

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *The Owners, Strata Plan EPS 7076 v.*
1186856 B.C. Ltd.,
2026 BCCA 248

Date: 20260528
Dockets: CA51383; CA51385

Docket: CA51383

Between:

The Owners, Strata Plan EPS 7076

Appellant
(Petitioner)

And

1186856 B.C. Ltd.

Respondent
(Respondent)

- and -

Docket: CA51385

Between:

1186856 B.C. Ltd.

Appellant
(Respondent)

And

The Owners, Strata Plan EPS 7076

Respondent
(Petitioner)

Before: The Honourable Justice MacNaughton
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
January 29, 2026 (*The Owners, Strata Plan EPS 7076 v. 1186856 B.C. Ltd.*,
2026 BCSC 148, Kelowna Docket S142167).

Oral Reasons for Judgment

Counsel for The Owners,
Strata Plan EPS 7076:

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Counsel for 1186856 B.C. Ltd.
(via videoconference):

J.W.T. Robinson
L. Dohler

Place and Date of Hearing:

Vancouver, British Columbia
May 28, 2026

Place and Date of Judgment:

Vancouver, British Columbia
May 28, 2026

Summary:

The parties disagree about whether the term “reasonable legal costs”, in s. 118 of the Strata Property Act, S.B.C. 1998, c. 43 [SPA], includes assessing the reasonableness, or necessity, of the enforcement steps taken under the SPA or only the quantum of the legal costs incurred in doing so. They seek leave to appeal the chambers judge’s determination of that issue.

Held: Both applications for leave to appeal granted.

[1] **MACNAUGHTON J.A.:** Before me are two applications for leave to appeal an order from the BC Supreme Court granting, with certain limitations, the petitioner's recovery of "reasonable legal costs" arising from the registration of a strata lien under s. 118 of the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*].

Background

[2] The petitioner, the Owners, Strata Plan EPS 7076 (the "Strata"), is the strata corporation for the development in question. The respondent, 1186856 B.C. Ltd., was the original builder and developer (the "Owner").

[3] The dispute arose in the context of a phased strata development, where strata lots were completed, sold, and closed at different times (the "Development"). During the Development process, the parties adopted a protocol whereby strata fees attributable to each unit were paid as part of the conveyancing process at or before the closing of the sale of a unit.

[4] In the spring of 2024, the Strata pursued the Owner directly for payment of strata fees for an unsold unit in the Development. On July 4, 2024, the Strata issued a written notice, pursuant to s. 112(2) of the *SPA*, demanding payment of these alleged arrears (the "Arrears"), and advising that a lien could be registered if payment was not made.

[5] The Owner did not pay the Arrears in the period set out in the notice. It did not dispute that the Strata was entitled to seek payment of the Arrears, but it requested documents to confirm the amounts claimed, including budgets, meeting minutes, and account statements. The Owner expressed confusion about the account statements and the amounts claimed. The Owner's position was that the requested documents would explain how the strata fees and arrears had been calculated.

[6] On August 14, 2024, following expiry of the notice period, the Strata registered a certificate of lien against the Owner's strata lot pursuant to s. 116(1) of the *SPA* (the "Lien"), which charged the strata lot with the amount the petitioner asserted was owing at that time.

[7] There was ongoing correspondence between the parties after the Lien was registered. The Owner made it known that it was prepared to pay strata fees upon receiving further clarification and documentation.

[8] On November 25, 2024, the Strata filed a petition in the Supreme Court seeking relief under s. 117 of the *SPA*. The Owner was served with the petition before the end of November and, on January 21, 2025, after the Lien had been registered and the petition seeking relief under s. 117 of the *SPA* was filed, the Owner paid the outstanding strata arrears claimed by the Strata. The payment resolved the underlying dispute concerning strata fees and common expenses.

[9] The Owner's payment did not include the Strata's claimed legal costs. It was the Owner's view that the enforcement steps taken by the Strata were unreasonable.

[10] Thus, the chambers judge heard the Strata's petition only on the issue of whether the Strata was entitled to the "reasonable legal costs" of registering and enforcing the Lien under s. 118 of the *SPA* for the Arrears.

[11] 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.

