

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan BCS 3426 v. Mei*,  
2024 BCSC 2011

Date: 20241101  
Docket: S227611  
Registry: Vancouver

Between:

**The Owners, Strata Plan BCS 3426**

Petitioner

And

**Hao Mei**

Respondents

Before: Associate Judge Harper  
(As Registrar)

## Reasons for Decision

Counsel for the Petitioner:

T.G.K. Drever

Counsel for the Respondent, Hao Mei:

E.S. Lee  
Y.H. Wu, Articled Student

Place and Date of Hearing:

Vancouver, B.C.  
September 17, 2024

Place and Date of Judgment:

Vancouver, B.C.  
November 1, 2024

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**Introduction**

[1] This is an assessment of the legal costs the petitioner, The Owners, Strata Plan BCS 3426 (the “Strata”), incurred to enforce a lien it registered against the respondent, Hao Mei’s strata lot (the “Property”) for unpaid strata fees. The assessment is pursuant to ss. 116 and 117 of the *Strata Property Act*, S.B.C. 1998 c. 43 [SPA].

[2] The other respondents named in this matter have not filed responses to the petition nor were they present at this assessment hearing.

[3] I note the last name of Ms. Hao Mei is “Hao”, despite her name is showing as “Hao Mei” on the pleadings. Accordingly, I will refer to her as “Ms. Hao” throughout these reasons.

[4] The legal framework for this type of assessment is explained in *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377. Section 118 of the SPA entitles a strata corporation to add the actual legal costs it incurs registering and enforcing a lien to the amount owing under the lien, provided those costs are reasonable: para. 5.

[5] The Strata presents a claim for legal costs totalling approximately \$24,000. Ms. Hao argues that the legal costs should be assessed at no more than \$4,000.

[6] The Strata had a written fee agreement (the “Agreement”) with the law firm it retained (the “law firm”). Pursuant to the Agreement, the law firm charged an initial flat fee of \$800 for steps up to and including issuance of the demand for payment.

The Agreement provides:

The Initial Charge will be invoiced to the Strata Corporation once our demand for payment is issued to the owner. Hourly Fees will only be invoiced to you at the conclusion of the file, when we either settle the claim on your instructions, or the strata lot is sold as a result of a court order obtained in the Forced Sale Action. All Hourly Fees will be payable from the proceeds of settlement with the owner, or the proceeds from the sale of the strata lot, as applicable. Further, all Hourly Fees are capped at the amount that we are able to collect from the owner, either through settlement or from the proceeds of sale of the strata lot. Any portion of the Hourly Fees that we cannot collect

from the owner will not be collected from the strata corporation. The goal of this fee arrangement is to ensure that the strata is not required to pay more than \$800 plus disbursements and taxes up front, and that the strata is reimbursed for all of its legal fees disbursements and taxes at the conclusion of the matter.

[7] In accordance with the Agreement, the law firm billed \$800 plus disbursements and taxes (total \$956.46) on August 25, 2021 for the initial steps before commencement of proceedings. Thereafter, the Strata was billed for disbursements only. The total amount of disbursements claimed is \$2,185.65 plus taxes in the amount of \$76.66 for a total of \$2,262.31.

[8] The remainder of the legal costs presented for assessment are set out in a dummy invoice dated September 9, 2024. The time period covered is from March 22, 2022 to and including September 8, 2024. The fees total \$19,186.25 plus taxes in the amount of \$2,302.35 for a total of \$21,488.60. No time is included for attending at the costs hearing.

### **Background**

[9] The Strata registered a lien against the Property for strata fees arrears on March 21, 2021. The law firm sent demand letters to Ms. Hao which make it clear that legal fees are being incurred and will be added to its statement of account. Receiving no response to the demands, counsel for the Strata, Mr. Chatten, filed a petition, an affidavit in support, and a certificate of pending litigation on September 23, 2022.

[10] The law firm was required to inform the Province of British Columbia of the Strata's lien claim because of a Crown lien registered against the Property.

