

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NW 87 v. Ajvazi*,
2023 BCSC 1462

Date: 20230823
Docket: S234917
Registry: New Westminster

Between:

The Owners, Strata Plan NW 87

Petitioner

And

**Jasar Ajvazi aka Richard Gibson and
Helen Marie Price**

Respondents

Before: Registrar Gaily

Reasons for Decision

Counsel for the Petitioner:

E.T. McCormack
E. Sheard

The Respondent, Jasar Ajvazi aka Richard
Gibson, appearing in person:

J. Ajvazi

No one else appearing

Place and Dates of Hearing:

New Westminster, B.C.
May 15-17, 2023

Place and Date of Judgment:

New Westminster, B.C.
August 23, 2023

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Introduction

[1] This is an assessment of the amount claimed by The Owners, Strata Plan NW 87 (the “Strata Corporation”), under s. 118 of the *Strata Property Act*, S.B.C. 1998, c 43 [SPA], for the enforcement of a lien registered on the strata unit (the “Unit”), which was owned by the respondents, Jasar Ajvazi (who is also known as Richard Price, but who I will refer to as Mr. Ajvazi) and Helen Marie Price.

[2] Section 118 of the SPA expressly provides that certain costs of registering or enforcing a lien under ss. 116 or 117 of the SPA may be added to the amount owing to the strata corporation under a certificate of lien (the “S. 118 Costs”). In *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377 [Baettig], which is the leading case interpreting s. 118 of the SPA, the Court of Appeal confirmed that a strata corporation’s “reasonable legal costs” included under s. 118(a), are subject to the qualification that those costs must have been reasonably necessary to register and enforce the lien (Baettig, para. 80).

[3] The lien filed by the Strata Corporation in September 2019 over the Unit pursuant to s. 116 of the SPA was for approximately \$7,500 (the “Lien”). In November 2021, the Strata Corporation enforced the Lien through a Court-Ordered sale of the Unit.

[4] The Strata Corporation claims that as at May 2023 (when the assessment was held), its S. 118 Costs total \$133,826.76, of which \$110,782.84 are the legal fees (not including disbursements or applicable taxes) it paid to its counsel, Wilson McCormack Law Group (“WMLG”). Included in the S. 118 Costs it claims are expenses incurred by the Strata Corporation’s strata management company, Century 21 Prudential Estates (RMD) Ltd. (“Century 21 PEL”), who had registered the Lien prior to retaining WMLG, and who paid for certain disbursements (as discussed below). The Strata Corporation’s legal costs are set out in the invoices of WMLG, dated from October 26, 2020 through November 9, 2022, which are attached to the appointment.

[5] The Strata Corporation acknowledges that the S. 118 Costs it seeks are high (they exceed the amount found to be reasonable in other cases assessing S. 118 Costs in part because the enforcement proceedings extended through to the court-ordered sale of the Unit), but it submits that these costs were reasonably necessary given Mr. Ajvazi's actions (and inactions) throughout the Lien enforcement proceedings, and his unwillingness to accept the Court's decisions.

[6] Based on my review of the S. 118 Costs claimed by the Strata Corporation detailed below, I find that in the circumstances of this case, the Strata Corporation is entitled to \$95,617.55 in S. 118 Costs (which includes its "reasonable legal costs" under s. 118(a)). I have determined that these costs were reasonably necessary to register the Lien and conduct the enforcement proceedings, and that those enforcement proceedings concluded with the sale of the Unit and its vacant possession by its new owner.

[7] I find that the costs claimed by the Strata Corporation related to the *assessment* of its S. 118 Costs are not encompassed under s. 118 of the *SPA*, but are costs associated with a proceeding under the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR]. As such, these costs are governed by Rule 14-1. Given Mr. Ajvazi's conduct at the assessment hearing, exercising the discretion afforded the registrar under Rule 14-1(19), I have determined that the Strata Corporation is entitled to its costs of the assessment payable by Mr. Ajvazi as special costs. I find that the appropriate amount for these special costs is \$25,000, inclusive of taxes and disbursements, and includes the preparation for and attendance at the pre-hearing conference ("PHC"), as well as the assessment hearing.

The Assessment Proceedings

[8] Mr. Ajvazi did not attend the PHC held before me on December 1, 2022, although the evidence established he was properly served with the Strata Corporation's requisition and appointment, as well as the first affidavit of Elaine McCormack, filed November 23, 2022 (the "McCormack Affidavit"). At the PHC, I had ordered Mr. Ajvazi to provide a written list of his objections to the Strata

Corporation's S. 118 Costs to counsel by January 30, 2023. The PHC order was served on Mr. Ajvazi, but he did not prepare a list of objections, either pursuant to the PHC order, or at any time up to and during the assessment while he attended.

[9] Ms. McCormack had primary conduct of the file and the evidence before me at the assessment consisted primarily of the lengthy McCormack Affidavit (as well as two other affidavits of Ms. McCormack, filed on November 29, 2022 and on May 5, 2023, confirming service of documents on Mr. Ajvazi and Ms. Price). The McCormack Affidavit's attestation is 330 paragraphs and it exhibits 207 documents, filling four binders. Unless otherwise indicated, all references in this decision to exhibits are to the McCormack Affidavit exhibits.

[10] Mr. Ajvazi filed a reply to the appointment on May 4, 2023, in which he referred to evidence exhibited to the McCormack Affidavit, alleging that the Strata Corporation's lawyers were committing perjury. He also sought to pursue a claim against the Strata Corporation under s. 163 of the *SPA*, seeking an order that he is entitled to damages of over \$1 million from the Strata Corporation. The reply was included in the hearing record. Mr. Ajvazi also tendered his own affidavit, which he filed on May 10, 2023, which repeats the same or similar arguments as in his reply. Mr. Ajvazi did not serve the affidavit on WMLG. The materials Mr. Ajvazi filed for the assessment did not address the S. 118 Costs in any material way and his claim for damages from the Strata Corporation was not properly before the Court or related to the assessment of the S. 118 Costs.

[11] The assessment, which was set for five days, concluded after three days. Mr. Ajvazi left the hearing at the lunch break of the second day, asserting that he intended to both appeal any decision I made and seek my disqualification as registrar, ostensibly because I had accepted the evidence of the process servers the Strata Corporation retained, which confirmed that Mr. Ajvazi had been served with the appointment and supporting materials, and because I had advised him I did not have jurisdiction to hear his claim for damages against the Strata Corporation.

Although I cautioned Mr. Ajvazi that the assessment would proceed in his absence, he did not return.

[12] Under Rule 23-6(4) and 18-1(5) of the *SCCR*, the registrar may give general directions for the conduct of the hearing in relation to an assessment. At the hearing, I directed that Mr. Ajvazi could only cross-examine Ms. McCormack on the evidence in the McCormack Affidavit, and not on the evidence that he had tendered in his May 10, 2023 affidavit. Ms. McCormack spoke to her affidavit under oath at the assessment; however, Mr. Ajvazi left the proceedings while Ms. McCormack was still speaking to it and he did not cross-examine her.

[13] Mr. Ajvazi's conduct at the assessment hearing illustrates the challenges the Strata Corporation faced in enforcing the Lien. While in attendance, Mr. Ajvazi was disruptive and disrespectful to the Court and to the Strata Corporation's counsel, frequently interrupting to object to the submissions and evidence, as well as to the Court's directions. Despite the explanation of the purpose of the S. 118 Costs assessment and the nature of the evidence tendered for the assessment, Mr. Ajvazi repeatedly alleged that counsel was committing perjury because the evidence in the McCormack Affidavit, which speaks to the S. 118 Costs claimed, was not before presiders at the Lien enforcement proceedings. When it was arranged for Mr. Ajvazi to have a hard copy of the McCormack Affidavit for his reference at the hearing (he maintained he had never been properly served with it, although it formed the basis for his claims of perjury set out in his reply and affidavit), Mr. Ajvazi refused it asserting that it was "contaminated".

[14] When I advised Mr. Ajvazi that his conduct was disrespectful of the Court, he accused me of being racist, disrespectful and bullying. He alleged that I had threatened him and scared him, and that his human rights were being violated. Throughout the Lien enforcement proceedings, Mr. Ajvazi has repeatedly levelled similar allegations against the Strata Corporation's counsel, strata council members and Century 21 PEL staff, as well as raising them before other presiders, and in complaints he filed with the Law Society of British Columbia ("LSBC") and the British

Columbia Human Rights Tribunal (“BCHRT”) in the midst of the enforcement proceedings.

[15] This is only a sample of the conduct the Strata Corporation and its counsel dealt with from the time the Lien was registered through to the assessment hearing.

Discussion

Legal Principles

[16] The Strata Corporation registered the Lien on the Unit pursuant to s. 116 of the SPA. As is permitted under s. 117 of the SPA, the Strata Corporation took conduct of the sale of the Unit to collect the money Mr. Ajvazi owed it under the Lien.

