

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Zhang v. The Owners, Strata Plan BCS*
4288,
2026 BCCA 323

Date: 20260723
Docket: CA49855

Between:

Shimin Zhang

Appellant/
Respondent on Cross Appeal
(Respondent)

And

The Owners, Strata Plan BCS 4288

Respondent/
Appellant on Cross Appeal
(Petitioner)

Before: Registrar T.R. Outerbridge

Assessment of Special Costs

Zhang v. The Owners, Strata Plan BCS 4288, 2026 BCCA 55, dated
February 11, 2026

No one appearing on behalf of the
Appellant/Respondent on Cross Appeal

Counsel for the Respondent/Appellant on
Cross Appeal:

J. Han

Place and Date of Hearing:

Vancouver, British Columbia
July 16, 2026

Written Submissions Received:

July 21, 2026

Place and Date of Decision:

Vancouver, British Columbia
July 23, 2026

Summary:

Assessment of special costs by the Registrar arising from an appeal concerning unpaid strata fees. Although the appeal should have been straightforward and relatively inexpensive, the conduct of the appellant's agent contributed to increasing its complexity and cost. Held: Special costs assessed at \$39,703.92. In the unusual circumstances of this case, the appellant's agent engaged in a repeated pattern of ineffective and misleading conduct. After the appellant or counsel failed to appear despite being given every opportunity to do so, the Registrar proceeded with the assessment in their absence, denying both a further adjournment and the agent a further right of audience.

Reasons for Decision of Registrar Outerbridge:

[1] The respondent in this appeal seeks the assessment of their special costs, totalling \$49,786.13.

[2] The underlying dispute relates to unpaid strata fees. The fees were the subject of a lien placed on the appellant's strata unit. The respondent strata eventually sought to enforce that lien in the Supreme Court. Their petition seeking enforcement was heard on 7 May 2024, and the chambers judge declared that the appellant had defaulted on payment. The Supreme Court registrar was to assess the amount owing and, if payment was not made, the appellant's property was to be sold to satisfy the debt.

[3] The appellant filed his appeal on 8 May 2024. The main basis for his appeal was the chambers judge's refusal to grant an adjournment of the petition hearing, given he was allegedly in poor health, in hospital in China, and unable to properly respond. As will become relevant below, the appellant has been represented throughout these proceedings by his daughter, Li Zhang. Mr. Zhang himself has not appeared in this Court or, to my knowledge, in any proceedings in the court below.

[4] The appeal did not proceed efficiently. After the notice of appeal was filed on 8 May 2024, the respondent filed a cross-appeal. The notice of appeal was then amended on 29 May 2024. An appeal record was filed on 8 July 2024, and a second amended notice of appeal was filed the same day.

[5] In July 2024, the respondent obtained instructions to consent to the appeal. The appellant appears to have agreed with that proposal because on 8 August 2024, an order signed by both parties was submitted purporting to allow the appeal by consent, remitting the matter back to the Supreme Court. The Court then provided information to the parties on appeals by consent on 20 August 2024, including the need to appear and speak to the order. The day afterward, the respondent advised that they would no longer pursue a consent appeal.

[6] A lengthy delay in prosecution of the appeal followed. Because no further steps had been taken for several months, in December 2024, the respondent brought an application seeking to dismiss the appeal or for deadlines to be set. An extension of time was also sought by the appellant.

[7] That application was heard on 8 January 2025. The chambers judge granted an extension of time for the appellant to file his factum, appeal book, and any required transcripts until 22 January 2025. The application to dismiss the appeal was adjourned and not reset. On 22 January 2025, in compliance with the chambers judge's order, the appellant filed a factum and appeal book.

[8] On 21 February 2025, the respondent filed their factum and their cross-appeal factum along with an appeal book. About a month later in March, the appellant filed a notice of hearing setting the appeal on 19 September 2025. Several months then passed with little activity, except the appellant sent letters in September seeking to adjourn the appeal because they had not filed a response factum to the cross-appeal and their reply. The respondent opposed the adjournment, given the delay.

