2018, Mr. Dougan of Access Law appeared before Master Taylor and obtained the order which, among other things, awards the petitioner reasonable costs, land title and court registry fees and other reasonable disbursements pursuant to s. 118 of the SPA. Once the order was entered, filed copies were sent to the respondents.
- [14] One of the terms of Master Taylor's order is that unless 0752737 B.C. Ltd. paid the sum assessed by the Registrar to the credit of this proceeding at the Vancouver Registry on or before September 30, 2018, the Petitioner would have exclusive conduct of sale of 0752737 B.C. Ltd.'s strata unit. Technically, the only amount owing at that time was the petitioner's reasonable legal expenses and related disbursements, which were not assessed prior to the payment deadline in the order.

- [15] On February 28, 2019, Access Law issued a second account to the petitioner in the sum of \$7,130.09 for services up to June 6, 2018 and closed its file. According to a subsequent demand letter, the balance outstanding on the fees it had charged to the petitioner to that point in time was \$3,414.91.
- [16] On or about September 15, 2020, the petitioner changed legal counsel to Hamilton & Company. Hamilton & Company's mandate was to recover the balance of the outstanding legal fees for the work done by the petitioner's previous counsel. This included reviewing Access Law's accounts to determine amounts properly due and owing pursuant to s. 116 SPA, it performed various searches including Court Services Online, LTSA and BC Assessment and obtaining Access Law's file.
- [17] On November 5, 2020, a Notice of Change of Lawyer was filed.
- [18] On December 21, 2020, counsel requested an updated statement of account regarding strata fees from the petitioner and registered a second Certificate of Lien. A Registrar's hearing was also scheduled for February 1, 2021.
- [19] On January 19, 2021, counsel called the Vancouver registry to re-schedule the registrar's hearing to February 10, 2021.
- [20] There were numerous communications with Access Law regarding their accounting information, file materials, correspondence, pleadings and affidavits in this proceeding.
- [21] Hamilton & Company have issued four invoices, including October 1, 2020 - \$364.21, November 2, 2020 - \$457.93, January 4, 2021 - \$473.71 and February 1, 2021 - \$937.84. They further estimate an additional \$1,700 will be incurred to prepare for and complete the hearing to assess reasonable legal expenses.
- [22] The amounts being claimed on this assessment can be summarized as follows: Fees Disbs
GST PST Total Access 1 \$ 379.44 \$ 23.84 \$ 20.16 \$ 26.56 \$ 450.00 Access 2 \$ 5,780.50 \$ 634.21 \$ 310.74 \$ 404.64 \$ 7,130.09 Ham 1 \$ 175.00 \$ 154.53 \$ 16.48 \$ 18.20 \$ 364.21 Ham 2 \$ 320.00 \$ 94.79 \$ 20.74 \$ 22.40 \$ 457.93 Ham 3 \$ 280.00 \$ 156.05 \$ 18.06 \$ 19.60 \$ 473.71 Ham 4 \$ 722.50 \$ 122.50 \$ 42.26 \$ 50.58 \$ 937.84 Estimate \$ 1,700.00 \$ 221.50 \$ 92.30 \$ 119.00 \$ 2,132.80 Total \$ 9,357.44 \$ 1,407.42 \$ 520.74 \$ 660.98 \$11,946.58 Legal Basis
- [23] The petitioner's right to claim reasonable legal costs and related disbursements arises out of sections 116 - 118 of the SPA. Section 116 allows the strata corporation to register a lien against an owner's strata lot if they fail to pay strata fees or a special levy, among other things. Section 117 allows the strata corporation, after registering a lien, to apply to court for an order for sale of the strata lot of the amount owing is not paid within a time specified in the order, on terms to be approved by the court. Section 118 addresses costs: 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.

