

CANADA / JUDGMENT

The Owners, Strata Plan LMS 1378 v. Chu

2007 BCSC 869

COURT

Supreme Court of British Columbia

DECIDED

15 June 2007

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2007 BCSC 869 The Owners, Strata Plan LMS 1378 v. Chu IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: The Owners, Strata Plan LMS 1378 v. Chu, 2007 BCSC 869 Date: 20070615 Docket: L051770 Registry: Vancouver Between: The Owners, Strata Plan LMS 1378 Petitioner/Applicant And Jenfeng Peter Chu Respondent Before: District Registrar Sainty Reasons for Decision Counsel for the Petitioner/Applicant: V.P. Franco Jenfeng Peter Chu, the Respondent: Appearing on his own behalf Date and Place of Trial/Hearing: May 29, 2007 Vancouver, B.C.

- [1] This was an assessment of three sets of costs: A. Special costs of the petitioner's opposition to the respondent's application for a review of an order of Drost J., made August 19, 2005 as ordered by Bennett J. on November 24, 2006; B. Special costs payable by the respondent to the petitioner pursuant to the order of Master Taylor made on February 10, 2006; and, C. The petitioner's costs at Scale 3 of the balance of the matters relating to the petition.
- [2] This matter has a long and somewhat convoluted history, much of which is summarized in the oral reasons for judgment of Bennett J., made November 24, 2006:
2. Mr. Chu purchased a condominium which is part of the Strata Plan LMS1378 in 2001. He paid strata fees for his condominium until December 2004. Mr. Chu stopped paying his strata fees ostensibly because he was not living in the condominium. He spends much of his time in Taiwan looking after his ill parents. His view is that because he does not use the amenities in the condominium he should not be required to pay the fees.
 3. The strata corporation brought a petition to this court seeking to enforce a lien filed under s. 16 of the Strata Property Act. Mr. Chu challenged the lien and the enforcement of the lien on the basis that the fees were not properly imposed, including a special levy for building envelope repairs.
 4. Mr. Chu's arguments were much more lengthy and complex than I have stated. The application was heard before Mr. Justice Drost on August 18, 2005. Mr. Justice Drost reserved overnight to give himself an opportunity to read all of the material that was filed. Mr. Justice Drost addressed all the claims raised by Mr. Chu and dismissed them. He found that they were without merit. See The Owners, Strata Plan LMS 1378 v. Chu (unreported) Vancouver Registry No. L051770, August 19, 2005, at paragraph 37, of the reasons of Mr. Justice Drost.

Judge Drost found that the sum due and owing was \$10,981.14 subject to further accruals, and he made that award. Further, he noted that the award would increase as further unpaid special levy strata fees, reasonable costs, Land Title fees, court registry fees, and other disbursements and interest of strata fees accrued and remained unpaid. In other words, the petitioners were awarded what they applied for. Justice Drost ordered costs on Scale 3.

5. Mr. Chu was not happy with the order of Mr. Justice Drost. He decided to bring an application to set aside Drost J.'s order and he set the matter down in this court. A series of court appearances then ensued. The first appearance was on September 16, 2005 before Mr. Justice Wong. Mr. Justice Wong advised Mr. Chu that he should be appealing the order, not applying to overturn the order in the Supreme Court. The reasons for judgment of Mr. Justice Drost were not yet available and the matter was adjourned pending the preparation of those reasons. It was thought that the reasons would be available quickly and the matter was adjourned to September 30th. On September 30th, the parties appeared before Mr. Justice Hood who further adjourned the matter because the reasons were not yet available and warned Mr. Chu again that his application was ill-founded and that the proper process was to appeal the order of Judge Drost.
6. I should add that Judge Drost retired at the end of September 2005 and it may be that he was not available to edit the reasons at that time. Prior to the appearance before Mr. Justice Hood, the petitioner asked Mr. Chu if he would consent to an adjournment since the reasons were not available and the application could clearly not proceed. Mr. Chu refused to agree to the adjournment and the matter had to go to the chambers list. As it was a contested adjournment, it was stood down the list requiring counsel for the petitioner to wait for what was the obvious result. The matter was adjourned to October 6, 2006, and the parties appeared before Madam Justice Stromberg-Stein. Justice Stromberg-Stein again adjourned the application because the reasons were not available, but told Mr. Chu that the court did not have jurisdiction to hear the matter and told him that he needed to bring the matter before the Court of Appeal. This application was adjourned generally.
7. The reasons of Drost J. became available in November of 2005. The matter came on in chambers before Justice Davies on November 25, 2005. The matter was adjourned because there was insufficient time to hear the application. On November 28, 2005, the matter came on before Madam Justice Gerow. She heard the application. She found that she was without jurisdiction to decide the matter and told Mr. Chu he needed to apply to the Court of Appeal. It is the application for these five appearances before Justices Wong, Hood, Stromberg-Stein, Davies, and Gerow that the petitioner seeks costs before me. I add parenthetically that the parties went before Justice Gerow on October 26, 2006, to make this application. Mr. Chu required an adjournment and Justice Gerow said she was not seized with the application and said it could go before any judge of this court.