[17] In *Baettig*, the Court of Appeal discussed the scheme created under ss. 116-118 of the SPA, noting that these sections are remedial, and that “they shift the burden of costs associated with collecting strata arrears to the delinquent owners who have failed to meet their obligations” (para. 65). The legislative intent underlying s. 118 is “that strata owners who comply with the bylaws and rules of the strata corporation should not have to shoulder the financial burden of remedying infractions committed by non-compliant owners” (para. 68).

[18] The focus of this assessment is the S. 118 Costs of the Strata Corporation, as those are defined. Section 118 of the SPA expressly provides that costs of registering a lien or enforcing a lien may be added to the amount owing to the strata corporation under a certificate of lien.

[19] Section 118 of the SPA provides:

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.

[20] Under s. 112(2) of the *SPA*, before a strata corporation may register a lien under s. 116, it must provide the delinquent owner with at least two weeks' written notice demanding payment, and indicating a lien may be registered if payment is not made within that two-week period.

[21] In *625536 B.C. Ltd. v. Owners of Strata Plan LMS 4385*, 2021 BCCA 158 [*Strata Plan LMS 4385*], at para. 29, the Court confirmed that "Whatever legal costs are incurred in preparing a s. 112(2) notice may be "added" under s. 118, to the "reasonable legal costs" that are included in a Certificate of Lien when a lien is ultimately registered against an owner's strata lot".

[22] In her order of May 14, 2021 (the "Robertson Order"), Master Robertson expressly noted that the amount owing under the Lien "shall increase as further ... reasonable legal fees... accrue and as the [Strata Corporation] incurs land title and court registry fees and other disbursements" (para. 5).

[23] As the Court explained in *Baettig*, safeguards against the inclusion of excessive legal charges under the umbrella of a lien are built into the wording of s. 118(a), namely, "only reasonable legal costs may be added to the amount owing under the lien" (para. 79, emphasis in original). *Baettig* was not an assessment of the S. 118 Costs claimed; the Court referred the assessment to the registrar with the direction that "legal costs, fees and other disbursements determined by the registrar to have been reasonably incurred in registering the lien and prosecuting the petition shall be allowed and added to the amount owing under the lien" (para. 88).

[24] Following *Baettig*, legal fees claimed under s. 118(a) must be reasonable. In assessing the reasonable legal costs under s. 118(a) of the *SPA*, I am to consider the reasonableness of the quantum claimed for the legal work undertaken: *The Owners, Strata Plan NW 2089 v. Ruby*, 2019 BCSC 504, para. 24.

[25] In *The Owners, Strata Plan NW 499 v. Louis*, 2023 BCSC 281 [*Louis*] (cited by the Strata Corporation in its brief of authorities), I noted that what are considered reasonable legal fees under s. 118(a) will depend to some degree on the

circumstances of each case, but that decisions assessing S. 118 Costs offer some guidance. The reported decisions I reviewed in *Louis* included *The Owners, Strata Plan NW 2089 v. Ruby*, 2019 BCSC 1485 [*Ruby*] and *Strata Plan LMS 2154 v. 0752737 B.C. Ltd.*, 2021 BCSC 1343 [*Strata Plan LMS 2154*] (also cited by the Strata Corporation in its brief of authorities).

[26] Like counsel on the review of a lawyer's accounts under Part 8 of the *Legal Profession Act*, S.B.C. 1998, c 9 [*LPA*], or on an assessment of special costs under R. 14-1(3), counsel for the Strata Corporation bears the onus of establishing that the legal costs it claims were reasonably necessary to register and enforce the Lien.

Assessment of the S. 118 Costs

General background

[27] Mr. Ajvazi and Ms. Price were the registered owners of the Unit, which was a residential strata lot in a condominium complex located at 6560 Buswell Street in Richmond, B.C., known as Brighthouse North (the "Property"). Ms. Price did not live in the Unit, but was the mortgagee. When the Unit was sold, the funds advanced under Ms. Price's mortgage were paid out from the proceeds. Ms. Price took no position on the assessment and did not appear at the hearing.

[28] Century 21 PEL provides strata management services to the Strata Corporation, which includes the collection of strata fees and special levies. At all material times, William (Bill) Blackall was the president and managing broker of Century 21 PEL. Laurie Evans of Century 21 PEL was the strata agent for the Property. Affidavits from both Ms. Evans and Mr. Blackall were before the court during the various stages of the enforcement proceedings and are also exhibited to the McCormack Affidavit.

[29] The Strata Corporation had previously retained Ms. McCormack and WMLG in 2018 to assist it with proceedings it had commenced against Mr. Ajvazi in the Provincial Court (see *Strata Plan NW87 v. Ajvazi*, 2018 BCPC 343).

[30] Ms. McCormack testified that she was the primary billing lawyer on this file. She is a senior member of the bar, having been called in 1993, and has practiced strata property law for most of her career. She confirmed that her normal hourly rate is \$500, but that she charged \$425 per hour for her time on this file, as set out in the retainer agreement, and did not increase it. As the file progressed, Ms. McCormack was assisted by Emily Sheard, who was called to the bar in 2020 and whose hourly rate was \$250 throughout. Cora Wilson, a senior counsel called in 1986 based at WMLG's office on Vancouver Island, assisted with the conveyance of the Unit to the new owner. WMLG also charges for its assistants' time at a rate of \$125 per hour, and the WMLG invoices include several entries of Vivian Panago, who has been Ms. McCormack's legal assistant for 20 years.

[31] Ms. McCormack explained that WMLG's normal practice in SPA lien proceedings is for Ms. Panago (or other assistants) to prepare and draft the standard materials required under the SPA (such as demand/payout letters, petition and affidavits), with the help of a bookkeeper to determine the amounts owing for the payout of the lien at a given time. Legal counsel, primarily Ms. McCormack (and later Ms. Sheard) are responsible for revising and finalizing court documents, advising and receiving instructions from the clients, appearing at court proceedings (such as the petition and, in this case, the approval for sale), and where necessary, dealing with appraisers and realtors.

[32] The registration of the Lien occurred late in 2019, but the enforcement proceedings took place while measures responding to the Covid-19 pandemic were in place at businesses and in the Courts.

S. 118 Costs for the Registration of the Lien

[33] On July 4, 2019 and on September 11, 2019, pursuant to s. 112(2) of the SPA, Century 21 PEL sent demand letters to Mr. Ajvazi, advising that he owed arrears in strata fees and special levies and that it would register a lien against the Unit for failure to pay the arrears. Century 21 PEL obtained a title search to confirm ownership of the Unit.

[34] As it advised in its July 4, 2019 demand letter, on September 11, 2019, Century 21 PEL registered the Lien against the Unit pursuant to s. 116 of the *SPA*.

[35] As part of its S. 118 Costs, the Strata Corporation claims \$167.81 in costs incurred by Century 21 PEL for the title search fee, as well as the agent's fee to register the Lien at the Land Title Office ("LTO"). These costs are expressly included under s. 118(b) ("land title and court registry fees") and (c) ("other reasonable disbursements") and part of the Strata Corporation's S. 118 Costs.

[36] In October 2020, the Strata Corporation retained WMLG to assist it enforce the Lien (the retainer agreement is at Ex. 206). On October 19, 2020, WMLG issued another demand letter to Mr. Ajvazi and Ms. Price, which also reminded the owners about the registration of the Lien under s. 116 and that if payment of the entire amount was not received within the timeframe, a second lien could be registered, and proceedings to enforce the Lien could be commenced (Ex. 15).

[37] After receiving the October 19, 2020 demand letter, Mr. Ajvazi communicated with WMLG, as well as with Ms. Evans, seeking to pay the arrears owing in cash through special arrangements with Century 21 PEL. In response, WMLG prepared and provided Mr. Ajvazi with demand/payout letters, such as the one issued to him on December 17, 2020 (Ex. 20).

[38] The WMLG invoice dated October 26, 2020 is for \$375.00, the time Ms. McCormack spent initially reviewing the file and preparing the demand/payout letter WMLG sent on October 19, 2021, plus some disbursements. The WMLG invoice dated December 29, 2020 is for a fixed fee of \$350.00 for the preparation of the December 17, 2020 demand/ payout letter WMLG sent to Mr. Ajvazi.

[39] The fees incurred by the Strata Corporation to prepare and issue the demand/ payout letters under s. 112 of the *SPA* are properly S. 118 Costs: *Strata Plan LMS 4385*. In *Louis*, I found that \$300 was a reasonable legal fee for the preparation and service of the demand letter required under s. 112(2) of the *SPA* (para. 70). I noted that in *Strata Plan LMS 2154*, Master Bilawich had found that \$250 was a

reasonable fee for the preparation of a s. 112 demand notice, which he described as “essentially a form letter that is adapted to the specific owner, strata and balance owing” (*Louis*, para. 68, citing *Strata Plan LMS 2154*, paras. 34 and 36).