- [24] In *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377 at paragraph 34, the court commented as follows regarding the meaning of reasonable legal costs: 34 The central issue on appeal is the interpretation of "reasonable legal costs" under s. 118 of the SPA. 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.
- [25] And at paragraphs 61-66: 61 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. 62 Sections 116-118 of the SPA appear under "Part 6 -- Finances", "Division 6 -- "Money Owing to Strata Corporation". 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. 63 Division 6 of Part 6 of the SPA provides the framework by which strata corporations can address the failure of a strata owner to meet his or her shared obligations. The SPA is premised on the fair division of expenses by statutory formula. As the appellant points out, "each owner must pay amounts assessed to satisfy common expenses which are intended to manage and preserve the investments of all owners in their collective best interests". The strata corporation has no authority to forgive arrears owed by a delinquent owner and has an obligation to ensure that compliant owners are not unfairly burdened by contributions that exceed their lawful share. 64 In *Strata Corp. VR149 v. Berezowsky* (1986), 5 B.C.L.R. (2d) 316 (C.A.), Mr. Justice Carrothers explained the purpose of the former CA's scheme for the recovery of unpaid strata fees:
- [12] Thus it can be seen that the legislature has imposed on the strata corporation the legal responsibility to care for and administer the common property within the strata plan, and has prescribed the mechanism, which is democratically vested in all the owners of the strata plan as a group, for the budgeting of expenditures and levying of contributions on the individual owners in proportion to the unit entitlement of their respective strata lots to raise the funds required by the strata corporation in this regard.
- [13] In anticipation of default on the part of the owner to the prejudice of the rest, such as has occurred in this case, the legislature has given the strata corporation (that is, the owners collectively and not an arm's-length independent landlord) a statutory mode of legal "self-help" in the nature of a power of distress to remedy such default. The strata corporation,

acting through its strata council also comprised of owners, has the onerous and unpleasant task of exacting delinquent contributions and penalties from immediate neighbours. The legislature has provided that the strata corporation shall have the assistance of the courts in carrying out this unpopular function.

- [14] ... The remedial provisions in the Act for recovery of unpaid assessments are essential and indispensable to the effective maintenance and operation of the entire strata plan. 65 Sections 116-118 of the SPA are remedial. They shift the burden of costs associated with collecting strata arrears to the delinquent owners who have failed to meet their obligations. Accordingly, the provision must be given "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects": Interpretation Act, R.S.B.C. 1996, c. 238, s. 8. 66 In my view, it is consistent with the remedial objective of ss. 116-118 and with the purposes of the SPA as a whole to interpret s. 118 as providing a strata corporation with the means to recover costs reasonably incurred in registering and enforcing a lien against a delinquent strata owner. If actual reasonable legal costs are not included in s. 118(a), legal fees not covered by the tariff must be borne by non-delinquent strata owners by way of increased common fees. This would further increase the financial burden on owners who are paying their share. In my view, this interpretation would be inconsistent with the philosophy and scheme of the SPA.
- [26] At paragraphs 78 - 81, the court addressed the protections that are afforded to an owner from excessive charges being recovered under the umbrella of a 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.

- [27] Master Taylor's order of May 30, 2018 includes the following terms regarding costs due to the petitioner:
3. The Company [0752737 B.C. Ltd.] is required to pay the amount assessed for the reasonable legal costs, land title and court registry fees and other reasonable disbursements of the Petitioner pursuant to Section 118 of the Strata Property Act.
 4. The Petitioner recover Judgment from the Company for the amount assessed by the Registrar for reasonable legal costs and related disbursements.
- [28] In this case, 0752737 B.C. Ltd. paid the outstanding in arrears in full plus an amount towards legal fees before the petition was filed. The petitioner took the position that additional legal expenses had accrued since the demand deadline expired and those had to be paid as well. It is unfortunate what was initially a dispute regarding a relatively modest amount has been drawn out over a period of several years and now involves a demand for legal costs of \$11,946.58 at this assessment. Evidence at Hearing
- [29] This assessment was not opposed by the respondent. The evidence relating to Access Law Group's two accounts came primarily from a series of affidavits of Cindy Law, a paralegal employed with that firm, including one expressly prepared in support of an anticipated assessment of costs. There was no evidence directly from Mr. Dougan, the lawyer who appears to have been primarily responsible for overseeing work on this matter. There were also several affidavits of Jennifer Brown, a designated paralegal employed with Hamilton & Company, providing an overview of Access Law's work on the matter based on her review of Access Law's file.
- [30] The evidence relating Hamilton & Company's four accounts and estimate came primarily in the form of three affidavits sworn by Ms. Brown. There was no affidavit evidence from either of the lawyers involved. Mr. Scheidegger provided some additional background and submissions at the hearing of the assessment.
- [31] There was little or no evidence addressing the background and experience of the various paralegals or lawyers involved or the appropriateness of their respective hourly rates. It appears the hourly rates employed were as follows: Access Law Group
- a) CL (Cindy Law), paralegal \$115-120 per hour
 - b) JR (unknown), paralegal or assistant \$130 per hour
 - c) PD (Phillip Dougan), lawyer \$340-\$365 per hour
 - d) JAB (Jamie Bleay), lawyer \$425 per hour Hamilton & Company
 - e) Civ6 (unknown), paralegal \$100 per hour
 - f) Civ3 (unknown), paralegal \$150 per hour
 - g) BLS (Ben Scheidegger), lawyer \$265-275 per hour