8. Mr. Chu filed his notice of appeal on December 21, 2005. The application to extend the time to file his appeal was heard on January 4, 2006, and that application was dismissed by Justice Lowry on January 11, 2006. Mr. Chu appealed Justice Lowry's decision and sought a review of the full court. The full court reviewed that application and on March 6, 2006, the court dismissed the application.
9. In the meantime, an application had to be brought to this court by the petitioner because Mr. Chu refused to hand over the keys to the condominium. Master Taylor granted the order to have the locks changed and, as well, granted special costs in relation to that application. Mr. Chu appealed Master Taylor's order and on February 28, 2006, Justice Stewart dismissed the appeal. Justice Stewart ordered that costs of the appeal be paid on Scale 3. Mr. Chu also brought an application for a stay of execution in the Court of Appeal because by this point the strata corporation had found a buyer. Levine J.A. heard that application and dismissed it.
10. The strata corporation then brought an application for approval of sale before Master Bolton. It was adjourned because Mr. Chu raised a number of concerns about the appraisal and Master Bolton ordered that there needed to be better evidence regarding market value. The petitioners obtained a second appraisal which was, in fact, lower than the first appraisal. They also obtained an affidavit from the first appraiser explaining some of the bases for his appraisal. The matter was reset before Master Donaldson and heard on April 6, 2006. Master Donaldson approved the order for sale, but gave Mr. Chu until April 13, 2006, to pay \$30,000 into court. The redemption period had long expired; however, Master Donaldson gave him an extra period of redemption. Mr. Chu paid the money into court on April 13, 2006. Mr. Chu is still not paying his strata fees.
11. The background before the five judges upon which the petitioner seeks costs is set out in the decision of Justice Lowry at 2006 BCCA 10, paragraphs 9 to 11 []
12. In those reasons, Justice Lowry said at paragraph 10 that, "The applicant did not misunderstand the procedure that was available to him." Mr. Chu acknowledged that he pursued the application in the Supreme Court in spite of having been told numerous times that the court could not hear the application, because he decided that the court fees involved in having the matter heard in Supreme Court were about one-third of the fees payable to initiate an appeal. Justice Lowry pointed to the fact that Mr. Chu put the owners to considerable expense in having to repeatedly appear at the various hearings of the application during which time they were precluded from proceeding to have the strata lot unit sold to enforce their lien. Justice Lowry commented at paragraph 11 that Mr. Chu's resistance to pay the fees and levies that he had been found to owe appeared to be based on little more than his unwillingness to accept that there are expenses which an owner must pay regardless of the fact that he is not living in the suite.

13. In his application to set aside Mr. Justice Drost's order in this court, Mr. Chu filed a lengthy argument with 17 different bases upon which to set aside Mr. Justice Drost's order. Because the matter was not dismissed out of hand by Justice Wong, petitioner's counsel felt obliged to respond to all of the arguments in case the court hearing the matter wished to hear from her.
- [3] Having heard the petitioner's argument, Her Ladyship held that the respondent's conduct was deserving of reproof or rebuke (¶22) and ordered that the respondent pay the petitioner's special costs of the attendances before Justices Wong, Hood, Stromberg-Stein, Davies and Gerow.
- [4] The petitioner provided two separate bills of costs to me at the hearing: A. A bill of costs for the "regular" costs pursuant to Appendix B of the Supreme Court Rules in respect of the petition and for which special costs were not ordered, and B. A bill of special costs which encompassed the time expended by the solicitors for the petitioner on both the application brought by the respondent to set aside Drost J.'s original order as well as the time expended in dealing with the application to change the locks.
- [5] All of the disbursements in respect of this matter were claimed on the "regular" bill of costs. Ms. Franco advised me at the hearing that rather than divide the disbursements between the two bills, she simply included them all on the one bill. In my view it was appropriate to do this as, regardless of whether the disbursements are claimed as part of the bill of special costs or the bill of costs pursuant to the tariff, the test for determining whether the disbursements ought to be allowed is the same.
- [6] At the hearing Ms. Franco testified at length with respect to the background of the proceeding. She described all of the matters undertaken by her, from the beginning of the file to the bringing of the costs application before me. Mr. Chu, rather than cross-examine Ms. Franco directly in respect to the evidence she provided, chose to simply tell me his side. In addition he provided me with his copies of the petitioner's bills of costs, both for the Scale 3 costs and the special costs, which bills contained a number of hand-written notes which constituted his submissions in respect of this matter.
- [7] Mr. Chu's issues with the bills of costs may be summarized as follows: A. Special costs
- i) Ms. Franco's hourly rate is excessive and the time spent on many of the items was more than what ought to have been spent; ii) Both Ms. Franco and her legal assistant billed for time expended on the same items; iii) The special costs ought to be disallowed in their entirety as they represent a continuous fine against Mr. Chu. The strata corporation continues to assess Mr. Chu monthly fines and, in addition, has included in the monthly account it sends out to him all of the legal costs the strata counsel has paid to its counsel in respect of this matter. This has apparently resulted in Mr. Chu losing a sale of the condominium in that the potential purchasers were somehow scared off from purchasing the unit when they received the Form B from the property manager, which form disclosed significant fines and levies against Mr. Chu's unit. This, Mr. Chu says is an improper act or omission pursuant to the

provisions of Rule 57(14) and he argues that I ought to disallow all of those costs as arising from that improper act or omission; iv) Wong J. ordered that Ms. Franco speed up the process with respect to the obtaining of the oral reasons for judgment of Drost J., and, because Ms. Franco did not do so, she is in default of Wong J.'s order. It is therefore unreasonable for Mr. Chu to pay any costs associated with that attendance or any subsequent attendances. In this regard, Mr. Chu referred me to the provisions of Rule 57(37) as authority for this proposition - that I ought to somehow award him costs or disallow costs to the petitioner because Ms. Franco caused some delay in her failure (alleged) to obtain Drost J.'s reasons for judgment in a timely fashion; and