Chambers Judge's Reasons

[12] The chambers judge released reasons for judgment on January 29, 2026: *The Owners, Strata Plan EPS 7076 v. 1186856 B.C. Ltd.*, 2026 BCSC 148 ("RFJ"). A corrigendum was issued on March 30, 2026. The chambers judge agreed with the Strata that s. 118 of the *SPA* permits recovery of reasonable legal costs incurred in registering and enforcing the Lien. She granted the Strata its reasonable legal

costs up to the date the Arrears were paid, but denied the costs incurred thereafter (the “Costs Order”).

[13] At the outset, the chambers judge said that the issue of quantum of any recoverable legal costs was not before her, and if entitlement was established, the reasonableness and amount (or quantum) of any such costs would be determined on an assessment before a registrar: RFJ at para. 19.

[14] The chambers judge then canvassed the applicable legal authority. She outlined the structured statutory scheme set out in ss. 112–118 of the *SPA*. She emphasized the limited cost recovery available under those sections: RFJ at para. 24. The chambers judge held that entitlement to costs recovery under a lien per s. 118 is not “automatic” because the provision is permissive, not mandatory. She held the regime “authorizes recovery only of costs incurred in registering or enforcing a lien and only to the extent those costs are reasonable.” She emphasized that s. 118 does not displace “the court’s role in determining whether entitlement exists in principle”: RFJ at paras. 26, 28.

[15] Turning to the jurisprudential authorities, the chambers judge discussed *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377 (“*Baettig*”). She pointed out that the Court in *Baettig* defined the meaning of “reasonable legal costs” as costs that are “reasonably necessary” to protect compliant owners from bearing the cost of enforcing strata obligations against delinquent owners (RFJ at para. 29). She held that, on the other hand, *Baettig* made clear that the objective of protecting compliant owners cannot be used to “expand entitlement beyond what the *SPA* permits” (RFJ at para. 31).

[16] She also turned to *The Owners, Strata Plan NW 2089 v. Ruby*, 2019 BCSC 504 (“*Ruby 504*”) to clarify the registrar’s responsibility in the process (RFJ at para. 32). She said that, once entitlement in principle has been determined by the court, the registrar’s role is to assess the quantum of costs claimed and its reasonableness. She pointed out other caselaw establishing a “temporal boundary” of entitlement—i.e., that is. 118 of the *SPA* is not engaged unless and

until a certificate of lien is registered (RFJ at para. 35 (emphasis added), citing *625536 B.C. Ltd. v. Owners of Strata Plan LMS 4385*, 2021 BCCA 158).

[17] The chambers judge summarized her findings at para. 37:

- a) entitlement under s. 118 of the *SPA* is a legal determination for the court, informed by the statutory language and purpose;
- b) entitlement is not automatic upon the registration of a lien;
- c) the court’s task is to determine whether the claim for costs falls within the type of lien-registration or enforcement scenario contemplated by the *SPA*; and
- d) once entitlement is established, the reasonableness and amount of costs are ordinarily matters for assessment.

[18] She said the court may consider the nature of the enforcement steps taken and whether the claim for costs is tethered to the registration or enforcement of a lien, as opposed to “becoming an end in itself”: RFJ at para. 39.

[19] On the issue of entitlement versus quantum, the chambers judge noted that entitlement is determined by the court, and concerns whether a strata corporation may in principle add legal costs to the amount owing under a lien because those costs were incurred in registering and enforcing the lien. On the other hand, the costs quantum is determined by the registrar, and concerns whether the claimed fees were reasonably necessary and in a reasonable amount: RFJ at paras. 40–43.

[20] She turned to the issue of the scope of entitlement where arrears are paid after a lien is registered, but before any order under s. 117 is sought or obtained. She held that, in such a case, the scope of s. 118 is necessarily confined “to those reasonably incurred to register the lien and to take the necessary steps leading up to payment, together with any steps reasonably required to give effect to that payment and discharge the lien”: RFJ at paras. 44–45. Relying on the court’s reasons in *Baettig*, she said this was because of the remedial purpose of ss. 116–118: RFJ at para. 46.

[21] The chambers judge emphasized that, “while entitlement under s. 118 is a legal question for the court, the scope of that entitlement is informed by the nature and timing of the enforcement steps taken” and the “determination of whether particular legal costs were reasonably necessary within that scope is, in the ordinary course, a matter for the registrar”: RFJ at para. 47.