- h) GSH (Stephen Hamilton), lawyer \$475 per hour
- [32] The petition and various affidavits in support were provided, as were copies of the accounts and separate detailed breakdowns of time in individual entries. Some descriptions of services were vague. Access Law Accounts
- [33] Access Law rendered two accounts. The first was dated October 13, 2017 in the sum of \$450.00 and was for services in September 2017 relating to the initial formal demand for payment. The fee component is \$379.44, which includes conducting a company search and LTSA search, review of client documents and searches, preparing a demand letter to Westminster Savings Credit Union and to client, reviewing correspondence and finalizing letters. I am not entirely clear on why a demand was made of the credit union as opposed to 0752737 B.C. Ltd. I assume this may have been a typographical error. There were three time-keepers involved in this account - CL (who I assume is Cindy Law), JR (unknown but appears to be a paralegal or legal assistant) and PD (lawyer Phillip Dougan).
- [34] In terms of efficiency, CL billed for the company and land title searches at 0.4 which is on the high side to perform two or three basic searches. JR billed 1.2 hours to review documents and draft a demand letter and letter to client. PD billed 0.1 to review correspondence. CL billed 0.6 to finalize and send letters. The demand letter is essentially a form letter that is adapted to the specific owner, strata and balance owing. A total of three staff involving 1.9 hours to draft and issue it is high.
- [35] Disbursements claimed include company search, land title search and a BC Online fee, totalling \$23.84.
- [36] In my view, a reasonable fee for the demand letter and searches is \$200. I allow disbursements as claimed. GST is payable on the fees and disbursements. PST is payable on the fee only. Total comes to \$249.03, which I round up to \$250.00.
- [37] The second Access Law account was dated February 28, 2019 in the sum of \$7,130.09 for services from October 2017 to June 6, 2018. This encompasses activities from drafting the petition and affidavit material, scheduling and attending the unopposed hearing of the petition to entering the Order of Master Taylor and mailing a copy to 0752737 B.C. Ltd., the credit union and to the petitioner.
- [38] In terms of overall time allocation, JR recorded 12.9 hours, Ms. Law recorded 11.1 hours, Mr. Dougan recorded 7.3 hours and JAB (Mr. Bleay, lawyer) recorded 0.3. There were two entries for ST whose hourly rate suggests he or she was a lawyer, totalling 0.2 hours.
- [39] Time entries between October 17 and November 21, 2017 largely focus on telephone and email communications with a credit union and client regarding payment, the balance owing and updating the statement re balance owing. Descriptions tend to be less than helpful. For example, an October 10, 2017 entry of PD states "call from credit union; email to staff" - 0.3 hours. An entry the following day states "call to owner; email to staff" - 0.2 hours. An entry of November 16, 2017 states "file review; email to staff" - 0.2 hours. There are numerous

emails requesting updated information or statements from client, the majority of which have a "standard" 0.2 time entry. There are numerous references to conferences among team members. There appears to be some duplication of effort as between JR and CL, and between them and Mr. Dougan. Overall, the amount of time recorded chasing down information from the petitioner and credit union appears unduly repetitive and excessive as a result. There does not appear to be a particularly efficient use of lawyer or paralegal time during this period.