- v) At the time the petitioner had the locks changed on his suite, the petitioner did not have title to the unit and, therefore, ought not to have been awarded any costs with respect to that matter. B. Bill of costs (at Scale 3)
 - i) Drost J., in his reasons for judgment (¶ 4) noted that he had considerable difficulty in following Mr. Chu's submissions, both oral and written, because of Mr. Chu's relatively weak command of the English language. (I should note that I had no such difficulty). Mr. Chu argues that his deficiencies in the English language ought to have somehow excused him from paying costs. Alternatively, he argues that he ought to have had more opportunity to address the court or have been provided with an interpreter on each occasion when the matter came before the court. Because of those failures he ought not to pay any costs; ii) Stewart J. was reluctant to make an order with respect to costs and suggested during the hearing that there ought not to be a costs award. Only when Ms. Franco insisted were costs then ordered against Mr. Chu. Therefore, he argues he ought not to pay any costs relating to that attendance; iii) Master Bolton's order makes no reference with respect to costs; iv) Gerow J., when the parties attended before her to deal with the special costs application, suggested that the petitioner's special costs application ought to be dismissed, but when the matter proceeded before Bennett J. she gave an order for special costs. Accordingly, there should be no costs for the appearance before Gerow J.;
 - v) There was no order for costs made by Edwards J. and if there was, the matter ought to have only consumed a half day; vi) At the hearing before Drost J. Ms. Franco submitted out of date case law and accordingly no costs ought to be awarded to the petitioner with respect to that attendance; vii) The claim for units under item 33 (conduct of sale) is effectively a double recovery when one considers that Master Taylor awarded the petitioner its special costs of the application to change the locks.
- [8] Mr. Chu argues that the disbursements claimed on the bill before me were increased substantially from the original bill of costs presented to him in February 2006 (before the special costs application). He argues therefore that I ought not to allow any of these increased disbursements. Mr. Chu also argues that photocopies ought not to be awarded at more than 2 or 4 cents each. He also submits that some of the disbursements were not proven: specifically those for B.C. Online searches and Land Title searches done through B.C. Online.

[9] Many of Mr. Chu's complaints relate, not to the amount of the special costs or Scale 3 costs, but to whether the petition ought to have been filed and his claims that it was simply wrong to award costs against him. At the hearing I explained to Mr. Chu that, as a registrar, I have no jurisdiction to go behind an order of this Court. If costs have been awarded, I must assess those costs (be they "special" or "regular") applying the Rules of Court and case law relating to the appropriate amounts I ought to assess based on the evidence presented at the hearing. I do not intend to specifically deal with each of Mr. Chu's complaints except as they relate to the amount to be awarded and/or the applicability of a particular item under the tariff.

Special Costs

[10] Rule 57(3) of the Supreme Court Rules sets out the factors I must consider in determining the appropriate amount of special costs to be paid by the respondent to the petitioner. It provides: Where the court orders that costs be assessed as special costs, the registrar shall allow those fees that the registrar considers were proper or reasonably necessary to conduct the proceeding to which the fees relate, and, in exercising that discretion, the registrar shall consider all of the circumstances, including

- (a) the complexity of the proceeding and the difficulty or the novelty of the issues involved,
- (b) the skill, specialized knowledge and responsibility required of the solicitor,
- (c) the amount involved in the proceeding,
- (d) the time reasonably expended in conducting the proceeding,
- (e) the conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the proceeding,
- (f) the importance of the proceeding to the party whose bill is being assessed, and the result obtained, and
- (g) the benefit to the party whose bill is being assessed of the services rendered by the solicitor.

[11] This matter was particularly complex and it was made so almost exclusively by the conduct of the respondent. Had he not brought his ill-conceived motion (and he was advised that it was ill-conceived by several justices of this court, as well as at least one justice of the Court of Appeal), the petitioner would not have been put to the costs and expenses of several court appearances. Further, the respondent refused to cooperate with the order for conduct of sale, and was, effectively, the author of his own misfortune in creating road blocks for the petitioner who ought to have been able to handle this matter in a very summary fashion. Ms. Franco advises (and I am also aware) that these types of matters are generally very simple and straightforward: first, an application is brought for judgment, to set the terms for redemption and for conduct of sale to the petitioning strata corporation. That application is then usually followed by an application for approval of sale. These matters usually take four to six months from commencement to completion. This matter was commenced on July 20, 2005 and it is only now, in June 2007, that the matter is finally being concluded.