[11] Attempts to serve Ms. Hao with the court documents were unsuccessful. Mr. Chatten reviewed the building's fob records and determined that the unit was last accessed on August 22, 2022. There was no updated contact information for Ms. Hao and therefore a skip trace was arranged.

[12] The skip trace was unsuccessful. Mr. Chatten and law firm staff undertook additional steps to see if Ms. Hao could be located. These steps were unsuccessful and, therefore, Mr. Chatten sought an alternative service order. The Strata's first attempt to obtain an alternative service order was rejected because the court required a more recent attempt at personal service before the order would be granted.

[13] Further attempts were made to serve Ms. Hao personally at the Property based on recent fob activity. Those attempts were unsuccessful.

[14] An alternative service order was granted on August 24, 2023, permitting service by way of posting the documents on the door of the Property; mailing the documents to the address for the Property; and emailing the documents. Service was effected through these means.

[15] Finally, in November 2023, the solicitors for Ms. Hao, Mr. Lee, contacted Mr. Chatten by email and requested a payout statement. This was the first contact by or on behalf of Ms. Hao regarding the strata fees arrears. It is noteworthy, in my view, that the forms of alternative service were the same addresses the Strata had used in their previous attempts to contact Ms. Hao and persuade her to pay the arrears. Ms. Hao must have known that she was in arrears, but she failed to pay without any explanation. There is no evidence from Ms. Hao herself as to why she failed to pay her strata fees. There is no mortgage registered against the Property so she must have had the means to pay.

[16] Ms. Hao agreed, through counsel, to pay the strata fees arrears but not the Strata's legal fees. The parties entered into a consent order dated June 10, 2024 which provides that Ms. Hao shall pay the reasonable legal costs of the Strata pursuant to s. 118(a) of the *SPA* with costs to be assessed.

### **The Format of the Hearing**

[17] Mr. Chatten, on behalf of the law firm, filed a 58-paragraph affidavit of justification for the fees and disbursements. Another member of the law firm,

Mr. Drever, appeared on behalf of the law firm at the hearing and examined Mr. Chatten on his affidavit. Mr. Lee cross-examined Mr. Chatten.

[18] Mr. Lee did not challenge Mr. Chatten on the work done, the time spent or fees incurred. Rather, in submissions, he argued that regardless of the work done, the time spent and fees incurred, prior cases in which the registrar has assessed legal costs pursuant to s. 118(a) of the *SPA* set a cap of about \$4,000. I asked Mr. Lee why he did not challenge the fees in cross-examination and he replied that he did not want to “impugn” (as he put it) Mr. Chatten. I take it from this response that Ms. Hao concedes that the law firm did the work as claimed. Further, I infer from the lack of cross-examination on Mr. Chatten’s experience, the hourly rates charged, and the result obtained that these issues are conceded in favour of the Strata.

[19] Unfortunately, in the face of the decision not to cross-examination Mr. Chatten on any substantive issue regarding the statement of account I am left with little assistance on how to assess the reasonableness of the legal costs. The registrar should not be expected to conduct a time-consuming forensic audit of a legal bill on their own initiative, especially where the parties are represented by counsel. If there are challenges to the statement of account, procedural fairness requires the lawyer presenting it to be able to respond to questions on cross-examination. If Mr. Chatten had been cross-examined on the statement of account, he might have conceded some points, or defended them. Either way, I would have had a much stronger evidentiary foundation on which to base my assessment.

**Discussion**

[20] The assessment of reasonable legal costs is made pursuant to Rule 18-1 of the *Supreme Court Civil Rules*. The court may direct that an assessment be held by an associate judge or registrar and may direct that the assessment be certified. That is the process the parties followed in entering into the consent order of June 10, 2024. Although the consent order does not provide that the assessment be certified, I infer that the parties intended this result as I heard no different view at the hearing.

[21] *Baettig* resolves the issue of what level of costs are recoverable to enforce a strata lien claim. At para. 56, the Court of Appeal held:

The scheme of the *SPA* in general, and ss. 116–118 specifically, ensures that individual strata owners have clearly defined rights and responsibilities and provides legislative mechanisms designed to prevent compliant strata owners from being forced to shoulder the burdens created by delinquent owners.