- [40] At about November 21, 2017 or so, it appears that the petitioner gave instructions to sue the owner. Drafting of a petition and a final demand letter started on November 22, 2017. Revisions to the draft petition and the supporting affidavit of Ms. Law continued on December 14, 2017. There appear to have been three people involved, namely JAB, JR and CL. The petition and first affidavit were filed with the court on December 15, 2017. The petition is relatively simple. The relief sought is standard for this type of proceeding, with only some party names, dates, legal description and charge number being revised to suit this claim. The facts section consists of 8 paragraphs and is largely "boilerplate" with some facts specific to this case inserted. The legal basis section is minimal, simply referring to the SPA, the Strata Property Amendment Act, s. 116 of the SPA in particular and it refers to the Baettig case, *supra*, regarding costs.
- [41] At this time there was one affidavit of Ms. Law filed, consisting of 11 paragraphs over three pages and 8 exhibits, including two property manager demand letters, a strata statement as of December 12, 2017, a company search for the owner, notice of change of bylaws regarding interest charges, bylaws 2 and 32 relating to fines and NSF charges, a copy of the Access Law demand letter, a title search print for the owner's unit and copy of the SPA Lien filed by the petitioner on title to the owner's unit.
- [42] It appears about 2.5 hours of time was spent drafting and finalizing these materials, which appears somewhat high in the circumstances.
- [43] The next stage in the account involves a substantial number of communications dealing with service of materials and multiple communications with a process server. One of the significant issues relates to attempts to serve John / Jane Doe tenants of the property. It appears that the wrong address residential address was provided initially and it appears eventually it was determined the unit was vacant. My rough calculation is about 2.2 hours addressing service issues, which is I consider excessive. The parties being served included a numbered company and credit union, service of which should be straightforward and the unknown tenant respondents - it turned out the unit was vacant.
- [44] There were also a number of communications with a Terri Chen, who I understand is a principal of 0752737 B.C. Ltd., who inquired whether the petitioner would waive additional legal expenses after it had paid the outstanding arrears of strata fees and \$450 towards legal fees set out in the first Access Law demand letter. It appears about 0.6 hours was recorded to address this request, which was declined. This seems high in the circumstances.

- [45] Counsel made ready to schedule the petition for hearing. On February 15, 2018, there are two entries which appear to involve significant duplication. CL has recorded 1.2 hours to "finalize Notice of Hearing, Summary of Relief Sought, Affidavit of C. Law #2 and Affidavit of C. Law #3, attend to swear affidavits, give instructions to agent to file them with the Affidavit of Service and Affidavit of Attempted Service with court regis[try]." On the same day, JR has recorded 1.1 hours to "Conference re hearing date, Prepare Affidavit of Cindy Law #3, Summary of Relief Sought at Section 117 Hearing, Notice of Hearing and Form of Order." There are other examples of what appear to be parallel descriptions of activities between CL and JR.
- [46] Another modest example of an unhelpful entry is one from CL on February 19, 2018 for 0.2 hours stating simply that it was for receipt of filed hearing documents from the court registry. Another is from Mr. Dougan on February 20, 2018, which is only for 0.1 hours but described as "review correspondence". Another example of apparent duplication is JR on February 20, 2018 recording 0.6 hours for preparing service letter and letter to client enclosing documents for hearing and preparing an application record. The following day CL records 0.4 hours for "finalize letter to client, letters to respondents to enclose filed hearing documents.
- [47] I appreciate that, taken individually, the examples I have highlighted are modest issues and my comments might appear nit-picky. That is not my intent; the point is that this pattern repeats throughout the time record and when one considers the impact over the entire period covered by the second account, the combined result becomes significant.
- [48] The hearing of the petition was eventually adjourned to May 2018. A revised summary of relief sought and notice of hearing were prepared, and an Affidavit #4 of Ms. Law addressing the costs claim. That affidavit was included and referred to in this assessment. There again appears to be some duplication in descriptions provided by CL and JR relating to these materials.
- [49] On May 28, 2018, Mr. Dougan recorded 1.0 hour preparing for the hearing. On May 30, 2018, he recorded 1.0 hour preparing alternate orders, reviewing authorities and conference with counsel regarding pros and cons of [Baettig] costs orders, procedure to shorten time line. There was a second entry by him the same day for 2.2 hours to attend registry to vet orders and attend the hearing. There was a third entry the same day for 0.5 hours for draft bill of costs at scale C and email to counsel.
- [50] These descriptions cause some concern. Starting with the last one first, the costs order granted by Master Taylor did not involve an assessment of scale C costs and it would not have required that a bill of costs be drafted. The respondent owner does not appear to have had legal counsel assisting it, so it is not clear who the counsel was that this bill of costs was emailed to. I note that the order indicates that only Mr. Dougan appeared at the hearing. One explanation may be that this particular entry was recorded to the wrong file number. In any event, this is not a reasonable cost associated with registering or enforcing the SPA Act