[22] Applying these principles to the facts of this case, the chambers judge held that the Strata’s invocation of the lien’s registration fell within the core enforcement scenario contemplated by the SPA: RFJ at paras. 59–60. She emphasized that the Lien was registered in August 2024 and the owner did not pay the Arrears until January 2025.

[23] On the issue of the proper scope of entitlement, the chambers judge referred to *Baettig* to conclude that any legal costs added to the Lien reflect only those costs reasonably necessary to register the Lien and pursue its enforcement. Again on the issue of the role of the court versus that of the registrar, she said that the registrar’s role is to assesses quantum, not entitlement or scope, and the court’s role is to define the boundaries within which the registrar’s assessment occurs, including determining whether certain categories of costs fall within the statutory concept of “registering or enforcing” a lien: RFJ at paras. 62–66.

[24] She concluded that in this case, the scope of the entitlement existed only for the period before the Arrears were paid. She said that after that stage, the Lien ceased to serve any enforcement function because from then on, legal steps were only aimed at resolving the dispute over legal costs: RFJ at paras. 68–71. She concluded that legal costs incurred after the Arrears were paid fall outside the scope of s.118.

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[25] The Owner applies for leave to appeal the Costs Order. It says leave is required because the Costs Order is a limited appeal order under R. 11 of the *Court of Appeal Rules* B.C. Reg. 120/2022, which requires leave by virtue of s. 13(2) of the *Court of Appeal Act*, S.B.C. 2021, c. 6.

[26] The Owner seeks to appeal the Costs order on the basis that the chambers judge erred in deferring the “reasonableness” assessment only to the question of quantum and not entitlement. The Owner seeks to argue on appeal that the particular legal steps taken by the Strata in this case were not reasonably necessary. The corrigendum, at paras. 73, 75 and 76, appears to limit the assessment of the reasonableness of costs to quantum only thereby incorrectly foreclosing the Owner’s core argument.

[27] The Strata took no position on the Owner’s application.

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[28] The Strata also applies for leave to appeal the Costs Order. It agrees leave is required under R. 11.

[29] The Strata disputes the chambers judge’s interpretation of s. 118 of the *SPA*, relying on this Court’s decision in *Baettig*. Specifically, it says the chambers judge erred in concluding that legal costs incurred after the Arrears were paid fall outside of the scope of recovery for legal costs under s. 118 of the *SPA*.

[30] The Strata seeks to argue that their reasonable legal costs form part of the amount claimed in the lien.

[31] The Owner took no position on the Strata’s application.

Discussion

[32] Rule 11 of the *Court of Appeal Rules* provides:

For the purposes of the definition of “limited appeal order” in section 1 of the Act, the following orders are prescribed as limited appeal orders...

...

- (f) an order in respect of costs or security for costs, if the only matter being appealed is in respect of costs or security for costs

...

[33] All parties submit, and I agree, that the Costs Order falls under R. 11 and requires leave to appeal.

[34] The remaining question is whether leave to appeal the Costs Order should be granted to the Strata and/or the Owners. The four criteria to consider when determining whether it is in the interests of justice to grant leave to appeal are well-established:

- 1) whether the point on appeal is of significance to the practice;
- 2) whether the point raised is of significance to the action itself;
- 3) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
- 4) whether the appeal will unduly hinder progress of the action.

See *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 at para. 10.

[35] These criteria are all considered under the rubric of the interests of justice: *Vancouver (City) v. Zhang*, 2007 BCCA 280 at para. 10. In addressing the question of the merits of the appeal, this Court asks whether the applicant has identified a “good arguable case of sufficient merit to warrant scrutiny by a division of this Court”: *Johnston v. Matheson* (1994), 46 B.C.A.C. 158 at para. 10.

[36] I will apply the factors to each of the parties’ applications for leave to appeal separately, though several points of analysis overlap.

The Owners’ Proposed Appeal

Merits

[37] The Owner says the chambers judge failed to appreciate that the “reasonableness” aspect of the words “reasonable legal costs” in s. 118 of the *SPA* is relevant both to the question of entitlement (i.e., whether it was reasonable for the Strata to incur a legal cost in the first place, determined by the court) and also

the question of quantum (i.e., whether the quantum of costs incurred for a legal step are reasonable, determined by the registrar). The Owner suggests that the Strata's enforcement of the Lien was unreasonable in light of the Owner's concession that it would pay the Arrears on receipt of confirming documents.