[40] The Strata Corporation submits that \$350, the fixed fee WMLG charged to prepare the s. 112 demand/payout letters, is a reasonable fee, taking issue with the characterization of the s. 112 demand/payout letter as a *pro forma* letter. The Strata Corporation asserts that the preparation of the demand/payout letter requires a recalculation and updating of the fees owing under a given lien each time payout is requested. I accept the Strata Corporation’s submissions and find that the \$350 fee charged by WMLG to prepare a demand/payout letter is reasonable.

[41] Accordingly, I find that the amount of \$892.81 the Strata Corporation claims as its S. 118 Costs to register the Lien is reasonable.

The Enforcement Proceedings to the expiry of the Redemption Period

[42] On December 29, 2020, WMLG filed a petition under the *SPA*, commencing the enforcement proceedings (the “Petition”) (Ex. 3). On December 30, 2020, WMLG registered the Strata Corporation’s CPL on the Unit in the LTO, attaching the Petition (Ex. 25). The CPL was also filed in Court.

[43] The December 18, 2020 WMLG invoice is for \$2,410.31, which includes the time Ms. Panago and Ms. McCormack spent preparing the Petition and supporting affidavit of Ms. Evans, preparing the CPL, as well as communicating with Ms. Evans in her capacity as strata manager, and with Mr. Ajvazi about paying the arrears. WMLG also prepared a second lien for the Strata Corporation during this period, but it was never filed. This invoice is almost entirely for legal fees, with less than \$20 claimed in disbursements (photocopies).

[44] The WMLG invoice dated January 4, 2021 for \$1,921.97 is for the period between December 21 and 30, 2020, encompassing WMLG’s work to finalize and file the Petition and supporting affidavit, to register the CPL and file it with the court. The invoice also reflects time corresponding with Mr. Ajvazi and with Ms. Evans. The

legal fees portion of this invoice is approximately \$700, as most of the amount is for disbursements for the fees for filing documents in Court and the LTO (over \$1,000).

[45] The Petition was served on Mr. Ajvazi on February 8, 2021, when a process server personally served him after repeated attempts (Ex. 28). The Strata Corporation also incurred fees serving the Petition on Ms. Price, who was not served until February 19, 2021, given difficulties locating her (Ex. 33).

[46] The WMLG invoice dated February 16, 2021 is for \$2,534.45, almost the entirety of which is for legal fees (\$2,200 plus taxes). Ms. McCormack said that the majority of the work she and Ms. Panago billed on this invoice related to serving the Petition, supporting affidavit, and the CPL on both Mr. Ajvazi and Ms. Price, which required additional time to instruct process servers and determine how best to serve each of Mr. Ajvazi and Ms. Price.

[47] After he was served with the Petition and before it was heard, a span of about three months, in many of the emails he sent, Mr. Ajvazi continued to indicate to Century 21 PEL and to WMLG that he intended to pay the arrears.

[48] The WMLG invoice dated March 9, 2021 is for \$2,814.50 and covers the period from February 22 to March 8, 2021. The legal fees on this invoice amount to \$1,742.50 plus taxes. Some of these fees were incurred in arranging and ensuring the service of the Petition and related materials on Mr. Ajvazi and Ms. Price, but it also includes time spent communicating with Mr. Ajvazi. This invoice also includes time Ms. McCormack spent preparing for and attending a virtual meeting with the strata council and Century 21 PEL, including preparing a resolution approving the expenditure of funds from the contingency reserve fund to pay for the Petition proceedings (which was passed as required under the *SPA*). Included in this invoice are approximately \$860 in disbursements, being the agent's fees for personally serving Mr. Ajvazi and attempting service on Ms. Price in Port Alberni and Kamloops.

[49] WMLG prepared and sent a demand/payout letter to Mr. Ajvazi on March 11, 2021 (Ex. 38). WMLG issued an invoice on March 11, 2021 for \$350, the fixed fee it charges to produce a demand/payout letter. Although arrangements were made for him to pay the arrears by meeting Mr. Blackall at the Century 21 PEL office, Mr. Ajvazi did not pay the arrears.

[50] In emails Mr. Ajvazi sent to WMLG and Ms. McCormack (and others), he repeatedly refers to her as “Ms. Macaroni” and he would frequently attach pictures to the emails he sent, including of a sexually explicit sculpture. In the email he sent to WMLG on March 15, 2021, Mr. Ajvazi asserted that Ms. Evans and Century 21 PEL refused to arrange for him to pay his strata fees, and he also threatened to report Ms. McCormack to the “Attorney Bar association” for unspecified reasons (Ex. 41).

[51] Mr. Ajvazi does not deny that in early March 2021, after he was served with the Petition, he prepared a letter purporting to be from the Real Estate Council of British Columbia (“RECBC”), which was distributed to all of the owners (the “Fake RECBC Letter”). The Fake RECBC Letter set a special general meeting for March 28, 2021, the agenda of which included the replacement of Century 21 PEL as the Property manager and the election of a new strata council (Ex. 42). The Fake RECBC Letter alleges that Ms. Evans and the current strata council received “kickbacks” and that the “executive committee” had voted that certain members of the current strata council were not to attend the meeting. The Strata Corporation contacted the RECBC about the Fake RECBC Letter and the RECBC issued a cease and desist letter to Mr. Ajvazi on March 16, 2021 (Ex. 43).

[52] Later in March, Mr. Ajvazi sent an email to all of the owners indicating that the RECBC had approved the special general meeting, which he had unilaterally set for March 28, 2021 (among other things). On April 6, 2021, the RECBC sent a further letter to all owners advising that Mr. Ajvazi had no authority to communicate with them on the RECBC’s behalf and it did not endorse his communications or their content (Ex. 50).

[53] During this period, Ms. Price retained a notary who requested a payout letter, which WMLG prepared and provided to her on March 15, 2021 (Ex. 52).

[54] The WMLG invoice dated April 12, 2021 covers the period from February 24 to April 8, 2021 and is for \$5,453.42, the legal fees portion of it amounting to \$4,820 plus taxes. Ms. McCormack testified that the bulk of the fees on the invoice were incurred as she dealt with Mr. Ajvazi's ongoing emails (nearly every entry by Ms. McCormack on this invoice records time for "review of emails from owner", which she confirmed was Mr. Ajvazi). Ms. McCormack also billed her time addressing the issue of the Fake RECBC Letter with the strata council and Century 21 PEL. Ms. McCormack also spent time preparing the affidavits of Mr. Blackall and Ms. Evans for the upcoming Petition hearing, which affidavits confirmed that Mr. Ajvazi had not paid the Lien arrears, despite the demand/payout letters and his assertions that he would pay the arrears (Ex. 23 and 53). Time was also spent by Ms. Panago preparing the payout letter for Ms. Price and communicating with her notary.

[55] Although neither Mr. Ajvazi nor Ms. Price had filed responses to the Petition by the deadline in compliance with the SCCR, WMLG provided them both (and Ms. Price's notary) with copies of the notice of hearing, confirming the date of the Petition hearing. Ms. Price filed a response to the Petition on April 20 (Ex. 62). Through a search of the court file, WMLG confirmed that Mr. Ajvazi had not filed a response to the Petition by April 22 (Ex. 63).

[56] On April 23, 2021, the parties appeared before Master Vos by videoconference (MS Teams), but he adjourned the Petition because Mr. Ajvazi, who was self-represented and whose residence was the subject of the Lien proceedings, had not filed a response. Master Vos ordered Mr. Ajvazi to properly file and serve a response to the Petition by May 6, re-setting the hearing of the Petition for May 14, 2021 (and dispensing with Mr. Ajvazi's signature on the order) (Ex. 65).

[57] After the appearance before Master Vos, Mr. Ajvazi sent several emails to WMLG, including copying Ms. McCormack on an email reporting her to the LSBC for "threatening and scaring" Mr. Ajvazi, and attaching an unfiled petition alleging that

the Strata Corporation had commenced the Petition out of spite (among other things) (Ex. 69).

[58] The WMLG invoice dated May 4, 2021 is for \$6,298.42 and covers the period from April 13 to May 3, 2021, the majority of which is for legal fees of \$4,772.50 plus taxes. This invoice includes the fees for preparing the notice of hearing, the draft order made after the application before Master Vos, the Petition record index, the Petition record, as well as filing and serving all of these documents. It also includes time Ms. McCormack spent preparing for and attending the hearing before Master Vos (which includes the time she spent waiting on the video call for the hearing to commence), updating the strata council and Ms. Evans about the hearing, and corresponding with Ms. Price’s lawyer. The invoice includes disbursements for agent’s fees and photocopies preparing all of the court documents.

[59] Ms. McCormack confirmed that no time was billed to the Strata Corporation related to Mr. Ajvazi’s complaint to the LSBC about her (which the LSBC dismissed).

[60] On May 5, 2021, WMLG sent Mr. Ajvazi another demand/payout letter (Ex. 81). The WMLG invoice dated May 6, 2021 is for the fixed fee of \$350 for the preparation of the May 5, 2021 demand/payout letter.