[22] Each strata owner has a shared obligation to pay for maintenance and improvements provided by the strata corporation for the benefit of all owners. In other words, each strata owner “must pull their own weight”: *Baettig*, para. 59.

[23] The Court of Appeal in *Baettig* also held:

[65] Sections 116–118 of the *SPA* are remedial. They shift the burden of costs associated with collecting strata arrears to the delinquent owners who have failed to meet their obligations. Accordingly, the provision must be given “such fair, large and liberal construction and interpretation as best ensures the attainment of its objects”: *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 8.

[66] In my view, it is consistent with the remedial objective of ss. 116–118 and with the purposes of the *SPA* as a whole to interpret s. 118 as providing a strata corporation with the means to recover costs reasonably incurred in registering and enforcing a lien against a delinquent strata owner. If actual reasonable legal costs are not included in s. 118(a), legal fees not covered by the tariff must be borne by non-delinquent strata owners by way of increased common fees. This would further increase the financial burden on owners who are paying their share. In my view, this interpretation would be inconsistent with the philosophy and scheme of the *SPA*.

[24] To summarize, 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.

### **Reasonableness of the Legal Costs**

[25] I turn now to the reasonableness of the legal costs.

[26] Ms. Hao relies on *The Owners, Strata Plan NW 2089 v. Ruby*, 2019 BCSC 1485. It is important to note, however, that on an assessment of actual legal costs, each case turns on its own facts. In *Ruby*, there was no evidence from counsel involved in the legal proceedings against Mr. Ruby. Master Muir (now Associate Judge Muir), presiding as Registrar, pointed out in para. 57 that counsel should

ensure that in preparing for costs assessments, they are aware of what are considered to be the best practices or standard procedures.

[27] In my view, in the present case, the law firm followed those best practices. Mr. Chatten filed an affidavit, was examined-in-chief and cross-examined, although Mr. Lee chose not to challenge the reasonableness of the legal costs in his cross-examination.

[28] In *Ruby*, Master Muir had some serious concerns with all of the time records provided. I have no such concerns in the present case. If Ms. Hao had concerns about the time records, Mr. Lee could have cross-examined Mr. Chatten on them.

[29] Ms. Hao also relies on *Strata Plan LMS 2154 v. 0752737 B.C.*, 2021 BCSC 1343 [0752737 B.C. Ltd.]. In that case, the strata lot owner paid the arrears plus the legal fees demanded in the initial demand letter. The strata then filed a petition seeking recovery of the further legal costs incurred. The dispute is summarized at para. 28:

In this case, 0752737 B.C. Ltd. paid the outstanding in arrears in full plus an amount towards legal fees before the petition was filed. The petitioner took the position that additional legal expenses had accrued since the demand deadline expired and those had to be paid as well. It is unfortunate what was initially a dispute regarding a relatively modest amount has been drawn out over a period of several years and now involves a demand for legal costs of \$11,946.58 at this assessment.

[30] It was in the light of those unfortunate events that Master Bilawich (now Associate Judge Bilawich), presiding as Registrar, assessed the reasonableness of the legal costs and reduced the bill as presented.

[31] In the present case, Ms. Hao failed to pay the strata fees arrears on demand. The initial demand letter the law firm sent dated August 23, 2021 included the demand for strata arrears in the amount of \$6,020.50 plus estimated legal fees of \$956.46. If Ms. Hao had complied with the initial demand, she could have saved herself a lot of money in legal costs. There are no “unfortunate events” here as there



were in *0752727 B.C. Ltd.* The Strata was required to take the steps it did to recover payment.

[32] The final case Ms. Hao relies on is *The Owners, Strata Plan NW 499 v. Louis*, 2023 BCSC 281 [*Louis*]. *Louis* was a lengthy and complex proceeding. The Registrar was required to calculate the strata arrears and special levies owing as well as to assess the legal costs. The Strata Corporation in *Louis* claimed approximately \$37,000 in legal costs to register and enforce its lien. The legal bills were in evidence before the Registrar, but there was no affidavit of justification from the lawyer or lawyers who did the work. The strata lot owner, who was self-represented, did not raise specific objections to the costs claimed. The Registrar reviewed the legal bill and found some of the charges to be excessive.