[9] The parties came before the Court on 19 September 2025. By that time, the appellant had retained counsel, Mr. Li, who sought an adjournment. The Court directed the appeal be adjourned and set it down for 24 October 2025, awarding the respondent strata its costs. The appellant filed an amended factum and a transcript, and the parties filed a joint book of authorities.

[10] Before the October appeal hearing, the Court alerted the parties to an affidavit filed by the appellant that appeared to contain fresh evidence. At the October hearing, the Court raised further serious concerns with this affidavit. What happened next is best summarized by the Court in their reasons indexed at 2026 BCCA 55:

[14] The appeal came before this division for hearing on October 24, 2025. We heard submissions from Mr. Li on the appellant's behalf, including submissions as to why Ms. Sun's affidavit should be received as fresh evidence.

[15] At the outset of her response submissions, the Strata's counsel expressed concerns about Ms. Sun's affidavit. She stated that her office had been unable to identify any lawyer in the Province of British Columbia by the name of "Susan Jiang". Her office had also contacted both the Supreme Court and Court of Appeal registries, and no one was aware of a commissioner by the name of Susan Jiang.

[11] The Court then adjourned the hearing and directed an exchange of materials relating to the authenticity of the signature on the affidavit. The respondent filed materials confirming there was no lawyer or commissioner in British Columbia named "Susan Jiang" who had sworn the appellant's affidavit. The appellant's counsel then withdrew. In her responding materials, Ms. Zhang suggested that Ms. Jiang might have been a lawyer outside of British Columbia, but she had no contact information for any commissioner by that name. No supplementary affidavit was filed by the affiant herself explaining the discrepancy or confirming Ms. Zhang's version of these events.

[12] The appeal was then reset for hearing on 27 January 2026 before the same three judges. Prior to that hearing, the Court advised the parties that its purpose would be to address: 1) the consequences of the apparent defects in the Sun affidavit; 2) the respondent's submissions on the appeal proper; and 3) whether Ms. Zhang was authorized to act as agent for Mr. Zhang, given he had not yet appeared and it remained unclear whether she was authorized to act on his behalf. On this issue, the Court's memorandum to the parties stated as follows:

If the appellant wishes to have his daughter, Ms. Li Zhang, provide submissions on his behalf at the hearing, the appellant must communicate this wish in a manner that satisfies the division that he authorizes Ms. Li Zhang to speak on his behalf and explains the reason why he cannot make submissions on his own behalf. In that event, the division will determine whether to exercise discretion to permit Ms. Li Zhang to make submissions on behalf of the appellant.

[13] On 19 January 2026, Mr. Zhang purportedly sent a letter to the Court requesting an adjournment of the 27 January 2026 hearing date, primarily because he needed a translator for the hearing. In the alternative, he requested that the appeal be heard in writing. The Court advised that it would not grant the adjournment, requiring Mr. Zhang to attend the hearing and, as is customary in civil proceedings, arrange an interpreter. Letters were then delivered indicating that Mr. Zhang was having trouble accessing the Zoom link from China. He was purportedly still unwell and would not be returning to Canada until June 2026.

[14] The hearing of the appeal proceeded on 27 January 2026 over the appellant's objections. Mr. Zhang did not appear either in person or by Zoom as instructed. However, Ms. Zhang handed up correspondence, again purportedly from Mr. Zhang authorizing her to represent him in the appeal. That letter contained his signature and was dated 27 January 2026. When the Court inquired how he could have delivered the letter from China with his signature on the same day as the appeal, Ms. Zhang suggested the date was wrong and the letter was, in fact, signed by Mr. Zhang the day before. The Court also considered further submissions and unsworn evidence at that hearing, much of which was not provided to the respondent until the hearing commenced on 27 January 2026. Following the hearing, the Court reserved its decision.