[61] Ms. McCormack attests that between May 5 and 15, 2021, WMLG received at least 19 emails from Mr. Ajvazi, which, in her view, “became increasingly focused on violence and sex” and she filed a complaint with the New Westminster Police Department (McCormack Affidavit, para. 136). Ms. McCormack confirmed that no time was billed to the Strata Corporation for time spent dealing with the New Westminster Police regarding her complaint about Mr. Ajvazi’s emails to her and others.

[62] WMLG confirmed through a court file search conducted on May 6, 2021 that Mr. Ajvazi had filed a response to the Petition on May 3, but he had not served it on the Strata Corporation in compliance with the *SCCR* (McCormack Affidavit, para.

138, Ex. 85). On May 7, WMLG received two copies of a filed, but unsworn affidavit from Mr. Ajvazi, which was Mr. Ajvazi's response to the Petition (Ex. 86).

[63] Up to May 13, 2021, the day before the Petition hearing, Mr. Ajvazi sent several emails to WMLG, including some attaching copies of unfiled court documents. Ms. McCormack said that she had to review all of the emails and their attached documents as the documents were often very similar, but not identical to each other, and some documents were filed in court, some were not. On May 11, Mr. Ajvazi filed a further affidavit in the Petition proceedings, which he provided to WMLG the same day (Ex. 95). On May 12, WMLG filed a further affidavit of Ms. McCormack's legal assistant made that day, confirming that Mr. Ajvazi had not paid out the arrears.

[64] Master Robertson heard the Petition by videoconference (MS Teams) on May 14, 2021 and issued her order the same day (Ex. 5). The Robertson Order reflects that Master Robertson determined that Mr. Ajvazi had defaulted on the strata fees and special levies owing for the strata Unit and that the amount due and owing by Mr. Ajvazi as of April 6, 2021 was \$3,018.08 (\$7,521.84 less a payment of \$4,503.76 made May 13, 2021), plus the S. 118 Costs (para. 3). The Robertson Order provided for a 60-day redemption period (para. 6), after which the Strata Corporation was granted exclusive conduct of the sale of the Unit without further application to the court (para. 7). As noted above, it also provided that the amount due and owing to the Strata Corporation by Mr. Ajvazi "shall increase as further unpaid strata fees, special levies, late charges, reasonable legal fees, and other charges accrue and as the [Strata Corporation] incurs land title and court registry fees, and other disbursements" (para. 5).

[65] After the hearing before Master Robertson, Mr. Ajvazi continued to email Ms. McCormack, Ms. Evans, and various members of the strata council. An example of the typical content of the emails Mr. Ajvazi sent is contained in one he sent on May 14 to Ms. McCormack, Ms. Evans, and strata council members Mark Mohr and Jody Kovacs (Ex. 102). In it, he writes, "I will come every month to pay strata fees", but he

makes no other reference to paying the arrears. Mr. Ajvazi's email goes on, "I make sure everybody know your piping Bill, the police refuse to put you in jail, But my layer will ask soon ... I know you don't like Chines I know like to piping, don't tell your piping other Chines woman ...". As I understand it, "Bill" refers to Mr. Blackall and "piping" is Mr. Ajvazi's euphemism for sexual relations.

[66] The WMLG invoice dated May 25, 2021 is for \$8,274.21 for the period from May 5 to May 21, 2021; the legal fees amount to \$6,900 plus taxes and the disbursements are just over \$500 plus taxes. Ms. McCormack said this invoice reflects the work preparing for and attending the Petition hearing before Master Robertson, as well as communicating with the strata council about the Petition hearing and its outcome. Time was spent preparing the updated Petition materials, and affidavits in response to Mr. Ajvazi's response to the Petition, as well as serving documents on Mr. Ajvazi and Ms. Price. Ms. McCormack also testified about the amount of time she spent reviewing the communications from Mr. Ajvazi and responding to them, which she says was extensive and well beyond her normal experience on similar SPA lien enforcement files. By this point, the WMLG invoices reflect that Ms. Sheard is also billing time on the file, assisting with the preparation of court documents and affidavits.

[67] On May 31, Ms. McCormack emailed a copy of the entered Robertson Order to Mr. Ajvazi and to Ms. Price's lawyer, and also mailed it to Mr. Ajvazi (Ex. 107). That same day, Mr. Ajvazi sent two emails to Ms. McCormack's assistant in which he refers to his complaint about Ms. McCormack to the LSBC, alleges that he has been elected to the strata council, and that his lawyer is preparing an appeal and an arbitration (Ex. 108).

[68] The Strata Corporation continued to attempt to settle the Lien arrears with Mr. Ajvazi, and WMLG communicated with the strata council about this and their instructions for settlement.

[69] The WMLG invoice dated June 8, 2021 is for \$2,444.41, entirely in legal fees plus applicable taxes, and covers the period from May 27 to June 8, 2021. Time was

spent working on an updated account reconciliation from Century 21 PEL, drafting and revising a demand/payout letter to Mr. Ajvazi, as well as filing the Robertson Order and serving it on Mr. Ajvazi and Ms. Price. At the assessment hearing, Ms. McCormack confirmed that on some of the invoices, such as this one, WMLG did not bill the Strata Corporation for the legal assistants' time, only for time recorded by Ms. McCormack and Ms. Sheard, in an effort to reduce the costs incurred.

[70] On June 9, 2021, Ms. McCormack emailed a without prejudice letter to Mr. Ajvazi on behalf of the Strata Corporation, offering to settle with him if he agreed to pay the Strata Corporation \$38,975 as the amount owing under the Lien by June 30, 2021 (Ex. 110). The letter indicates that the bulk of the amount owing on the Lien arrears at that point was for legal fees. Mr. Ajvazi refused the settlement offer. That same day, Mr. Ajvazi emailed Ms. McCormack, Ms. Evans and two council members, alleging (among other things) that they were committing hate crimes, as well as targeting his family and "provoking violence" (Ex. 111).

[71] Ms. McCormack attests that after receiving Mr. Ajvazi's June 9 email, she instructed WMLG's IT provider to block Mr. Ajvazi's emails, both to reduce the costs to the Strata Corporation incurred by reviewing each email he sent, but also because of what she found to be "the escalation of violent and sexual subject matter of the correspondence received from Mr. Ajvazi" (McCormack Affidavit, para. 170).

[72] On June 10, 2021, WMLG advised Mr. Ajvazi by an emailed letter that they were no longer accepting service of court-filed documents from him by email, but that they would accept service by other methods (McCormack Affidavit, para. 171). Mr. Ajvazi responded in a letter sent to WMLG by registered mail dated June 14, in which he purported to advise the executive committee of the Strata Corporation that WMLG was no longer its lawyer and repeating his allegations that Ms. McCormack and others were committing hate crimes against him (Ex. 114).

[73] The June 22, 2021 WMLG invoice is for \$2,021.78 and includes time from June 1 through June 11, 2021, primarily dealing with the proposed settlement with Mr. Ajvazi, as well as communicating with the strata council about the settlement.

The legal fees amount to \$1,730 plus taxes, with less than \$100 in disbursements plus taxes. Ms. McCormack also testified that time was spent dealing with Mr. Ajvazi's ongoing correspondence to her, as well as to Ms. Evans and the council members, and she included the time incurred to block Mr. Ajvazi's emails and instruct her staff about the communication protocol with him for future interactions.

[74] On July 7, Mr. Ajvazi sent by registered mail to WMLG a cheque dated June 29, 2021, for \$573.46, on which handwriting indicates it is payment for special levies and strata fees, together with a copy of an email thread between Mr. Ajvazi and a strata council member (Ex. 117). The amount was not sufficient to pay out the Lien and it did not indicate it was for that purpose.

[75] From the filing of the Petition to this point in the Lien enforcement proceedings (that is, the date of the expiration of the redemption period), the Strata Corporation's S. 118 Costs amount to \$34,873.47. While this amount is not entirely s. 118(a) legal costs, they make up the majority of the S. 118 Costs claimed.

[76] In *Louis*, I found that a reasonable legal fee for the preparing, filing and serving of the petition and supporting materials, together with the hearing of the petition including obtaining the order of the Master confirming the amount owing on the lien, was \$18,000 (para. 107). In previous cases, including *Ruby and Strata Plan LMS 2154*, the amount of the legal costs found to be reasonable in the circumstances of those cases for the same steps in the lien enforcement proceedings were less than \$4,000 (see *Louis*, para. 91).

[77] In *Louis*, I described Mr. Louis as a "determined litigant who is challenging to deal with" (para. 92). However, the challenges presented by Mr. Ajvazi are different from those presented by Mr. Louis and I agree with the Strata Corporation that the circumstances of this case and the Lien enforcement proceedings up to the point of the expiration of the redemption period under the Robertson Order are not readily comparable with the circumstances described in the other reported S. 118 Costs assessment decisions, including in *Louis*.