- [12] Ms. Franco testified that she is a solicitor of some eight years call. Since her call to the bar, seventy-five percent of her practice has been in the area of strata property law. She further advises that her law firm acts for hundreds of strata corporations; specifically in respect to collection matters. Her hourly rate is \$300 per hour. I am satisfied that Ms. Franco brought a degree of skill and specialized knowledge to this matter and frankly believe that had the matter been handled by a solicitor with less knowledge of the Strata Property Act and the issues that arose in this particular case, her client, the petitioner, might not have been as successful as it was, particularly relating to the application for and the award of the special costs.
- [13] The amount involved is difficult to pinpoint. I understand, in the first instance, the amount Drost J. ordered the respondent to pay was \$10,981.41, plus interest and costs at Scale 3. That amount has increased since the date of His Lordship's order in that, to the best of my knowledge Mr. Chu still refuses to pay his strata fees. Those unpaid strata fees are to be added to the amount of the judgment as they accrue. In addition, the costs I am assessing will be added to the amount due, thus substantially increasing it.
- [14] With respect to the time expended in conducting the proceeding, Mr. Chu made a number of comments about this on his documentation. Specifically he queried the time expended for preparation and attendance at court, reviewing documentation, and so on. Mr. Chu, on his materials, suggests substantial reductions to the amounts that have been recorded. In relation to the preparation for and attendance at the hearings before the various Justices for his application to set aside Drost J.'s order, Mr. Chu appears to suggest that Ms. Franco and her client ought to be penalized for the application being brought on several times without the benefit of the reasons for judgment of Drost J. The need for those several attendances cannot, however, be placed at the feet of Ms. Franco regardless of any comments made by Wong J., directing her to (or suggesting that she) contact the court to somehow "speed up" the reasons. It is my understanding from Ms. Franco (and I believed her evidence) that on several occasions Mr. Chu insisted that the matter proceed, even though Ms. Franco suggested it ought to be adjourned pending the actual receipt of Drost J.'s reasons for judgment.
- [15] I reviewed very carefully the amount of time that was recorded to each item listed in the bill of special costs; I do not find that any of it has been over-recorded. In my opinion, generally, the amounts recorded to this file are reasonable in the circumstances. The exception to that is the time recorded by Ms. Franco and her legal assistant for attendance at the same meeting or for instructions being given. Some examples of this are:
- (a) on September 9, 2005, both Ms. Franco and Ms. Vianello, her assistant, recorded time to meeting with each other to provide instructions and discuss matters that were going to be undertaken on the client's behalf;

- (b) on October 26, 2005, Ms. Franco recorded time to emailing Ms. Vianello to prepare documentation. Ms. Vianello then, the next day, charges the time for carrying out those instructions.
- [16] In my view it is not appropriate to include in a bill of special costs time recorded by both a solicitor and her assistant for meeting with each other to discuss matters or for providing instructions.
- [17] Mr. Chu's conduct clearly lengthened unnecessarily the duration of the proceedings. I have already provided some comments in respect of this. It is my view that these actions contributed to the making of the special costs award against him.
- [18] This matter was clearly of importance to the petitioner in the sense that it was necessary for them to try and collect the monies that were owed by Mr. Chu who was refusing to pay his strata fees. Strata corporations need all of the strata fees and special levies assessed to meet the needs of the building. If people do not pay their strata fees and special levies, then maintenance items are delayed or abandoned, and all of the owners may suffer as the value of the common areas will be diminished.
- [19] The petitioner clearly benefited from the work done by the solicitors.
- [20] Special costs are the fees that a reasonable client would pay a reasonably competent solicitor for performing the work described in the bill (*Bradshaw Construction Ltd. v. Bank of Nova Scotia* (1991), 54 B.C.L.R. (2d) 309 B.C.S.C.), (aff'd) [1992] B.C.J. No. 1657 (QL) (C.A.). In my view, the only issue that can be taken with the amount claimed in respect of these special costs is the dual recording of time to the file by both Ms. Vianello and Ms. Franco. The total amount of special costs (fees) claimed in this matter is \$11,726.50. Considering the factors I must apply as I have outlined and commented on herein, the fees which are proper or reasonably necessary to conduct this proceeding is \$11,000. The petitioner is awarded this sum, plus applicable taxes as its special costs under the orders of Bennett, J. of November 24, 2006 and Master Taylor made February 10, 2006. Bill of Costs Pursuant to the Tariff (at Scale 3)
- [21] Most litigants are able to come to a resolution as regards bills of costs pursuant to the tariff. There are only certain items in respect of which the registrar has discretion in the number of units to be awarded. There are a number of other items which, if the item described occurred, must be assessed at the amounts set out in the tariff, subject to the provisions of Appendix B, Section 4, relating to the number or portion of days taken for the matter.
- [22] The petitioner claims the following amounts: Item Description Claimed 1 Correspondence, conferences, instructions, investigations, or negotiations 14 3 All process, for which provision is not made elsewhere in this tariff, for commencing and prosecuting a proceeding 5 13 Process for preparation of accounts [Summary of Relief Sought] 3 16 Preparation for an application or other matter referred to in item 17, for each day of hearing where hearing commenced