[15] On 11 February 2026, the Court issued reasons dismissing the appeal on the basis that the adjournment granted below was a discretionary decision entitled to deference. In dismissing the appeal, the Court granted the respondent's application that the costs of the appeal be paid as special costs. In doing so, the Court observed the following:

[38] For the reasons stated, we conclude that Ms. Zhang's conduct in relation to Ms. Sun's affidavit, which must be imputed to Mr. Zhang, was deliberate and an abuse of the Court's process. Mr. Zhang submitted and relied on an affidavit that purported to be sworn before a commissioner for taking affidavits in British Columbia when, to Mr. Zhang's knowledge, this was false. This behaviour alone amounts to reprehensible conduct that warrants an order for special costs.

[39] Beyond the affidavit, Mr. Zhang's conduct in this Court has additionally evidenced a persistent pattern of delay in the prosecution of this appeal and a willingness to disregard both procedural rules and specific direction from the Court as to how the appeal was to be conducted. Mr. Zhang did not appear at the January 27 hearing despite the Court's direction that he must attend in person or by Zoom. He provided written submissions despite the Court's direction that this appeal will not be in writing. He has attempted to place further evidence before the division on multiple occasions—most recently on the day of the hearing—without notice to the Strata or leave of the Court.

[40] In these circumstances, we consider that Mr. Zhang's litigation conduct has been sufficiently egregious that he should be ordered to pay special costs of the appeal.

[16] Given the cross-appeal had not been pursued by the respondent, the Court ordered that both parties bear their own costs of that proceeding. Properly, none of those costs have been claimed or awarded here.

[17] On 7 April 2026, I convened a pre-hearing conference for the purpose of scheduling this special costs application and to explain the process to Mr. Zhang and Ms. Zhang, given they were self-represented. Given that Mr. Zhang has not yet appeared at any level of court and the appellant's representation that he would be available in June, the costs assessment was scheduled for 4 June 2026. That memorandum also gave notice to the parties that Mr. Zhang or his counsel would have to appear at the assessment. I reconfirmed this direction in a letter sent from the Court to the parties on 28 May 2026, clarifying that Mr. Zhang could also appear and seek to have Ms. Zhang act as his agent.

[18] The assessment was scheduled for 4 June 2026. On the morning of the assessment, Ms. Zhang provided the Court with a letter indicating that she had retained counsel. I adjourned this hearing on conditions, granting costs to the respondent by consent and time to allow Ms. Zhang's new counsel to file a notice of

change of representation within five business days, confirming to the Court that he was acting for Mr. Zhang. Though that was done, although late, on 23 June 2026, counsel withdrew shortly afterward on 7 July 2026. The assessment was then reset for 16 July 2026 on the same conditions.

[19] The afternoon before the assessment, Ms. Zhang again sought a last-minute adjournment. As I indicated to the parties at the hearing, I was not prepared to adjourn the assessment further or permit Ms. Zhang to continue to act on behalf of her father. The reasons below explain why I have reached these decisions.

[20] A central concern both at this special costs hearing and the appeal is whether Mr. Zhang has authorized his daughter to act for him, given he has not appeared in this Court or in the court below. Although Ms. Zhang has appeared throughout these proceedings as Mr. Zhang's agent, where the Court permits an agent to appear on behalf of a party, it does not amount to blanket permission for that agent to appear throughout the proceedings: *Ancheta v. Ready*, 2005 BCCA 232 (Chambers) at para. 34. As the Court required in January and as I have required here several times, the party itself may be asked to appear and explain the need for an agent: *Ancheta* at para. 34.

[21] As described in *Ancheta*, it should not always be assumed a non-lawyer agent is guaranteed a right of audience. While it is becoming more common for agents to appear in the Court of Appeal given the cost of legal services and the number of self-represented litigants (in 2025, 39% in civil appeals have at least one side self-represented, as detailed in the Court's 2025 Annual Report), it is always a matter of discretion whether the Court will grant the privilege of audience: *Facchin Estate*, 2012 BCCA 112 (Chambers) at paras. 21–22. Traditionally, agents have been allowed to appear on behalf of another party where the Court finds it "necessary or proper" (*Vernrose Holdings Ltd. v. Pacific Press Ltd.* (1978), 88 D.L.R. (3d) 523 (B.C.C.A.)) but have been cautious in doing so (*Zant v. Hovey*, 2023 BCCA 311 (Chambers) at para. 31).