[78] Mr. Ajvazi proved difficult to communicate with, as evidenced by the content of the emails he sent, as well as the documents he filed in response to the Petition. Mr. Ajvazi took actions that were unpredictable and required the involvement and advice of legal counsel (such as the repeated emails making various allegations against Century 21 PEL staff and strata council members). After receiving the demand/payout letter sent in October 2020, Mr. Ajvazi repeatedly communicated to the Strata Corporation's counsel (as well as Century 21 PEL staff) that he intended to pay the arrears, and how this was to be arranged, increasing the time they spent on the file. The evidence also establishes that it was difficult to effect service of the Petition and supporting materials on both Mr. Ajvazi and Ms. Price, resulting in increased fees and disbursements.

[79] The Strata Corporation submits that Mr. Ajvazi's creation and distribution of the Fake RECBC Letter (as well as the later email "approved by" the RECBC) were part of the Lien enforcement proceedings and the legal costs for advising the strata council about how to deal with these activities are properly included in the S. 118 Costs. Mr. Ajvazi does not deny that he prepared and distributed the Fake RECBC Letter. He sent it and the subsequent email after the Petition was filed, apparently seeking the replacement of the strata council, and the replacement of the strata property manager, Century 21 PEL. I find that it is reasonable to characterize Mr. Ajvazi's creation of the Fake RECBC Letter and subsequent email as part of the Lien enforcement proceedings and that the fees for advising the strata council about it are within the scope of s. 118(a) of the *SPA*.

[80] Master Vos adjourned the Petition hearing when it was originally set so that Mr. Ajvazi could prepare and file a response, but Mr. Ajvazi did not engage in the process and rejected the Strata Corporation's attempt to formally settle the Lien arrears with him prior to obtaining the order approving the sale of the Unit.

[81] I find that in the circumstances of this case, while nearly double the amount found reasonable in *Louis*, the amount of \$34,873.47 claimed by the Strata

Corporation as its S. 118 Costs to register and enforce the Lien through to the expiration of the redemption period set out in the Robertson Order is reasonable.

Enforcement of the Lien through the Sale Proceedings

[82] On July 22, after the 60-day redemption period set by the Robertson Order had expired, Ms. McCormack attended by videoconference a meeting of the strata council to confirm that the redemption period in the Robertson Order had expired, and to obtain instructions regarding proceeding with the conduct of the sale of the Unit (McCormack Affidavit, para. 178).

[83] The strata council instructed WMLG to pursue the sale of the Unit as contemplated by the Robertson Order and permitted under s. 117 of the *SPA*.

[84] On August 4, WMLG prepared a letter to Mr. Ajvazi informing him that a realtor and an appraiser would be attending at the Unit on August 6, 2021 to perform an inspection and appraisal of the Unit in anticipation of its sale, pursuant to para. 10 of the Robertson Order (Ex. 118). The letter was provided to Mr. Ajvazi on August 4 (McCormack Affidavit, paras. 179 and 180).

[85] WMLG retained Macintosh Appraisals Ltd. to perform the appraisal of the Unit associated with the sale, and the Strata Corporation directly paid the invoice provided by Macintosh Appraisals dated August 9, 2021 for \$1,050 for the preparation of the appraisal report (Ex. 120). I find that this was a reasonable disbursement encompassed under s. 118(c) of the *SPA*.

[86] In early August 2021, Mr. Ajvazi retained counsel, Hong Guo of Guo Law Corporation (“Guo Law”), who contacted Ms. McCormack to advise that Mr. Ajvazi had instructed her to negotiate a settlement with the Strata Corporation (Ex. 122).

[87] The WMLG invoice dated August 9, 2021 is for \$4,669.45 for work performed from June 28 to August 9, 2021. The legal fees on this invoice are \$4,167.50 plus taxes (the disbursements charged were minimal and only for copying). Ms. McCormack testified that the invoice includes fees for commencing the sale

proceedings of the Unit (e.g., communicating with the strata council, Century 21 PEL, the Strata Corporation's realtor and appraiser), as well as communicating with Mr. Ajvazi and ensuring he received notice of the entry to the Unit for the purposes of the inspection and appraisal. It also included time she spent communicating with Guo Law about a possible settlement, for which both Ms. Sheard and Ms. McCormack recorded time.

[88] On August 25, 2021, on behalf of the Strata Corporation, Ms. McCormack communicated to Guo Law an offer to settle with Mr. Ajvazi if he agreed to pay the Strata Corporation \$45,000 as the amount owing under the Lien, which offer was open until August 31 (Ex. 127).

[89] On or about August 27, 2021, Guo Law sent a letter to WMLG by email advising that Mr. Ajvazi "is willing to settle all the outstanding amounts that he owes to the Strata" and "also accepts reasonable legal fees. He is open to negotiate", enclosing a "good faith" cheque for \$1,551.00 payable to the Strata Corporation, and indicating that Mr. Ajvazi was "willing to pay another \$3,500 to Strata" (Ex. 128). This letter also stated that Mr. Ajvazi "would like to request to extend the deadline of August 31, 2021 for three months". In a subsequent email on August 31, Guo Law confirmed to Ms. McCormack that the \$1,551 cheque "was for legal fees and sent to Strata company by registered mail" (Ex. 129).

[90] Ms. McCormack said she did not know the extent of Guo Law's retainer and whether it extended beyond settling the Lien arrears given Mr. Ajvazi's communication with Ms. Evans regarding the inspection and appraisal of the Unit, indicating that a key to the Unit was available through his lawyer, Guo Law (see Ex. 133 and 134). Ms. McCormack also said she could not understand the terms of the counter-offer made by Guo Law on August 27. She attempted to confirm with Guo Law the extent of their retainer and, with respect to the settlement offer, to confirm that Mr. Ajvazi was aware of the terms and the amount the Strata Corporation sought as settlement of the Lien arrears. She sent a letter to Guo Law on September

9, 2021, seeking clarification about the status of the settlement and counter-offer (Ex. 136).

[91] On September 10, 2021, Ms. Guo advised that she was no longer representing Mr. Ajvazi (Ex. 137). The “good faith” cheque was eventually returned to Mr. Ajvazi (Ex. 145).

[92] The appraisal of the Unit was prepared following the inspection and a copy of it was provided to WMLG on August 9 (Ex. 6). The Unit was listed for sale on the MLS on August 16, 2021 (Ex. 7). WMLG advised Mr. Ajvazi in a letter dated August 18 and delivered to him by mail, hand and email, that the realtor and prospective purchasers would be attending the Unit on August 22 within a specific time-frame (Ex. 124, 125).

[93] Despite several notices of entry sent to Mr. Ajvazi, the realtor and prospective purchasers were unable to access the Unit; however, offers to purchase the Unit were made to the Strata Corporation’s realtor based on the MLS listing. On or about August 23, 2021, the Strata Corporation’s realtor accepted an offer to purchase the Unit for just under \$300,000 (the “Original Offer”).

[94] On September 16, 2021, the Strata Corporation held a special general meeting at which it passed by a $\frac{3}{4}$ vote of the owners a resolution (in English and translated to Cantonese), confirming an expenditure from the contingency reserve fund for the purpose of paying the legal fees, taxes, disbursements and internal expenses of WMLG to continue the Petition proceedings through the sale of the Unit (McCormack Affidavit, paras. 212-214, Ex. 141 and 142).

[95] The Strata Corporation, through Century 21 PEL, arranged for the translation of the resolution and Century 21 PEL paid \$73.50 for this translation, as reflected in the invoice dated August 22, 2021 (Ex. 142). I find that this was a reasonable disbursement under s. 118(c) of the SPA and encompassed in the S. 118 Costs.

[96] The WMLG invoice dated September 29, 2021 covers the period from August 10 to September 29, 2021 and is for \$19,121.20. The legal fees claimed on this

invoice are \$16,790 (plus applicable taxes), and the disbursements are approximately \$300.

[97] Ms. McCormack testified that she spent more time than was normal in her experience communicating with Guo Law regarding a proposed settlement of the Lien arrears. This included trying to determine whether Guo Law represented Mr. Ajvazi for other purposes, given his email indicating that Guo Law had a key to the Unit. She also testified she spent more time than normal in her experience dealing with the sale of the Unit and strategizing with the strata council, Century 21 PEL, and the realtor about how to access and market the Unit when Mr. Ajvazi was not providing entry. She also spent time meeting virtually with the strata council and the owners regarding the resolution authorizing the expenditure for legal fees.

[98] Given that WMLG had blocked Mr. Ajvazi's service of court documents on them by email, they would receive documents from him by mail or registered mail. On this invoice, Ms. Sheard recorded time dealing with a purported document sent to WMLG by registered mail (the firm received a Canada Post notice that a document was waiting for pick up), but which was never in fact recovered by them as Canada Post was unable to ever find a piece of registered mail associated with the notice they had received.