- (b) where opposed Hearing before Stewart J. - February 23, 2006, ½ day. Hearing before Master Bolton - March 16, 2006 (1/2 day), together with Hearing before Master Donaldson - April 5, 2006 (1/2 day) for a total of (full day) claimed Hearing before Gerow J. - October 24, 2006 (1/2 day) together with Hearing before Bennett J. - November 23, 2003 (1/2 day) for a total of (full day) claimed 7.5 17 Interlocutory application or other application for which provision is not made elsewhere in this tariff, for each day
- (b) where opposed. Hearing before Stewart J. - February 23, 2006, ½ day. Hearing before Master Bolton - March 16, 2006 (1/2 day), together with Hearing before Master Donaldson - April 5, 2006 (1/2 day) for a total of (full day) claimed Hearing before Gerow J. - October 24, 2006 (1/2 day) together with Hearing before Bennett J. - November 23, 2003 (1/2 day) for a total of (full day) claimed 12.5 18 Preparation for an application or other matter referred to in Item 19 for each day of hearing
- (b) if opposed. Hearing of Petition before Drost J. - August 18, 2005 (full day) and Hearing before Edwards J. - August 12, 2005 (full day) for a total of (2 full days) claimed 10 19 Hearing of proceeding, including originating application, special case, proceedings on a point of law, interpleader or any other analogous proceeding, and applications for judgment under Rule 18, 18A and 31(6), for each day
- (b) if opposed. Hearing of Petition before Drost J. - August 18, 2005 (full day) and Hearing before Edwards J. - August 12, 2005 (full day) for a total of (2 full days) claimed Attending for Reasons for Judgment of Drost J. - August 19, 2005 (1/2 day) 25 20 Preparation for attendance referred to in Item 21, for each day of attendance Anticipated to settle bill of costs (1/2 day) Anticipated to settle order of Stewart J. (1/2 day) 2 21 Attendance before a registrar to settle an order or to assess costs, for each day Anticipated to settle bill of costs (1/2 day) Anticipated to settle order of Stewart J. (1/2 day) 4 26.1 Preparation of an outline under Rule 51A Outline Part III - September 28, 2005 hearing 3 29 Process for payment into or out of court 1 31 Process relating to entry of an order or a certificate of costs when Item 21 or 34 does not apply Order of Drost J. - August 19, 2005 Order of Master Donaldson - April 5, 2006 Order of Bennett J. - November 24, 2006 3 32 All process, for which provision is not made elsewhere in this tariff, relating to execution upon or enforcement of an order, exclusive of any application to the court 1 33 Conduct of sale where property sold by order of court 7 Total number of units: Multiply by unit value: Subtotal: Taxes: GST 6% PST 7% 98.00 \$80.00 \$7,840.00 \$470.00 \$548.00 Total Costs and Taxes \$8,859.20 Item 1
- [23] This item is the "catch all" and is intended to provide the petitioner with some compensation for all matters undertaken in this legal proceeding and for which compensation (units) has not been granted elsewhere. In determining the appropriate number of units to award I must be mindful, not only of the units awarded for the item, but also of the special costs which I have assessed which have been awarded to the petitioner. Much of the complexity in this matter has been compensated for by the special costs award made by Bennett J. This matter ought to have been reasonably simple but was made complex almost exclusively by Mr. Chu's own conduct. That conduct led to the special costs award against him.

- [24] I have the discretion to award between 1 unit and 20 units in respect of this item. In my view, this matter falls somewhere in the middle when one takes the complexities which have already been compensated for by the special costs award out of the equation. Accordingly, I will award the sum of 10 units under this item. Item 3
- [25] The petitioner claims 5 units under this item. Mr. Chu suggests that 1 unit is appropriate. He indicates that the petition was ill-founded and somehow misleading and accordingly the number of units ought to be minimal.
- [26] This item relates to the preparation of the petition and supporting affidavit. I have discretion to award between 1 unit and 10 units in respect of this item. In my view the preparation of a petition and supporting affidavit is usually a fairly comprehensive process because the facts upon which the relief is sought must be set forth in great detail in the petition and affidavit. That being said, as Ms. Franco has admitted, these types of petitions are usually reasonably straightforward and simple matters. The actual petition and supporting materials in this case are no different. The appropriate number of units to award for this item is 4 units. Item 13
- [27] The petitioner seeks 3 units for this item. I have discretion to award between 1 unit and 5 units. Only a summary of relief sought was prepared. That document is prepared at the same time as the petition and is based on information contained in the affidavit in support of the petition. In that respect, it is a very straightforward document.
- [28] Mr. Chu argues that nothing ought to be awarded in respect of this item as, in his submission, this matter was ill-conceived from the beginning in that the petitioner ought to have acceded to his view that he ought not to pay any strata fees. Accordingly, it was wrong of the petitioner to attempt to collect those strata fees. As I have said before I cannot go behind the matters that were initially before the court. I can only assess costs that have been awarded. The appropriate number of units to award for this item is 1 unit. Items 16 and 17
- (a) Hearing Before Stewart J. - February 23, 2006
- [29] The petitioner has claimed 1.5 units for preparation for this application (under Item 16), and 2.5 units for attendance in respect of this application (under Item 17). Mr. Chu argues that no units should be awarded for this application as, firstly, he ought to have had an interpreter, and secondly, Stewart J. suggested that there be no order for costs and the order for costs was only made after persistence on the part of Ms. Franco.
- [30] As I advised Mr. Chu on many occasions during the hearing, my only jurisdiction as a registrar is to assess costs that have been ordered. I am not in a position to go behind orders of the court and to make any determination whatsoever as to whether those orders were or are appropriate. If an order for costs exists I must assess those costs according to the rules of court and applying the case law that relates to those matters. The order of Stewart J. provides: THIS ORDER ORDERS THAT:

- (2) The petitioner shall have its costs of this application at Scale 3.
- [31] Accordingly, I am not in a position to do anything other than assess the costs awarded by Stewart J. The hearing took half a day. The units allowed for preparation and attendance at that half-day hearing are 1.5 and 2.5 respectively (as has been claimed).
- (b) Hearing Before Master Bolton - March 16, 2006 (1/2 day) plus Hearing before Master Donaldson - April 5, 2006 (1/2 day) (total claimed: 1 day)
- [32] On the bill of costs it appears as if the petitioner has claimed units for a ½ day in respect of each of these applications. Mr. Chu argued that, as Master Bolton made no order with respect to costs, costs ought not to be assessed for that attendance. Master Donaldson ordered:
10. The respondent shall pay costs of this application to the petitioner on Scale 3 based on the tariff for a full day of preparation and a full day for attendance.
- [33] Accordingly, I must award the petitioner 3 units for preparation and 5 units for attendance in respect of the application before Master Donaldson, regardless of whether any costs are assessed for preparation and attendance at the hearing before Master Bolton. Accordingly, the petitioner is awarded the units claimed.
- (c) Hearing Before Gerow J. - October 24, 2006 (1/2 day) together with the Hearing before Bennett J. - November 23, 2006 (1/2 day) (total claimed: 1 day)
- [34] Mr. Chu argues that Gerow J. made no order with respect to costs and, accordingly, nothing ought to be awarded for the preparation and attendance relating to the application before Her Ladyship. In her oral reasons for judgment, Bennett J. stated (at ¶ 24): Costs of this application are granted on Scale 3. There will be costs for a full-day hearing yesterday and receiving the reasons for judgment today, as well as the appropriate preparation time. I assume this matter will be referred to the registrar for the ascertaining of the appropriate legal fees.
- [35] Despite the order of Bennett J. which sets the petitioner's costs for the application before as noted, the petitioner only claims units for a full day. Accordingly, I will award only those costs that are claimed: 3 units for preparation and 5 units for attendance in respect of that hearing. Items 18 and 19
- (a) Hearing of Petition Before Drost J. - August 18, 2005 (full day) and Hearing before Edwards J. - August 12, 2005 (full day) (total claimed: 2 days)
- [36] Mr. Chu argues that he ought not to pay any of these costs for the following reasons:
1. He had a legal right to an interpreter before the order of August 18, 2005, and accordingly, he ought not to have to pay any costs for those attendances;

2. He did not file any affidavits in respect of this matter, and it was adjourned on the first instance it came before the Court;
 3. Ms. Franco referred to out of date case law, at the hearing before Drost J.; and
 4. Mr. Chu already had his unit listed for sale and, accordingly, there was no need for bringing the application in the first place.
- [37] As I have already stated, I have no jurisdiction to go behind the costs award and if an award of costs was made I must award the appropriate number of costs in respect of preparation and attendance for the application.
- [38] Drost J.'s order states: THIS COURT ORDERS AND DECLARES THAT:
14. The Petitioner is entitled to recover their costs on Scale 3 from the Petitioner (sic).
- [39] In his reasons at (¶ 40) His Lordship states: Finally and further, for greater clarification, if necessary, I find the petitioner entitled to its costs of this application on Scale 3.
- [40] An application includes the preparation and attendance by counsel or a party in respect of all times in which that application is before the court. I understand from Ms. Franco's evidence that the petitioner originally set the hearing of the petition for August 12, 2005. Mr. Chu attended that hearing without any affidavit evidence. When it became apparent to Edwards J. (who was hearing the application) that Mr. Chu had significant questions relating to the calculation of the fees and the general governance of the strata building which his unit was located, he adjourned the hearing for one week to allow the strata corporation to obtain minutes of the meetings and sufficient evidence to meet Mr. Chu's concerns. His Lordship also adjourned the issue of costs of the hearing to the judge hearing the petition. The hearing was reset and came before Drost J. on August 18.
- [41] No order was entered from the attendance before Edwards J. That being said, there is, in my view, only one application: the application commenced before Edwards J. and then adjourned over and heard by Drost J. I understand from Ms. Franco's testimony (and that testimony was uncontroverted) that each court attendance consumed a full day. Accordingly, I will allow 10 units total for preparation for the application (5 for each day) and 25 for the attendances (10 for each day of hearing before firstly, Edwards J. then Drost J. and 5 for the attendance the day following the hearing to receive Drost J.'s reasons). Items 20 and 21
- [42] Mr. Chu argued that no units should be awarded under this item as none were claimed on the original bill of costs sent to him in February 2006. This argument is not reasonable. Since February 2006, the petitioner has undertaken a number of new matters in this proceeding for which costs have been awarded. Those costs must then be assessed and included in the amounts I will award. The units sought under this item are for the preparation and attendance at this hearing before me.