[38] At RFJ para. 47, the chambers judge said, "the determination of whether particular legal costs were reasonably necessary ... is, in the ordinary course, a matter for the registrar on [the quantum] assessment." Later in her reasons, the chambers judge seemed to clarify her interpretation of this principle in considering what I understand to be the Owner's argument: that the reasonableness requirement informs not only quantum but also entitlement in asking whether it was reasonable to incur legal costs in the first place. In her RFJ she said:

[54] *Ruby* confirms that the question of whether it was reasonable to incur legal costs in the first place is for the court to determine at the entitlement stage, not for the registrar on assessment. At the same time, neither *Ruby* nor *Baettig* support the proposition that all reasonableness considerations are deferred to assessment. Instead, the court retains a gatekeeping role in defining entitlement and scope under s. 118 in that it must determine whether the claim for costs falls within the statutory categories of "registering or enforcing" a lien. What is deferred to the registrar is the assessment of quantum: whether the particular fees and disbursements claimed within that scope were both reasonably necessary and reasonable in amount. *Ruby* does not stand for the proposition that entitlement may be denied whenever enforcement could, in hindsight, have been handled differently or whenever an owner can point to arguable shortcomings in a strata's enforcement approach. Rather, it delineates institutional roles: the court determines entitlement and scope in principle, and the registrar determines the reasonableness of the amounts claimed.

[55] *Baettig* provides further guidance. The Court of Appeal confirmed that ss. 116–118 are remedial provisions designed to protect compliant owners from having to enforce strata obligations against delinquent owners. Importantly, the Court emphasized that a strata corporation has no authority to forgive arrears and must ensure that compliant owners are not unfairly burdened by contributions that exceed their lawful share...

...

[57] ...This does not mean that every enforcement step taken by a strata corporation will attract cost recovery under s. 118. Nor does it insulate the strata corporation from scrutiny as to the scope or necessity of particular legal steps. It does, however, reinforce why entitlement under s. 118 cannot be defeated solely because the strata corporation chose to proceed in

accordance with the statutory process once arrears were asserted to be owing.

[Emphasis added.]

[39] As the chambers judge held here, there is no authority that directs a court not to assess the reasonableness of the legal costs at the entitlement stage of the analysis. Indeed, *Baettig* requires that the costs incurred must have been “reasonably necessary” to fall within the scope of s. 118.

[40] To this extent, I see the minimal required merit sufficient to warrant scrutiny from a division of this Court on the chambers judge’s incorporation of the “reasonableness” of the legal costs requirement in her entitlement assessment under s. 118. The judge said that, at the entitlement stage, the court may consider “the nature of the enforcement steps taken and whether the claim for costs is tethered to the registration or enforcement of a lien, as opposed to becoming an end in itself”: RFJ at para. 39. Applying this and other relevant principles to the facts of this case, the chambers judge said:

[59] On the facts of this case, the petitioner issued a notice under s. 112. The respondent did not pay the claimed arrears within the notice period. In August 2024, the petitioner registered a certificate of lien under s. 116. The respondent did not pay the arrears until January 2025, well after the lien was registered. There was no undertaking, agreement, or unconditional tender of payment before registration that would have rendered the lien unnecessary or premature.

[60] In these circumstances, the petitioner’s invocation of the lien’s registration falls within the core enforcement scenario contemplated by the *SPA*. While the court retains discretion at the entitlement stage under s. 118, that discretion must be exercised consistently with the statutory purpose and structure. Given these facts, the factors that might justify denying entitlement in principle are absent.

[Emphasis added.]

[41] Relatedly, I see sufficient merit to the Owner’s ground of appeal regarding the chambers judge’s interpretation of the division of responsibility as between the court and the registrar as it pertains to the “reasonableness” aspect of the analysis, and in particular, the import of *Ruby 504* on this question.

Significance to the Practice

[42] The Owner says this appeal is significant to the practice because of the need for guidance from this Court in the interpretation of the provision, and due to the more general issue of the recovery of legal fees for strata corporations. It says “the prospect of full recovery of actual legal fees risks incentivizing strata corporations—and, to be blunt about it, their lawyers—to aggressively pursue strata lien actions.”