lien.

- [51] A second concern is the reference to alternate forms of order being prepared on the day of the hearing of the petition. It is not clear why this would be necessary. In the course of reviewing the order granted, I noted that it appears to be a significant error has crept into the version that was entered with the court. To explain this I must highlight the differences between portions of the relief sought in the filed petition and what was set out in the entered order.
- [52] In the part 1 "relief sought" section of the petition, items 1 and 2 state that the petitioner was seeking:
1. A declaration that the Respondent, 0752737 B.C. Ltd. (the "Company"), as the registered owner of certain lands and premises, situate, lying and being in the City of Vancouver, in the Province of British Columbia, more particularly known as: Parcel Identifier: 023-230-860 Strata Lot 19 District Lot 526 Group 1 New Westminster District Strata Plan LMS 2154 (the "Lands and Premises") is in default of its obligation to pay the maintenance fees (the "Strata Arrears") as provided for in Section 99 of the Strata Property Act, SBC 1998, c. 43 (the "Act"), and the bylaws of the Petitioner.
 2. A declaration that the Petitioner has a valid charge, registered pursuant to Section 116(4) of the Act, on June 7, 2017, under number CA6050473 against the Lands and Premises.
- [53] In the entered Order made May 30, 2018, these two paragraphs appear to have merged and become conflated:
1. The Respondent, 0752737 B.C. Ltd. (the "Company") has a valid charge, registered pursuant to Section 116(4) of the Act, on June 7, 2017, under number CA6050473 against the lands and premises situate, lying and being in the City of Vancouver, in the Province of British Columbia and more particularly known and described as: Parcel Identifier: 023-230-860 Strata Lot 19 District Lot 526 Group 1 New Westminster District Strata Plan LMS 2154 (the "Lands and Premises")
- [54] The entered order does not contain a declaration that 0752737 B.C. Ltd. is in default of its obligation to pay maintenance fees. I presume this may be because by the time the petition was heard, 0752737 B.C. Ltd. had paid arrears of strata fees in full and the only outstanding issue was reasonable legal costs still outstanding.
- [55] Further, the first clause in the order states that the respondent 0752737 B.C. Ltd. has a valid charge registered pursuant to s. 116(4) of the SPA, on June 7, 2017, under number CA6050473 against its own strata unit, rather than stating that the petitioner that has a valid charge.
- [56] It appears that in the course of drafting the formal order, items 1 and 2 of the relief sought in the petition were merged and some significant portions were omitted entirely.
- [57] Changes were also incorporated into paragraph 3 of the relief sought in the petition, from:

3. A declaration that all monies secured by the Charge, together with such further monies as have accrued since the filing of the Charge, are now due and owing to the Petitioner.
- [58] Which was modified in the Order to:
2. The legal fees secured by the Charge, together with such further monies as have accrued since the filing of the Charge, are now due and owing to the Petitioner.
- [59] Paragraphs 4 and 5 of the relief sought were also adjusted in the version of the order that was entered.
- [60] If significant changes were made to the form of Order sought on the day of the hearing, one wonders whether counsel for the petitioner gave the respondents reasonable prior notice of these changes. There are no time entries which suggest this occurred.
- [61] The resulting order diverges significantly from the relief sought as set out in the petition that was served on the respondents. It does not include the standard declaration of default. It mis-states who the holder of the valid charge against 0752737 B.C. Ltd.'s strata unit is. No steps appear to have been taken to address these issues with the order. If corrective steps are taken, I do not consider it would be appropriate to ask 0752737 B.C. Ltd. to bear related costs, as these appear to have crept in due to late modifications petitioner's counsel made to the form of order.
- [62] After the order was entered, copies were sent to the respondents and to the petitioner, after which Access Law appears to have 'downed tools' until the change of counsel. No explanation was provided for the why work stopped or why there was a change of counsel.
- [63] Based on my review of the time entries in the second Access Law account, in my view a reasonable fee to draft the petition and various affidavits, arrange for service, schedule the matter for hearing, speak to the hearing of the petition and enter the order of Master Taylor is \$3,000.
- [64] In *The Owners, Strata Plan NW 2089 v. Ruby*, 2019 BCSC 504, Master Muir, sitting as Registrar, conducted an assessment of reasonable legal expenses and disbursements in another SPA Lien case addressing similar issues. The hearing of the petition in that case appears to have been contested whereas in the present case the petition was unopposed. The learned Master concluded that the reasonable legal fee for giving notice, preparing filing and serving the lien (which was done before Access Law was retained in this case) and filing and serving petition materials was \$1,000 (see paragraph 57) and \$2,000 for the hearing of a petition up to obtaining the master's order in that case (see paragraph 86). In the present case, there were some modest complications with service and a re-scheduling of hearing of the petition. I have also expressed above my concern about the issues with the order that was obtained, which warrants a reduction in the fees associated with revising orders and the hearing of the petition.

[65] With respect to disbursements claimed on the second Access Law account, these include agents fees of \$94.00, postage of \$24.81, Land Title Search / BC Online charges of \$18.90, Admin Fees / BC Online of \$4.00, BC Assessment / BC Online fees of \$9.50, filing fee of \$23.00, process serving of \$260.00 and filing fees for the Petition of \$200.00. These total \$634.21. In my view these are all reasonable and they are granted as presented.

[66] The total for the second Access Law account is accordingly assessed as follows:

- a) Fees \$3,000.00
- b) Taxable Disbursements \$434.21
- c) Non-Taxable Disbursements \$200.00
- d) GST \$171.71
- e) PST \$210.00
- f) Total \$4,015.92 Hamilton & Company Accounts

[67] On about September 15, 2020, Hamilton & Company assumed conduct of this matter from Access Law following a period of dormancy. It has rendered four accounts to the petitioner for its time transitioning the file, issuing a notice of intention to proceed, filing a second lien, preparing additional materials for the assessment of reasonable legal costs and scheduling the hearing. I will address those four accounts together. It has also put forward an estimate of time and disbursements for the hearing to assess reasonable legal fees.

[68] Fees claimed in the four accounts issued include the following:

- a) October 1, 2020 \$175.00
- b) November 2, 2020 \$320.00
- c) January 4, 2021 \$280.00
- d) February 1, 2021 \$722.50
- e) Total \$1,497.50

[69] The October 1, 2020, November 2, 2020 and January 4, 2021 accounts include 0.5 of Mr. Scheidegger's time, 0.9 of Mr. Hamilton's time, 0.5 of "Civ 3" (Ms. Brown, a designated paralegal) time and 1.4 of "Civ6" (Ms. Ban, presumably a paralegal or legal assistant) time. It appears that Ms. Brown's time is being billed at \$150 per hour and Ms. Ban's at \$100 per hour, Mr. Scheidegger at \$265 per hour and Mr. Hamilton at \$475 per hour. No evidence was provided concerning the level of experience concerning the four time-keepers.

[70] Mr. Hamilton's tasks included reviewing file material, preparing an email to client, meeting with paralegal (topic not specified) and preparing demand letters. Mr. Scheidegger's tasks included reviewing file and instructions to paralegal, and finalizing and executing a second claim of lien for registration. Ms. Brown's tasks include preparing and reviewing email with

Access Law requesting additional information, reviewing an email from previous lawyer with background history, reviewing file and instructing assistant. Ms. Ban's tasks include email exchanges with client, reviewing a ledger, reviewing emails from client with owner's contact information, conducting updated LTSA, BC Assessment and BC company searches, further emails to client for ledger, email to client with update, reviewing client email with ledger, email to Mr. Bleay requesting documents, and ledger breakdown to register lien.