- [43] Some units (3 in total) were included on the bill before me for an anticipated application to settle Stewart J.'s order. At the hearing Ms. Franco confirmed that she was withdrawing that claim as there was no attendance required for that purpose. I will however allow 2 units for preparation and 4 units for attendance for this hearing as, despite being set for 2:00 p.m., this hearing continued until 5:40 p.m. and consumed more than two and half hours of hearing time thereby entitling the petitioner to the full day rate. (See Appendix B, ss. 4(4) of the Supreme Court Rules.) Item 26
- [44] Mr. Chu suggests that rather than the 3 units claimed, 1 unit is more appropriate. The range of units I may award in respect of this item is 1 to 3. In my view, 2 is the appropriate number to award for the outline prepared for the September 28, 2005 hearing. Item 29
- [45] Mr. Chu says this item ought not to be awarded because it was not claimed in February 2006 bill. I do not agree for the reasons I have expressed earlier.
- [46] The petitioner will have to arrange for payment out of court of the \$30,000 Master Donaldson ordered that Mr. Chu pay into court. That order was made on August 6, 2006 (clearly after the February 2006 draft bill of costs). Master Donaldson awarded the petitioner its costs of that application. It is therefore appropriate that this amount be included in the costs I am to assess. Item 31
- [47] 3 units have been claimed for entering the orders of each of Drost J., Master Donaldson, and Bennett J. I have no discretion with respect to this item. If the petitioner entered these orders (which it did), it is entitled to 1 unit for each order entered. I will accordingly award the 3 units claimed. Again, Mr. Chu suggested that only 1 unit be assessed as that is the amount that was included on the February 2006 bill of costs. I have addressed this argument earlier in my reasons and will not repeat myself. The orders of Master Donaldson and Bennett J. were made subsequent to preparation of that February bill of costs. Item 32
- [48] At the hearing, Ms. Franco agreed that she ought not to have included this item on the bill of the costs. Item 33
- [49] The petitioner claims 7 units for this item. Mr. Chu argues that the petitioner in asking for units under this item seeks double recovery. He argues that the special costs ordered by Master Taylor take this item (conduct of sale) into account. To allow the petitioner to recover units under this Item would amount to double recovery. To some extent, I agree with Mr. Chu. Many of the conduct of sale issues arose and are compensated for by the special costs and by the orders for costs of the application for hearing of the petition before Drost J. and the order for sale made by Master Donaldson. Some additional things - instructing the realtor, considering offers, seeking instructions have not been included elsewhere. Accordingly, I will award the sum of 3 units in respect of this item.

- [50] The petitioner's costs at Scale 3 are assessed as follows: Item Description Claimed Allowed 1 Correspondence, conferences, instructions, investigations, or negotiations 14 10 3 All process, for which provision is not made elsewhere in this tariff, for commencing and prosecuting a proceeding 5 4 13 Process for preparation of accounts [Summary of Relief Sought] 3 1 16 Preparation for an application or other matter referred to in item 17, for each day of hearing where hearing commenced
- (b) where opposed Hearing before Stewart J. - February 23, 2006, ½ day. Hearing before Master Bolton March 16, 2006 - (1/2 day), together with Hearing before Master Donaldson - April 5, 2006 (1/2 day) for a total of (full day) claimed Hearing before Gerow J. - October 24, 2006 (1/2 day) together with Hearing before Bennett J. - November 23, 2003 (1/2 day) for a total of (full day) claimed 7.5 7.5 17 Interlocutory application or other application for which provision is not made elsewhere in this tariff, for each day
- (b) where opposed. Hearing before Stewart J. - February 23, 2006, ½ day. Hearing before Master Bolton - March 16, 2006 (1/2 day), together with Hearing before Master Donaldson - April 5, 2006 (1/2 day) for a total of (full day) claimed Hearing before Gerow J. - October 24, 2006 (1/2 day) together with Hearing before Bennett J. - November 23, 2003 (1/2 day) for a total of full day claimed 12.5 12.5 18 Preparation for an application or other matter referred to in Item 19 for each day of hearing
- (b) if opposed. Hearing of Petition before Drost J. - August 18, 2005 (full day) and Hearing before Edwards J. - August 12, 2005 (full day) for a total of (2 full days) claimed 10 10 19 Hearing of proceeding, including originating application, special case, proceedings on a point of law, interpleader or any other analogous proceeding, and applications for judgment under Rule 18, 18A and 31(6), for each day
- (b) if opposed. Hearing of Petition before Drost J. - August 18, 2005 (full day) and Hearing before Edwards J. - August 12, 2005 (full day) for a total of (2 full days) claimed Attending for Reasons for Judgment of Drost J. - August 19, 2005 (1/2 day) 25 25 20 Preparation for attendance referred to in Item 21, for each day of attendance Anticipated to settle bill of costs (1/2 day) Anticipated to settle order of Stewart J. (1/2 day) 2 2 21 Attendance before a registrar to settle an order or to assess costs, for each day Anticipated to settle bill of costs (1/2 day) Anticipated to settle order of Stewart J. (1/2 day) 4 4 26.1 Preparation of an outline under Rule 51A Outline Part III - September 28, 2005 hearing 3 2 29 Process for payment into or out of court 1 1 31 Process relating to entry of an order or a certificate of costs when Item 21 or 34 does not apply Order of Drost J. - August 19, 2005 Order of Master Donaldson - April 5, 2006 Order of Bennett J. - November 24, 2006 3 3 32 All process, for which provision is not made elsewhere in this tariff, relating to execution upon or enforcement of an order, exclusive of any application to the court 1 0 33 Conduct of sale where property sold by order of court 7 3 Total number of units Multiply by unit value Subtotal: GST: 6% PST: 7% 98 \$80.00 \$7,840.00 \$470.00 \$548.00 85 \$80.00 \$6,800.00 \$408.00 \$476.00 Total Costs and Taxes \$8,859.20 \$7,684.00 Disbursements