[43] I agree that the proposed appeal raises an issue that is significant to the issue of strata corporations’ pursuit of costs under s. 118, and agree that this appeal would be significant to the relationship between owners and strata corporations.

Progress of and Significance to the Action

[44] The proposed appeal would not hinder the progress of the matter. The Strata’s entitlement to reasonable legal costs is the only matter at issue in this proceeding. The point on appeal determines that matter.

Conclusion

[45] In light of these factors weighing in favour of granting leave to appeal, I see it in the interests of justice to grant the Owner’s application.

The Strata’s Proposed Appeal

Merits

[46] The Strata says the chambers judge erred in concluding that legal costs incurred after the Arrears were paid fell outside the scope of s. 118. It relies on *Baettig* at paras. 56, 60–61, 65–66, 73–74 which it says supports its position. It says the Arrears did not include any payment for s. 118 reasonable legal costs, and that such costs are not Arrears but “monies owing under the Lien”.

[47] On this point, the chambers judge said:

[71] Section 118 of the *SPA* does not authorize the recovery of legal costs incurred solely to pursue payment of legal fees after the underlying strata obligation has been satisfied. To permit such recovery would risk reversing

the statutory relationship between arrears and costs, making legal fees the primary object of enforcement rather than an incident of it.

[72] This conclusion does not depend on a finding of improper conduct by the petitioner, nor does it turn on sympathy for the respondent. It flows from the structure of the *SPA*. Section 118 is designed to protect compliant owners from subsidizing unpaid strata fees, not to support the continued accrual of lienable legal costs once those fees have been paid.

[73] Accordingly, the petitioner's entitlement in this case is limited to reasonable legal costs incurred in enforcing the lien up to the point at which the arrears were paid, including any costs reasonably required to give effect to secure payment of the arrears and to discharge the lien

[Emphasis added.]

[48] I cite the paragraphs relied on from *Baettig*, in whole or in part:

[61] As noted earlier, s. 118 entitles strata corporations to add certain costs incurred in registering and enforcing a lien to the amount owing under the lien, including "reasonable legal costs". The costs added to the amount owing under the lien pursuant to s. 118 gain priority against other charges previously registered against the strata lot.

[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"

[66] ...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.

[73] However, as noted above, the *SPA* does not merely provide that a strata corporation may recover "reasonable legal costs" from a strata owner. ... Section 118 provides that certain amounts may be added to the amount owing under a Certificate of Lien. Section 116(5) provides that the lien ranks in priority against all previously registered charges, except those enumerated in ss. 116(5)(a)-(c). Thus, interpreting "reasonable legal costs" as party and party costs does not, standing alone, render s. 118(a) redundant because, without s. 118(a), a strata corporation's "reasonable legal costs" would not gain the priority of the lien.

[74] ...the structure of s. 118 as a whole supports a conclusion that the legislature intended "reasonable legal costs" to encompass the actual costs incurred by a strata corporation in registering and enforcing a lien against a delinquent unit owner, subject to review for reasonableness.

[49] I agree that *Baettig* does not answer the question of whether the Strata is entitled under s. 118 to recover legal costs accrued after the payment and discharge of a lien, but that are associated with its enforcement. I see this ground of appeal to warrant scrutiny from a division of this Court.

Significance to the Practice

[50] The Strata says this appeal has significance to the practice because the chambers judge's interpretation of s. 118 (i.e., that costs incurred after the Arrears were paid fall outside its scope) would have the effect of requiring the other compliant owners in the Strata to "shoulder the burden" of those costs, i.e., to take on portions of legal fees incurred to collect under s. 118.

[51] I agree that this question raises one of significance to the practice, and in particular to the issue of strata corporations' pursuit of legal costs in general.

Progress of and Significance to the Action

[52] For the same reasons stated above, the proposed appeal would not hinder the progress of the matter. It constitutes the entirety of the matter.

Conclusion

[53] Due to my conclusion on each of these factors, I see it as in the interests of justice to grant leave to appeal to the Strata.

Disposition

[54] Both applications for leave to appeal are granted.

"The Honourable Justice MacNaughton"