[99] Included in the S. 118 Costs are fees claimed by Century 21 PEL to assemble emails that were exhibited to Ms. Evan's affidavit (\$157.50 on September 21, 2021) and to reimburse Century 21 PEL for the notary fee of \$226.71 incurred on September 30, 2021 to swear Ms. Evan's affidavit when she was out of town. I find that these were reasonable disbursements under s. 118(c) and properly included in the S. 118 Costs.

[100] On October 1, 2021, the Strata Corporation filed its application seeking an order approving the sale of the Unit pursuant to the Original Offer, together with supporting affidavits (Ex. 148). The hearing was set for October 20, 2021 (the "Approval Hearing"). The application and affidavits in support were served on Ms. Price's lawyer, and personally served on Mr. Ajvazi on October 7 (Ex. 151).

[101] On October 18, 2021, two days before the Approval Hearing, Mr. Ajvazi served a response to the application and an affidavit on WMLG. Mr. Ajvazi had filed the response on October 18 and the affidavit on October 15 (Ex. 156 and 157). Among other things, in his response materials, Mr. Ajvazi alleged that the Lien proceedings were commenced against him out of spite, that Ms. McCormack was improperly “soliciting Attorney fees” through the pursuit of the Lien’s enforcement, and that the Strata Corporation and council’s action had provoked violence against him and these parties were committing a hate crime (Ex. 156).

[102] Although Mr. Ajvazi’s response materials were provided to WMLG after it had filed the application record for the Approval Hearing, WMLG attempted to include Mr. Ajvazi’s documents in the materials before the court for the hearing by filing an amended application record. However, the registry refused to accept the filing of the amended application record because it was after the deadline under the *SCCR* (McCormack Affidavit, paras. 234-237).

[103] Because the sale of the Unit was subject to court approval, other prospective purchasers could make sealed bids on the Unit to WMLG. At the time (fall 2021), the Court’s Covid-19 Notice 31, “Sealed bid procedures for foreclosures and other matters involving sales of land” set out the process governing sealed bids where the proceedings were heard virtually. The notice stipulated that competing bids must be received by 4:00 p.m., two business days before the scheduled approval hearing, at counsel for the Strata Corporation. On October 18, 2021, after it had filed the application record for the Approval Hearing, WMLG received four bids from competing offerors and a revised bid from the original offeror (McCormack Affidavit, para. 231).

[104] Justice Jenkins presided at the Approval Hearing on October 20, 2021, which was held by videoconference (MS Teams). He approved the sale of the Unit to the highest of the five bids for the Unit, with a purchase price of \$350,001, signing the draft order on the bench. The draft order Jenkins J. signed was the one included with the application record (based on the Original Offer of \$300,000), but it did not

reflect the actual order made by Jenkins J. accepting the highest bid (McCormack Affidavit, paras. 239-240).

[105] The evidence before me was that Jenkins J. had concluded the Approval Hearing after he had approved the order for sale by directing the court clerk to disconnect the parties, while Mr. Ajvazi was continuing to make submissions that his human rights were being violated by the Strata Corporation and others (McCormack Affidavit, para. 241). Ms. McCormack said because of this situation, she was not able to confirm with Jenkins J. that the order he signed reflected the revised offer, approving the sale to the highest bidder.

[106] Unfortunately, the sale order signed on the bench by Jenkins J. did not reflect the terms of the successful bid, and WMLG had to file a requisition for an order without notice, together with a supporting affidavit, seeking to correct the sale order of Jenkins J. (McCormack Affidavit, paras. 247-251). These materials were served on Ms. Price and Mr. Ajvazi. On October 25, 2021, Ms. McCormack appeared before Justice Armstrong, who declared that there was a slip in the Jenkins J. order and ordered counsel to resubmit a new order for Jenkins J. to sign, which she did (McCormack Affidavit, paras. 256-261).

[107] Five days after the Approval Hearing, on October 25, 2021, Mr. Ajvazi filed a complaint with the BCHRT through its online portal, alleging discrimination in the area of tenancy on the basis of disability, race and religion, naming WMLG and Century 21 PEL as respondents (the "BCHRT Complaint") (Ex. 173, pp. 1410-1413). In the BCHRT Complaint, Mr. Ajvazi identifies the harm that he has suffered as a result of the discrimination was the Lien proceedings and that he needed help from the BCHRT because the Strata Corporation was trying to sell the Unit (Ex. 173, p. 1413). Ms. Evans forwarded a copy of the BCHRT Complaint to Ms. McCormack by email on October 30, 2021 (Ex. 173, p. 1407).

[108] The sale of the Unit was scheduled to close on November 4, 2021, which was fifteen days after the Court approval of the sale. On October 29, 2021, through a process server, WMLG personally served Mr. Ajvazi a letter dated October 28, 2021,

together with the orders of Jenkins J. and Armstrong J., advising of the closing date of the sale of the Unit and that if he failed to provide vacant possession of the Unit by noon on November 4, 2021, it would seek a writ of possession order and what such an order entailed (Ex. 170, 171).

[109] On October 29, WMLG also wrote to Ms. Price's counsel seeking a payout statement for the mortgage she held on the Unit and asking her to execute the Form C discharge in anticipation of the closing of the sale of the Unit (Ex. 172). On November 2, 2021, WMLG also wrote to Ms. Price's notary seeking a payout statement and asking her to execute the Form C discharge in anticipation of the closing of the sale of the Unit (Ex. 176).

[110] On November 1, 2021, WMLG filed a requisition attaching the contract of purchase and sale of the Unit in the court registry (Ex. 174), and wrote to the LTO authorizing the cancellation of the CPL on the Unit (Ex. 175).

[111] On November 2, 2021, Mr. Ajvazi filed a requisition seeking short leave to bring an application on November 4, the day he was to provide vacant possession of the Unit. The materials he filed reflect that Mr. Ajvazi was seeking to vary the order of Jenkins J. by extending the date of vacant possession on the basis that the hearing was unfair due to language barriers, and advising he was seeking legal advice (McCormack Affidavit, paras. 272-275, Ex. 177-179). Among other things, Mr. Ajvazi asserted that the legal basis for his application was the *Canadian Human Rights Act*, and that he would be seeking the appointment of a special administrator under s. 164 of the *SPA* (see Ex. 177, p. 1448). Mr. Ajvazi exhibited to his affidavit in support of his application the Robertson Order, the Guo Law letter to WMLG of August 27 with his counter-offer to the settlement, together with copies of cheques.

[112] WMLG filed the Strata Corporation's response to Mr. Ajvazi's application on November 3, together with a supporting affidavit (Ex. 182-183). WMLG provided their documents to Mr. Ajvazi to include in the application record (Ex. 185).

[113] That same date (November 3, 2021), WMLG was in communications with the Unit purchaser's counsel, providing them the required documentation to complete the sale of the Unit (Ex. 181) and was communicating with Mr. Ajvazi to provide keys to the Property and the Unit to the Strata Corporation's realtor by November 4, 2021, to facilitate the vacancy of the Unit for the new owner (Ex. 184).

[114] Justice Verhoeven heard Mr. Ajvazi's application to vary the order of Jenkins J. by teleconference the morning of November 4; Ms. McCormack attended the hearing representing the Strata Corporation. Justice Verhoeven dismissed Mr. Ajvazi's application (and ordered that his signature be dispensed with on the order); Verhoeven J.'s order was entered on November 8, 2021 (Ex. 10).

[115] Mr. Ajvazi did not provide vacant possession of the Unit as ordered by noon on November 4, 2021. On November 5, 2021, the Strata Corporation filed a requisition seeking the issuance of a writ of possession, together with affidavits of service and of non-compliance (Ex. 186, 188). Because the Strata Corporation was required to provide the name of a bailiff company who would enforce the writ of possession, Ms. McCormack spent time contacting and retaining a bailiff company.

[116] The Court granted the writ of possession of the Unit on November 5, 2021 (Ex. 11), which ordered the bailiff to gain possession of the Unit, and to seize and sell at public auction any of the goods and chattels remaining in the Unit. The bailiffs obtained possession of the Unit and removed the remaining chattels by November 8, 2021 (the evidence was that Mr. Ajvazi had vacated the Unit by that time).

[117] The invoice of the bailiff, Integrated Civil Enforcement, dated November 10, 2021 for its services to execute the Writ of Possession was \$2,506.86, and was paid by Century 21 PEL (Ex. 190). I find that this is a reasonable disbursement under s. 118(c) related to the enforcement of the Lien and properly a S. 118 Cost.

[118] The order approving the sale of the Unit pronounced by Jenkins J. expressly contemplated a holdback of \$70,000 to cover the Strata Corporation's S. 118 Costs as follows:

6. If the parties cannot agree on the amount owing to the Petitioner under section 118 of the *Strata Property Act* for reimbursement of reasonable legal costs, land title and court registry fees, and other reasonable disbursements, then the amount of \$70,000.00 claimed by the Petitioner, will be paid into Court from the proceeds of sale pursuant to section 5(c) of this Order, and paid out in accordance with the agreement of all parties or pursuant to an Order of the Registrar of this Honourable Court.