[22] I understand the appellant will be deprived of his opportunity to challenge the evidence and make submissions on this assessment, which involves a considerable sum. It is not a decision lightly taken, given its obvious effect on procedural fairness. However, it is for that very reason that the Court made every effort to be certain that Mr. Zhang's interests were being properly represented.

[23] In this assessment, it cannot be either necessary or proper to allow an agent to continue to represent another party's interests when: a) there is concern about whether that agent has been properly instructed to do so; and b) where the appellant has been given every opportunity to appear himself, to hire counsel, or to instruct an agent and has not done so. This assessment has been outstanding since the Court made its order granting the respondent its costs on 11 February 2026. It was scheduled in April for June on the expectation that Mr. Zhang would be back in Canada at that time. He or his counsel has never appeared.

[24] An additional month has now passed. The afternoon before this assessment, a letter and affidavit were filed by Ms. Zhang seeking another last-minute adjournment. The letter bears Mr. Zhang's signature. However, when pressed at the hearing of the assessment, Ms. Zhang admitted she had signed her father's signature on the letter. She remained seemingly oblivious to the significance of having done so, given the history of her conduct in this appeal. That letter raises, for the first time, the existence of a power of attorney granted to her by Mr. Zhang. A copy of this document has never been provided to the Court or the respondent but was handed up at the assessment only when requested.

[25] The power of attorney was signed in 2007 and appears to grant Ms. Zhang authority over her father's affairs. Ms. Zhang could not provide a clear reason why she had not relied on it earlier, at one point stating that it had been misplaced and another indicating letters "from her father" have permitted her to act on his behalf so far in this litigation. In any event, it remains unclear whether the power of attorney is authentic. Instead, Ms. Zhang seems more concerned about anyone relying on it at all. She is concerned it has been distributed to counsel for the respondent, who

insisted in open court they have never seen it. Even more oddly, she demanded the Court return the power of attorney to her following the hearing, seemingly concerned it would form part of the Court's record.

[26] Regardless, it is simply too late for Ms. Zhang to raise these issues, which should have been dealt with much earlier. I have given the appellant and his daughter months to investigate and determine how to best represent the appellant's interests at this assessment. Other than continuing a pattern of seeking adjournments to retain counsel at the eleventh hour, he and Ms. Zhang have done very little. The delay is now inordinate and prejudicial to the respondent, who would be forced to incur and collect additional costs if this assessment were again adjourned.

[27] Finally, Ms. Zhang has been proven ineffective at representing her father's interests in this assessment and has continued a pattern of misleading conduct, which is yet another reason why it cannot be either necessary or proper for her to continue as his agent. An adjournment is in no party's interests, given the mounting costs. For these reasons, I determined the assessment must proceed and that Ms. Zhang could no longer act as the appellant's agent. That said, I received and reviewed material Ms. Zhang filed at the assessment, agreeing I would consider them to the extent they aid her father's position.

[28] I turn now to examine the law surrounding special costs.

[29] Rule 71 of the new *Court of Appeal Rules* governs special costs. Rule 71(2) states that, "if costs of the proceeding are ordered to be assessed as special costs, the registrar must allow each fee the registrar determines was properly or reasonably necessary to conduct the proceeding." In *Chao Yin Canada Group Inc. v. Xenova Property Development Ltd.*, 2023 BCSC 390, the Supreme Court summarized how to define the terms "necessary" and "proper" as follows:

[19] Work for which fees are claimed will be deemed to be “necessary” if that work was indispensable to the conduct of the proceeding. Work for which fees are claimed will be deemed “proper” if while not strictly necessary, it is nevertheless reasonably undertaken or incurred for the purpose of the proceeding: *Brown v. Goodacre*, 2019 BCSC 1008.

[20] Whether work for which fees are claimed was “proper or reasonably necessary to the conduct of the proceeding” is assessed on an objective basis. Special costs are intended to capture “the fees that a reasonable client would pay a reasonably competent solicitor for performing the work described in the bill”: *Bradshaw Construction Ltd. v. Bank of Nova Scotia*, 1991 CarswellBC 52 (B.C.S.C.), *Gichuru v. Smith*, 2014 BCCA 414.