[33] If Ms. Hao's position is that the legal fees charged are excessive and out of keeping with previous Registrars' decisions, it was incumbent on Mr. Lee to put that proposition to Mr. Chatten on cross-examination so that Mr. Chatten could have the opportunity to respond.

[34] The Agreement provides a balance between the initial flat rate charge of \$800, which might favour the law firm, and the deferred fees, which the law firm will only recover if the owner of the strata lot is ordered to pay them. It does not appear from the reasons of the cases relied on by Ms. Hao that fee agreements were in evidence. Given that the law firm defers the bulk of its fees until it can recover them from the strata owner, I think that a modest uptick in the initial charge is reasonable and I allow it. The fees are divided roughly between legal counsel and support staff.

[35] The disbursements claimed total \$2,185.65 plus taxes on the taxable portion of the disbursements in the amount of \$76.66, totalled to \$2,262.31. Mr. Chatten identified an overcharging error of \$240 which should be deducted from the disbursements claimed.

[36] There was no specific objection taken to the disbursements and I find them all to be reasonable. The process server fees of \$721.74 are of note given the efforts to try and serve Ms. Hao.

[37] On cross-examination, Mr. Chatten testified that his firm did a lot work with stratas, that the law firm had developed its own precedents, and they used precedents in this case. He confirmed that he did not do any legal research in preparation for the assessment. Mr. Drever did not make any reply submissions regarding the case authorities Mr. Lee relied on.

[38] Given the minimal cross-examination of Mr. Chatten, and the lack of legal argument on behalf of the Strata, I am left with little to rely on in order to assess the reasonableness of the fees. I have only Mr. Chatten's evidence that the work done was reasonably necessary, together with Ms. Hao's reliance on previous registrar decisions. As noted, Mr. Lee could have cross-examined Mr. Chatten on the rejected alternative service order. It is arguable that Ms. Hao should not have to pay for legal work undertaken that did not advance the proceeding. I am not able to discern from the draft statement of account what charges apply solely to that unsuccessful step in the proceeding.

[39] The time billed appears to include quite a lot of administrative time that could be considered office overhead or otherwise subsumed within legal counsel's hourly rate. However, my impression is only that: an impression. My concern in scrutinizing the statement of account without Mr. Chatten being cross-examined on it is that my assessment might appear arbitrary.

[40] With respect to costs of the assessment of costs, the draft statement of account includes, by my calculation, about \$4,500 for drafting the affidavit in support of the reasonable costs claim. There is nothing included for the hearing itself. In submissions, Mr. Drever expressed the view that costs of the assessment of costs would be "party and party costs". This is a puzzling submission given that the actual time for the drafting of the affidavit in support of the reasonable costs is sought to be included as an element of the reasonable costs. I heard no submissions from

counsel for Ms. Hao on the issue of whether costs of the costs assessment should be assessed as the reasonable costs actually incurred, or party and party costs under the tariff of costs. Because the issue was not fully argued at the hearing, I am not prepared to weigh in with an opinion on the appropriate level of costs that should be awarded.

[41] Both parties are responsible for the unsatisfactory state of affairs in which I find myself. One option is to order a re-hearing of the assessment. However, a re-hearing would be disproportionate to the amount involved. I have determined that I should assess the reasonable legal costs on the evidence before me, doing the best I can given the significant gaps in the presentation of the case on both sides. This decision should not be considered a precedent.

[42] I have taken the overcharge of \$240 into account in my assessment of the disbursements claimed. Consequently, the legal costs are assessed at \$10,000 plus taxes of \$1,200, plus disbursements of \$2,022.31 (including taxes) for a total of \$13,222.31.

**Summary**

[43] The respondent, Hao Mei, will pay the petitioner its reasonable legal costs in the total amount of \$13,222.31.

“Harper A.J.”