[119] On November 8, 2021, WMLG filed a requisition depositing \$70,000 of the sale proceeds into court (Ex. 189). On November 10, 2021, WMLG filed a certificate of result of sale.

[120] The WMLG invoice dated November 15, 2021 is for \$29,852.71, for work performed from September 29 to November 15, 2021. The legal fees claimed on this invoice amount to \$24,567.50 plus taxes. The disbursements are approximately \$2,000 plus taxes, primarily for agent's fees for filing court documents, as well as photocopies for the Court hearings.

[121] The invoice includes the preparation for and attendance at the Approval Hearing, as well as the appearance before Armstrong J. to correct the order of Jenkins J., and the time required to deal with the sealed bids and the process for ensuring they are before the court at the Approval Hearing. The invoice also includes all of the time spent responding to Mr. Ajvazi's petition, and attending before Verhoeven J. for its hearing. Ms. McCormack testified that time was spent obtaining a writ of possession and retaining the bailiffs to execute it, as well as finalizing the payouts to Ms. Price and Mr. Ajvazi, and paying the holdback funds into court. Ms. McCormack also testified that the invoice includes time spent addressing Mr. Ajvazi's BCHRT complaint.

[122] WMLG issued an invoice on November 17, 2021 for \$1,913.11, specifically for the work performed on November 12, 2021, relating to the sale of the Unit and its conveyance to the new purchaser, as well as the disbursement of the proceeds of the sale as noted above. The fee for the conveyance is \$1,450 plus taxes, and the disbursements are under \$300 plus disbursements.

[123] On November 16, 2021, a process server personally served Mr. Ajvazi with a cheque for \$187,897.69, which reflected the proceeds of the sale of the Unit, less the \$70,000 holdback and less the payout to Ms. Price (Ex. 194).

[124] The S. 118 Costs claimed by the Strata Corporation for the period from when the redemption period expired, through the sale of the Unit and obtaining vacant possession of the Unit, as reflected in the WMLG invoices described above (in addition to the specific disbursements discussed) amount to \$59,571.04. The majority of these are its legal costs, for the steps taken to obtain the order approving the sale of the Unit, through to obtaining vacant possession of the Unit.

[125] The Strata Corporation submits that to the date of the assessment hearing (May 2023), none of the reported S. 118 Costs assessment cases involved fees incurred for the further steps of the approval and forced sale of the strata Unit in question, and none offer guidance as to what are reasonable legal costs under s. 118(a) for these steps.

[126] The Strata Corporation also submits that none of the reported cases included the situation where, as here, a further petition was filed attempting to appeal or set aside the sale approval order (referring to Mr. Ajvazi's November 2, 2021 petition heard and dismissed by Verhoeven J.).

[127] The Strata Corporation points out that it incurred some of these legal costs as a result of the process required where a sale of property is court-ordered (*i.e.*, the sealed bid process), but the fees were further increased because of Mr. Ajvazi's conduct requiring the Strata Corporation to obtain an order for vacant possession and retain bailiffs to enforce it.

[128] The Strata Corporation also submits that more time was incurred by WMLG than is normally experienced in settlement negotiations with other counsel in communicating with Guo Law regarding the settlement of the amount Mr. Ajvazi owed on the Lien. In response to the Strata Corporation's settlement offer of \$45,000 made August 25, 2021, the counter-offer made by Guo Law on Mr. Ajvazi's

behalf was for approximately \$5,000 (as described above). In *The Owners, Strata Plan NW57 v. Lambert*, 2019 BCSC 64 at para. 47, Justice Harvey commented that given that the costs relating to the registration of the lien and its enforcement are added to the lien itself under s. 118, the petitioner (strata corporation) “was under no legal obligation to accept an offer for anything less than the sum it advised Ms. Lambert [the delinquent owner] was outstanding.” In the circumstances of this case, the Strata Corporation was under no obligation to accept the counter-offer made by Guo Law.

[129] I accept that the s. 118(a) legal costs incurred by the Strata Corporation in this case were increased by Mr. Ajvazi’s actions and the manner in which he participated in the process, particularly through Mr. Ajvazi’s filing of the petition heard by Verhoeven J. on November 4, 2021, the same day that Mr. Ajvazi was to provide vacant possession of the Unit under the Jenkins J. sale order.

[130] The Strata Corporation also submits that Mr. Ajvazi’s BCHRT Complaint is not analogous to the concurrent proceedings in *Louis* involving an appeal of a Civil Resolution Tribunal decision (the legal fees for which were disallowed), but were directly related to the Lien enforcement proceedings and resulted from them. Mr. Ajvazi filed the BCHRT Complaint five days after the Approval Hearing where Jenkins J. approved the sale of the Unit. As evidenced by the content of the BCHRT Complaint, Mr. Ajvazi specifically sought the assistance of the BCHRT because of the pending sale of the Unit. I agree with the Strata Corporation that in the circumstances of this case, the fees it incurred dealing with the BCHRT Complaint are related to the enforcement of the Lien. I find that Mr. Ajvazi would not have filed the BCHRT Complaint if the Strata Corporation had not obtained the order of Jenkins J. approving the sale of the Unit.

[131] In the circumstances, I find that the \$59,571.04 the Strata Corporation claims as its S. 118 Costs to conduct the enforcement proceedings from the expiration of the redemption period, through the sale of the Unit and its vacant possession by its new owner were reasonable in the challenging circumstances of this case. I also add

to these S. 118 Costs the disbursements totalling \$280.23, which are set out on the WMLG invoice dated January 3, 2022, for the agent's fees related to serving Mr. Ajvazi with the proceeds of the sale cheque, as well as fees for court and LTO online services. I find that these expenses are contemplated under s. 118(b) and (c) and properly included in S. 118 Costs.

[132] Accordingly, I find that the Strata Corporation's S. 118 Costs of \$59,851.27 for the conduct of the enforcement proceedings from the expiration of the redemption period, through the sale of the Unit to its vacant possession, are reasonable.

S. 118 Disbursements

[133] In the assessment of the S. 118 Costs above, I have not separated out the amounts the Strata Corporation claims as its disbursements under s. 118(b) and 118(c) of the SPA, although I have noted those disbursements incurred by Century 21 PEL, which I find to be included in the Strata Corporation's S. 118 Costs. For each of its invoices, WMLG attached copies of the invoices for the land title and court registry filing fees the Strata Corporation incurred throughout the Lien registration and enforcement proceedings, as well as invoices for its agents' fees, and other reasonable disbursements. I have found no issue with any of the claimed disbursements and find that they are properly included in the Strata Corporation's S. 118 Costs.

Summary of S. 118 Costs Allowed

[134] As detailed above, I find that the Strata Corporation is entitled to its S. 118 Costs for registering and enforcing the Lien in the amount of \$95,617.55.

Costs associated with the Assessment of the S. 118 Costs

Submissions and evidence on costs claimed for the assessment

[135] Ms. McCormack testified that she had hoped to settle the issue of the Strata Corporation's S. 118 Costs with Mr. Ajvazi and avoid an assessment hearing. She said that after providing him with the proceeds of sale cheque in late 2021, she

waited a few months before making overtures of settlement, although she conferred with the strata council about the terms of the settlement during this time.

[136] The WMLG invoice dated January 3, 2022 covers the period from November 18 to December 28, 2021 and is for \$2,909.44. The legal fees charged are \$2,347.50 plus taxes (totalling \$2,629.21). As noted above, I have included the disbursements billed on this invoice with the S. 118 Costs for the enforcement period through to vacant possession. The legal work performed during this period included communicating with the strata council regarding the \$70,000 holdback for the S. 118 Costs, as well as preparing a settlement offer of the outstanding S. 118 Costs with Mr. Ajvazi.

[137] On January 14, 2022, Ms. McCormack sent Mr. Ajvazi an offer to settle the amount of the Strata Corporation's S. 118 Costs, offering to divide the \$70,000 held in Court under the order of Jenkins J. so that Mr. Ajvazi would receive \$20,000 and the Strata Corporation would be paid the remaining \$50,000 (Ex. 199). The settlement offer was open to January 31, 2022, but Mr. Ajvazi did not respond and did not accept the offer.

[138] The Strata Corporation then began to prepare for the S. 118 Costs assessment proceedings, filing the appointment on November 25, 2022, setting the assessment hearing for five days, starting May 15, 2023, and scheduling the PHC on December 1, 2022. The Strata Corporation attributes the length of time it took to file the appointment to the lack of available dates before the registrar.

[139] WMLG issued three invoices after the settlement offer to Mr. Ajvazi was ignored and prior to filing the appointment, dated March 17 (\$16,441.83), August 24 (\$17,555.76), and November 9, 2022 (\$1,582.41), totalling \$35,580 (including taxes). While some disbursements for agent's fees for filing documents were incurred, the bulk of the charges are for legal fees as follows: \$14,230 plus taxes (March 17, 2022 invoice); \$15,340 plus taxes (August 24, 2022 invoice); and \$1,407.50 plus taxes (November 9, 2022 invoice).