[30] As this Court noted in its reasons, special costs are awarded to punish reprehensible conduct and serve to censure and deter litigation misconduct: *567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc.*, 2020 BCCA 69 at para. 42. This Court exhaustively reviewed the principles that apply to an assessment of special costs in *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329 and, prior to that in *Gichuru v. Smith*, 2014 BCCA 414, leave to appeal ref’d, [2014] S.C.C.A. No. 547. I would adopt those principles here.

[31] In *Basset v. Magee*, 2016 BCCA 329 (Registrar), at para. 23, I summarized several other principles that apply to an assessment of special costs:

- a) The burden of proof is on the party seeking to have costs assessed: *Bronson v. Hewitt*, 2014 BCCA 514 at para. 28;
- b) The assessment of special costs is an objective, not subjective exercise. The question is often restated as “the fees a reasonable client would pay to a reasonably competent lawyer”: *Bronson* at para. 12;
- c) The fact that fees have been claimed does not make them reasonable. Even if the bill was paid, those fees are not necessarily reasonable: *Gichuru* at para. 105, citing *Royal Trust Corporation of Canada v. Clarke* (1989), 35 B.C.L.R. (2d) 82 (C.A.) at 88;

- d) In conducting an assessment, the rules of natural justice apply. In part, this means that there must be some evidence to assess the scope and nature of the legal fees, giving the opposing party the opportunity to test the reasonableness of the fees sought (though here, that requirement has been attenuated): *Gichuru* at paras. 103–104, 111; and
- e) While the views of an expert may be of assistance, the registrar is entitled to use his or her judgment in evaluating the reasonableness of counsel’s hourly rates: *Farris v. Nyirabu*, 2016 BCSC 184 at para. 13 (Registrar).

[32] In conducting that assessment, “all of the circumstances” are considered and the following non-exhaustive factors are reviewed under Rule 71(3):

- a) the complexity of the proceeding;
- b) the difficulty or novelty of the matters involved;
- c) the amount involved in the proceeding;
- d) the time reasonably spent in conducting the proceeding;
- e) the importance of the proceeding, or of the result obtained, to the party whose costs are being assessed;
- f) the benefit, to the party whose costs are being assessed, of the services rendered by the party’s lawyer;
- g) the skill, specialized knowledge and responsibility required of the lawyer of the party whose costs are being assessed; and
- h) any party’s conduct that tended to shorten or unnecessarily lengthen the duration of the proceeding.

[33] Rule 72 then provides for reasonable amounts of disbursements necessarily or properly incurred and conveys the authority to add payable taxes.

[34] I turn now to address the factors in Rule 71(3).

[35] The legal question at the heart of this appeal was not complex. The appellant alleged that there had been a breach of procedural fairness in the proceeding below and that he should have been entitled to an adjournment. Though the appeal was further complicated by the various amendments to documents and repeated correspondence both to respondent's counsel and the registry, the issues at the heart of this appeal were not complex, difficult or novel. As the Court noted in its reasons, the amounts in issue in this appeal are very minor, between \$751.19 and \$1,822.74.

[36] Given this degree of complexity, this was not a proceeding which required particular skill, specialized knowledge or responsibility. Several lawyers worked on the file, ranging in years of call from 1992 to 2025. Work was appropriately distributed between these lawyers given the difficulty and complexity of the tasks billed. Hourly rates of counsel, including junior counsel and articulated students, ranged from \$225 to \$375 per hour, with senior counsel billing only a very small amount of time at \$525 per hour. The respondent was entirely successful in responding to this appeal, which was objectively important to the strata. And very little time was spent on the core steps required to respond to the appeal. For example, the factum and appeal book were drafted, revised, and filed very efficiently in about 12 hours.