[51] Rule 57(4) says:

- (4) In addition to determining the fees that are to be allowed on an assessment under subrule (1) or (3), the registrar must
 - (a) determine which expenses and disbursements have been necessarily or properly incurred in the conduct of the proceeding, and
 - (b) allow a reasonable amount for those expenses and disbursements.

[52] Other than arguing that he ought only to pay the disbursements on the February 2006 bill of costs, Mr. Chu questions only a few of the disbursement items. He argues that the BC Online searches and the Land Title searches were "not proven". At the hearing Ms. Franco provided me with a "Disbursement Subsidiary Report" which she testified lists the internal disbursements her law firm records to the file. The BC Online and Land Title searches are internal disbursements in that they are charged "in house". In my view they are reasonable and there is sufficient evidence before me to conclude that those disbursements were in fact incurred. As such I will allow them.

[53] Mr. Chu also questions the number of photocopies claimed. This file was reasonably complex and a large number of materials were produced. Ms. Franco was responsible for putting together many of those materials, not only for the initial application for the hearing of the petition, but I understand that Ms. Franco prepared the chambers record in respect of Mr. Chu's application to set aside Drost J.'s order. However, I am of the view that 5,323 pages of copies is somewhat on the high side for this matter. Even though there were numerous court attendances, most of those attendances were for the same application and materials ought to have been able to have been re-used rather than re-copied. I am aware of five court applications:

1. The original application to hear the petition (which was before the court on two occasions before Edwards J. and Drost J.);
2. Mr. Chu's application to review Drost J.'s order (eventually dismissed by Gerow J. but which was set many times before the court);
3. The application to change the locks before Master Taylor (subsequently upheld by Stewart J.);
4. The application before Master Donaldson to approve the sale; and,
5. This attendance to deal with the issue of costs.

[54] In my view, a more appropriate number for the photocopies is 3,500 and that is the number I will allow. I will however allow the copies at the sum of 25 cents per page, that being the "registrar's rate" for copies as set out in the notice to the profession issued by Master McCallum (as Registrar of the Supreme Court) on August 18, 2003.

- [55] In my view, the balance of the expenses and disbursements incurred in this proceeding and claimed on the bill of costs were necessarily or properly incurred in the conduct of this proceeding.
- [56] I will therefore allow disbursements totalling \$2,915.33, calculated as follows: Description Claimed Allowed Non-taxable disbursements: Paid to file Form G - Certificate of Lien \$65.20 \$65.20 Court filing fees \$332.00 \$332.00 F. Lee, Wong & Associates Ltd. Appraisal (Inv. #06037102) \$515.00 \$515.00 Anticipated expense to file Form H - Acknowledgement of Payment with the Land Title Office \$27.00 \$27.00 Subtotal non-taxable disbursements \$939.20 \$939.20 Taxable disbursements: Copy of Reasons for Judgment of Drost J. \$138.00 \$138.00 Process Server \$45.60 \$45.60 Cunningham & Rivard Appraisal (Inv. #63346) \$320.00 \$320.00 Postage \$15.23 \$15.23 Registered mail \$14.44 \$14.44 Photocopies/Laser copies 5,323 pages @ \$0.25/copy \$1,330.75 \$875.00[1] Courier \$62.40 \$62.40 Registry Agent's Filing Fees \$160.60 \$160.60 eCarswell Legal Research \$29.00 \$29.00 BC Online Searches \$35.00 \$35.00 Land Title Searches \$69.50 \$69.50 Al Scott Lock & Safe Ltd. inv. #34804 (Change locks) \$76.75 \$76.75 Facsimiles (65 pages @ 35 cents per page) \$22.75 \$22.75 Subtotal taxable disbursements \$2,320.02 \$1,864.27 Taxes: GST 6% = \$139.20 \$111.86 Total disbursements & taxes: \$3,398.42 \$2,915.33 Conclusions: A. Special Costs
- [57] The petitioner is awarded special costs in the amount of \$11,000 plus taxes (\$12,430 total). B. Costs Pursuant to the Tariff (Scale 3)
- [58] The petitioner is entitled to Scale 3 costs in the amount of \$7,684.00, inclusive of taxes. C. Disbursements
- [59] The petitioner's disbursements have been allowed at \$2,915.33, inclusive of taxes. D. Total Costs Assessed
- [60] Accordingly, the petitioner's costs are assessed in the total amount of \$23,029.33 (\$12,430 special costs, \$7,684 Scale 3 costs and \$2,915.33 in disbursements). If required the petitioner may prepare a certificate and forward it to me for my signature. "District Registrar Sainty"
- [1] 3,500 pages @ \$0.25/page

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