[140] Ms. McCormack testified that the fees reflected on these invoices included time spent preparing the settlement offer to Mr. Ajvazi in January, but that the bulk of the fees is for the time WMLG spent preparing for the assessment of the S. 118 Costs. These activities include organizing and reviewing WMLG's invoices to the Strata Corporation and the related disbursements to prepare for the assessment hearing, as well as preparing the McCormack Affidavit (the length of which I noted at the outset of these reasons). Time was also charged for communicating with the registry to schedule the PHC and the 5-day assessment hearing.

[141] The Strata Corporation also incurred further S. 118 Costs from November 7, 2022 to the date of the assessment hearing, including the fees associated with attending the PHC. However, it admits that the supporting invoices were not before me at the assessment hearing and the WMLG fees during this period are not claimed as part of the S. 118 Costs before me.

[142] In its submissions at the assessment hearing, the Strata Corporation seeks its costs of the preparation for and attendance at the PHC, which it estimates to be \$625.00 plus applicable taxes, as well as its costs for the assessment hearing itself, either based on the hourly rates of Ms. Sheard and Ms. McCormack (\$250 and \$425 respectively), or alternatively, assessed at \$2,000.00 per day of court time, plus applicable taxes.

[143] By my calculation, the fees sought for the assessment of the Strata Corporation's S. 118 Costs are approximately \$45,000 (\$38,209.21 as reflected on the WMLG invoices, plus roughly \$7,000 for the PHC and the assessment hearing).

Legal principles and analysis

[144] The *SPA* governs the Strata Corporation's entitlement to add its reasonable legal costs for registering and enforcing the Lien to the amount owing under the Lien. *Baettig* confirms that s. 118 of the *SPA* permits the Strata Corporation to add to the amounts owing under the Lien "legal costs, fees and other disbursements determined by the registrar to have been reasonably incurred in registering the lien and prosecuting the petition" (para. 88) (emphasis added).

[145] However, the *SPA* does not contemplate that the costs associated with the *assessment* of the S. 118 Costs may also be added to the amount owing under a lien, or how the costs of the assessment are themselves to be assessed.

[146] Other statutes contemplate costs associated with the assessment of legal fees. In particular, s. 72 of the *LPA* expressly addresses the costs to be awarded on the review of a lawyer's bill. In another example, s. 11(4) of the former *Arbitration Act*, R.S.B.C. 1996, c. 55 [now repealed and replaced by S.B.C. 2020, c. 2], directed that on an assessment of costs awarded by an arbitrator, the registrar was "not to assess the costs ... as though they were costs in a proceeding in the Supreme Court but must assess them in the manner specified by the arbitrator." The *SPA* does not contain any provisions analogous to s. 72 of the *LPA* or s. 11(4) of the former *Arbitration Act*.

[147] The family law tariff (Appendix B, *Supreme Court Family Rules*, B.C. Reg 169/2009) does not include an item for costs associated with an assessment of costs awarded in a family proceeding (unlike the tariff in Appendix B to the *SCCR*). In *Waters v. Michie*, 2019 BCCA 218, the Court of Appeal addressed the issue of whether a party awarded their costs in a family proceeding was entitled to their costs of the assessment and concluded that the legislative silence was indicative of the legislature's intention to not provide costs for an assessment of costs under the family law tariff. In reaching this conclusion, the Court determined that the word "application" in the family law tariff "does not extend to a costs assessment hearing" and it "saw no reason to extend the meaning of application to cover a costs assessment" (*Waters v. Michie*, para 14).

[148] Following the reasoning in *Waters v. Michie*, if the legislature had intended that the costs to assess the S. 118 Costs were to be included in the amount owing under the lien, they would have done so and the silence indicates that this was not the legislative intent.

[149] Further, it is clear that a hearing to assess costs in a civil matter is a distinct proceeding, separate from the proceeding for which the costs were ordered. This is

reflected in items 29 and 30 of the tariff (Appendix B, *SCCR*), which allows units for the attendance before a registrar to assess costs, and preparation for that attendance.

[150] The hearing to assess a strata corporation's S. 118 Costs is distinct from the lien enforcement proceedings at which those S. 118 Costs were incurred and I find that the Strata Corporation is not entitled to claim the legal fees and disbursements it incurred for the assessment of the S. 118 Costs as S. 118 Costs.

Determining the Strata Corporation's costs of the assessment

[151] The Strata Corporation is the successful party in these proceedings, having obtained a judgment for the amount owing under the Lien before Master Robertson. The fact that Master Robertson's order for judgment is not in a fixed amount does not change its status as a judgment (in *The Owners, Strata Plan VR2027 v. Dr. C.A. Whittington Inc.*, 2022 BCSC 1335, at para. 40, Justice Gomery noted that the "appropriate order for judgment is not in a fixed amount").

[152] As noted above, the Strata Corporation included as its S. 118 Costs the legal fees and disbursements it incurred after the Unit was sold and its new owner took vacant possession, amounting to \$38,209.20 (based on the invoices noted above). The Strata Corporation also submits I should assess its costs of attending the PHC and the assessment hearing, either on an hourly basis at each lawyer's hourly rate, or at \$625 plus taxes (for Ms. Sheard's attendance at the PHC) plus \$2,000 per day for both counsel's attendance at the assessment.

[153] Effectively, the Strata Corporation asks me to assess its costs of the assessment of its S. 118 Costs as its actual legal costs analogous to its "reasonable legal costs" under s. 118(a) of the *SPA*. In *567 Hornby Apt. Ltd. v. Le Soleil Restaurants Inc.*, 2020 BCCA 69 [leave refused 2020 CanLII 71307], the Court of Appeal determined that there is no general rule that an assessment of special costs carries with it the special costs of the assessment. In my view, this reasoning applies to the costs of an assessment of a strata corporation's S. 118 Costs – there is no

general rule that the costs associated with the assessment of S. 118 Costs are to be assessed on the scale of “reasonable legal costs” or actual legal costs.

[154] In my view, the costs associated with an assessment of a strata corporation’s S. 118 Costs under the SPA should normally be assessed on a party-and-party basis, in accordance with the tariff under the *SCCR*.

[155] However, I am mindful of the jurisprudence decided under ss. 116-118 of the *SPA*, reiterating that it is not fair to place the financial burden caused by a delinquent owner on the compliant owners. In this respect, it would not be fair to the Strata Corporation, which is of course made up of the other, compliant owners of units at the Property, to direct it to prepare a bill of costs to be assessed at a future appointment before the registrar, incurring further legal fees in the process.

[156] In my view, the circumstances of this case are such that it attracts an award of special costs for the assessment of the S. 118 Costs. Rule 14-1(19) of the *SCCR* affords the registrar discretion to award costs as they consider appropriate against a party who, “after pronouncement of judgment ... puts another party to unnecessary proceedings or expense”. In my view, Mr. Ajvazi’s continuing conduct put the Strata Corporation to unnecessary expense and attracts an award of special costs under R. 14-1(19).

[157] I also note that after the Unit was sold, the Strata Corporation offered to settle its S. 118 Costs with Mr. Ajvazi for \$50,000. I have determined that the Strata Corporation is entitled to \$95,617.55 as its reasonable S. 118 Costs. This amount well exceeds the amount the Strata Corporation offered to settle with Mr. Ajvazi (it is nearly double), before he put it to the expense of the assessment hearing.

[158] Rule 14-1(3) of the *SCCR* provides that with respect to special costs, a registrar must allow those fees that were proper or reasonably necessary to conduct the proceeding, and consider all of the circumstances, including the factors listed in R. 14-1(3)(b). I have considered the factors listed in R. 14-1(3)(b) as required.

[159] I have reviewed the WMLG invoices issued after the sale of the Unit concluded and its new owner took possession, which I described above. The assessment of a strata corporation's S. 118 Costs is not a particularly complex, difficult or novel proceeding requiring specialized skill or knowledge. As noted above, Mr. Ajvazi's failure to attend the PHC, or to provide a response addressing the Strata Corporation's bill of S. 118 Costs in any material way, unnecessarily lengthened the assessment proceeding.

[160] However, I find that the time WMLG billed to prepare for the assessment of the S. 118 Costs was excessive (as noted above, it exceeds \$35,000), particularly in proportion to the amount I have found to be its S. 118 Costs (the amount claimed in preparation for the assessment is a little over 1/3 the amount to register and enforce the Lien). I have reduced the amount I have awarded to the Strata Corporation as its special costs for the assessment of the S. 118 Costs.

[161] In the circumstances of this case, pursuant to R. 14-1(19), I find it appropriate to award the Strata Corporation its special costs of the assessment of the S. 118 Costs proceedings (which includes the PHC), which I assess at \$25,000 (inclusive of applicable taxes and disbursements).

"Registrar Gaily"