
The Case of the Recovery of Reasonable Legal Fees

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A recent BC Court of Appeal decision has significantly and very positively impacted a strata corporation's ability to recover legal fees incurred when taking legal action to collect arrears of strata fees and special levies.¹

In cases where a strata corporation is required to take steps to collect arrears of strata fees and special levies, sections 116 and 117 of the *Strata Property Act* (the "Act") permit strata corporations to file a lien against the title to an owner's strata lot and to enforce the lien by applying for an order to sell the strata lot. Section 118 of the Act permits "reasonable legal costs" to be added to the lien.

A number of previous cases have held that "reasonable legal costs" meant "party and party costs" rather than the strata corporation being able to recover all legal fees incurred. Party and party costs are costs determined by a tariff set out in the BC Supreme Court Civil Rules. The tariff sets out various activities and steps taken by the lawyer as part of the court process and assigns a number of points to each item. The total number of points in relation to a particular action is then multiplied by a dollar amount to determine the costs that can be recovered from the unsuccessful party. In most cases, party and party costs may equal less than one-half of the actual costs incurred.

The effect of the previous decisions in requiring party and party costs was that very often strata corporations did not recover all the legal costs incurred by the strata corporation to collect the arrears. In such cases, the other owners paid the unrecovered legal costs. In other words, the other owners were forced to incur costs as a

result of an owner failing, for whatever reason, to pay strata fees or a special levy. Such an outcome was viewed by many as unfair. However, the outcome was consistent with cost recovery in most legal actions. It is very unusual for a successful party to recover all the legal fees incurred.

In *Baettig*, the strata corporation argued that the prior cases that had concluded that reasonable legal costs as referenced in section 118 of the Act meant party and party costs were wrongly decided. The Court of Appeal agreed.

In reaching its conclusion, the Court of Appeal considered the scheme of the Act as ensuring that individual strata owners have clearly defined rights and responsibilities and providing legislative mechanisms designed to prevent compliant strata owners from being forced to shoulder the burden created by delinquent owners.

The Court of Appeal noted the comments of Mr. Justice Bowman "... within a strata corporation you are all in it together" and stated that the Act ensured that every strata owner pulls their own weight.

The Court of Appeal held that it was consistent with the scheme of the Act and the remedial provisions of sections 116-118 of the Act that reasonable legal costs should be interpreted as providing the strata corporation with the means to recover costs reasonably incurred in registering and enforcing a lien. The court noted that if strata corporations were unable to recover such costs the legal fees not recovered would be borne by non delinquent owners by way of increased common

¹ *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377

fees. The Court of Appeal found that this would further increase the financial burden on owners who are paying their share.

With respect to the collection of arrears and costs to remedy a bylaw breach, the Court of Appeal stated:

Strata owners who comply with the bylaws and rules of the strata corporation should not have to shoulder the financial burden of remedying infractions by non compliant owners.

When considering the meaning of the word “reasonable” in respect of the term “reasonable legal costs”, the Court of Appeal stated that a strata corporation is entitled to add its actual legal costs to the amount owing under the lien subject to the qualification that the costs must have been reasonably necessary.

The *Baettig* decision removes the concern of many strata corporations that collecting arrears of strata fees and special levies has the potential to impose financial burdens on other owners who pay strata fees as required.

Although the *Baettig* decision is important, strata corporations should not be tempted to seize on the statements of the Court of Appeal with respect to “owners pulling their own weight”, as meaning strata corporations should be able to assess owners strata fees based on the extent to which they use services rather than on the basis of unit entitlement. Such a conclusion cannot be drawn from the Court of Appeal decision. It is important to note that the Court of Appeal was referring to legal costs which were additional costs specifically referenced in the Act. The Court of Appeal also made reference to the costs permitted by section 133 of the Act which are also costs that are specifically permitted to be recovered. While the *Baettig* decision is very positive for strata corporations it should not be applied out of the context of the specific circumstances which the Court of Appeal was considering.