[37] Unfortunately, this was a case that was made procedurally intricate by the appellant by serially amending his notice of appeal, requiring the respondent to bring an application to dismiss the appeal as abandoned because the appeal had not been pursued, and through numerous communications with respondent's counsel. Given the amount in dispute and the issues involved, this should have been a straightforward appeal that was quickly decided. It was not. And the respondent is not to blame for the delay. Instead, the appellant's conduct unnecessarily lengthened this proceeding and drove up its cost. This conclusion accords with the Court's observation that the appellant's conduct showed "... a persistent pattern of delay in the prosecution of this appeal": at para. 39.

[38] Over the course of what should have been a straightforward appeal, the respondent deposes receiving over 80 emails from the appellant, not including those received while he had counsel. Many have to do with scheduling and service, and matters made more complex by the appellant's decision to conduct this appeal from China with limited local assistance. Finally, as the Court observed, there were also further submissions and unsworn evidence provided at the last moment prior to the hearing of the appeal, further driving up the cost to respond. This is to say nothing of the appellant's problematic affidavit and "willing disregard" for directions and instructions by the Court as to how this appeal ought to have been conducted.

[39] Given the factors I have considered above, with three limited exceptions, I find that much of the time spent by counsel responding to this appeal was proper or reasonable in all of the circumstances. The disbursements, which are modest, were mostly necessarily or properly incurred.

[40] The first exception relates to the photocopying charges, which I would reduce by \$1,000, inclusive of tax. Given most material in this appeal was filed electronically, there seems little need for over 9,000 pages of photocopies.

[41] The second exception relates to time billed where legal assistants conducted tasks that should be more suitably considered overhead: *Bronson* at paras. 46–47. Some of these clerical tasks are blended with entries that are suitably billed as paralegal work. There are a few other charges on the bill that relate to tasks that were equally unnecessary in the circumstances, such as the preparation of a joint book of authorities that was never referred to and travel time billed at counsel's full rate. For all of these charges, I reduce the bill by \$3,000.00 (\$3,360.00 with taxes).

[42] The third exception relates to the time spent on allowing the appeal by consent. This was a proposal by the respondent that, ultimately, did not proceed. The question is whether the time spent considering an appeal by consent unnecessarily lengthened the proceeding such that those costs ought not to be borne by the appellant.

[43] Aspects of appeals can be procedurally complex. Consistent with the objective standard applied in an assessment of special costs, a tactical decision considering a particular step in an appeal is not subject to a standard of perfection in hindsight. Some latitude is given to investigate reasonable steps. An appeal is not unnecessarily lengthened just because such a step is not ultimately taken, particularly when it has the potential to shorten an appeal or bring it to an early conclusion.

[44] Here, it is reasonable that some time was spent investigating the viability of a consent appeal. But I do not agree all the time should be visited upon the appellant, given the respondent ultimately decided not to proceed. Considering all of the circumstances, I would reduce the respondent's bill in this respect by \$500.00 (or \$560.00 with taxes).

[45] I turn now to briefly consider the costs arising from the assessment of the respondent's special costs. An assessment of costs includes costs of the assessment itself when the Court, as here, has ordered special costs of the appeal: *567 Hornby Apartment Ltd.* at para. 141, leave ref'd [2020] S.C.C.A. No. 140; *Singh v. Singh*, 2025 BCCA 309 at para. 37.

[46] The respondent's bill relating to the preparation and attendance at the June appearance and steps taken to prepare a new bill of costs following that appearance amounts to \$7,577.92 in fees and \$766.96 in disbursements, inclusive of taxes (until 16 June 2026). Following that appearance, another \$3,685.35 in fees and \$131.98 in disbursements are claimed between 17 June 2026 to 17 July 2026.

[47] These bills also contain some legal assistant time as well as some time billed for travel at counsel's full rate, which, in the circumstances, should be reduced. The preparation time is also on the higher side objectively, given counsel would have prepared twice for what amounted to largely the same hearing. I would fix the total amount for the preparation and attendance at the assessment at \$7,000.00, inclusive of taxes (or a reduction of \$5,162.21).

[48] Considering the principles that I have articulated above, I assess the special costs and disbursements to the conclusion of this assessment at \$39,703.92. I will sign a certificate of costs in that amount.

“T.R. Outerbridge, Registrar”