- [71] The February 1, 2021 account includes 2.9 hours of Mr. Scheidegger's time and 0.9 of Ms. Ban's time. Mr. Scheidegger's hourly rate increased to \$275 per hour and Ms. Ban's is still \$100 per hour. Counsel's time involved reviewing file materials, conferring with client regarding next steps and an accounting explanation, and assisting with drafting of affidavit materials. The assistant's time involved communications with Access Law to obtain copies of various affidavits and invoices, reviewing materials and conferences and calls with a client representative for accounting explanations.
- [72] The tasks described in these four accounts are primarily gathering and reviewing file material from previous counsel, getting updated ledger information from client, preparing and filing a new SPA lien (which has not been produced in evidence on this assessment) and drafting an affidavit, presumably for this assessment. It is not clear why a second SPA lien was filed or whether it relates to the subject of this assessment. A significant part of the time spent appears to involve new counsel requesting materials from former counsel and getting updated accounting information from client. No explanation has been provided for the decision to delay the assessment of reasonable legal costs following Master Taylor's order, and no reason is offered for the decision to change counsel. There were undoubtedly duplicate expenses incurred to get the second set of counsel up to speed. Absent a reasonable explanation, it is not reasonable to charge these to the respondent owner. It is also not clear why it is necessary to have two paralegals and two lawyers working and billing on preparing for an assessment of reasonable legal costs. There appears to be some duplication of tasks.
- [73] In the circumstances, a reasonable fee for the reasonable services described in these four accounts is \$750.00 all inclusive.
- [74] The petitioner also claims estimated fees for preparing Affidavit #1 of Ms. Brown for the assessment, serving assessment materials and attending at the hearing will be a further \$1,700.00 in fees. I note that the assessment was uncontested.
- [75] Doing the best I can with the limited information available, I find that reasonable fees are \$1,250.00 for affidavit, arranging service of materials and attending the hearing.
- [76] Taxable disbursements claimed in the Hamilton & Company accounts include:
- a) Photocopies - 261 pages at \$0.25 per page = \$65.25.
 - b) Agent Fees - West Coast Title Search - \$50.65.

- c) Postage - \$7.76
- d) Land Title and Survey Authority online charges - \$40.59. Ms. Brown's evidence is that these relate to title searches and obtaining a copy of a mortgage. I allow them as claimed.
- e) BC Online charges - \$41.50. These relate to online searches and court e-filings and are appropriate.
- f) Anticipated for assessment (agent's fees, copies, postage, scans) - \$80.50.
- g) Sub-Total - \$286.25
- h) GST (\$286.25 x 5%) - \$14.31
- i) Total - \$300.56.

[77] Non-taxable disbursements claimed include:

- a) Court filing fees - register certificate of lien - \$74.87
- b) Anticipated Fees to file Appointment, Affidavits and Certificate of Costs - 224.13.
- c) Total - \$299.00.

[78] All of the disbursement amounts claimed appear reasonable. I allow them as claimed.

[79] The total for the four Hamilton & Company accounts and anticipated fees and disbursements through to filing the certificate of costs arising from this decision is accordingly assessed as:

- a) Fees - four accounts \$750.00
- b) Estimated fees - assessment \$1,250.00
- c) Taxable Disbursements \$300.56
- d) Non-Taxable Disbursements \$299.00
- e) GST - fees \$100.00
- f) PST \$140.00
- g) Total \$2,839.56

Conclusion

[80] The reasonable legal expenses and related disbursements of the petitioner The Owners, Strata Plan LMS 2154 are allowed against the respondent 0752737 B.C. Ltd. in the amount of [Access Law Group: \$4,015.92 + Hamilton & Company: \$2,839.56 =] \$6,855.48.

[81] The respondent 0752737 B.C. Ltd. paid the sum of \$450.00 towards the legal expenses referred to in the original Access Law demand letter. It is entitled to credit for that payment. If 0752737 B.C. Ltd. made any other payments towards the petitioner's reasonable legal costs and related disbursements which have been missed in these reasons, it is entitled to credit for any such payments as well. Those should be disclosed and deducted from the balance owing as set out in the formal certificate of costs when it is entered. "Master Bilawich"

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