

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Barbieri Estate v. White*,
2025 BCSC 1711

Date: 20250904
Docket: S04978
Registry: Abbotsford

Between:

**Ricardo Joseph Barbieri,
on behalf of the Estate of Lily Diane Barbieri**

Plaintiff

And

Teresa Diane White

Defendant

Before: The Honourable Justice A. Ross

Reasons for Judgment

Counsel for Ricardo Joseph Barbieri:

J. Maryniuk

Counsel for the Defendant:

M. Misner

Counsel for Solus Trust Company:

R. Johal

Place and Date of Trial/Hearing:

Abbotsford, B.C.
September 24, 2024
New Westminster, B.C.
July 3, 2025

Place and Date of Judgment:

Abbotsford, B.C.
September 4, 2025

Table of Contents

INTRODUCTION 3
BACKGROUND FACTS..... 4
THE NOTICE OF APPLICATION 7
 Paragraph 1 (a), (b), and (c)..... 8
 Paragraph 2..... 12

Introduction

[1] The substance of this application relates to document disclosure and a claim of privilege. The defendant applies for an order for the production of five invoices issued by a law firm to the plaintiff (as well as other documents). In response, the plaintiff raises several arguments. One argument is that the five invoices contain privileged information. He says that he will assert a claim of privilege over portions of those documents, although he has not delineated that claim yet. He also raises other objections grounded in the history of this case and the wording of the notice of application.

[2] To put these reasons in perspective, it is important to have the background to this hard-fought estate litigation between two siblings. This application has a somewhat tortured history in two senses:

- a) The application originally came on for hearing before me in chambers on September 24, 2024. The parties were unable to complete their submissions. The matter was adjourned to be rescheduled. Due to the unavailability of the court, it did not complete until July 3, 2025.
- b) In addition, an application closely related to this one has already been before this Court and the Court of Appeal, resulting in written reasons from both courts.

[3] The issues for me to decide on this application are the following:

- a) Should the notice of application be read strictly, or should I interpret it in the spirit in which it was intended?
- b) Depending on the answer to the first question, is there a basis for me to grant the orders sought by the defendant?

[4] In answering these questions, I have attempted to craft an order that moves this litigation forward. Hence, I have attempted to approach this application from a

practical perspective, while at the same time, recognizing the hard-fought context of the litigation, and the limitations of the defendant's notice of application.

[5] This action has significant judicial procedural history including two decisions from the Court of Appeal. In my reasons below, I rely heavily on prior decisions of this Court and the Court of Appeal. I also refer to the parties by their first names. I mean no disrespect in doing so.

Background Facts

[6] There are several actions extant between the parties. In this action, Ricardo Barbieri ("Rick") (as executor) is suing his sister Teresa White ("Teresa"). This action was commenced by Rick on behalf of the estate of his mother Lily Barbieri. In that regard Rick was acting solely in his capacity as executor of the estate. He is not a plaintiff in his own right.

[7] Prior to the commencement of the hearing of this application, Rick was removed as the executor and trustee under the will of his mother. That order was made by Tammen J. on July 29, 2024 (2024 BCSC 1357). That decision was upheld by the Court of Appeal (2025 BCCA 253). I return to Rick's status below.

[8] An excellent description of the dispute between the parties was penned by Justice Blake in *Barbieri Estate v. White*, 2023 BCSC 1176:

[1] Lily Diane Barbieri (the "Deceased") died on November 7, 2018. She was predeceased by her husband, and was survived by her daughter, Teresa White ("Teresa"), and her sons, Ricardo Barbieri ("Rick") and Steven Barbieri ("Steven"). I will refer to the three siblings by their first names for clarity, intending no disrespect.

[2] The Deceased left a last will executed on December 14, 2017 (the "Will") in which she directed that Rick and Teresa were to act jointly as executors, and that the residue of her estate (the "Estate") was to be distributed equally among her three children.

[3] Probate of the Estate was granted to Rick and Teresa on May 1, 2019 in the Vancouver Registry Action P190661 (the "Probate Proceeding").

[4] On July 11, 2019, Rick filed a notice of application in the Probate Proceeding, seeking, among other things, an order that Teresa be removed as executor and trustee of the Estate, and he become the sole executor.

[5] This application arises in the unusual circumstances where Rick, in his capacity as sole executor of the Estate, previously agreed to account to the beneficiaries of the Estate on a bi-monthly basis. On September 10, 2019, the parties agreed to a consent order in the Probate Proceeding, pursuant to which Teresa was removed as the executor and trustee of the Estate (the “Consent Order”). One of the terms of the Consent Order was that Rick, in his capacity as the sole executor and trustee of the Estate (the “Executor”), would provide Teresa and Steven with an “up-to-date accounting of the Deceased’s Estate” on the 15th day of every second month, starting October 15, 2019 (the “Estate Accounting”). Rick did provide the Estate Accounting to Teresa in accordance with the Consent Order, but he now says that both he and his lawyers have inadvertently produced privileged documents over a period spanning from approximately October 2019 to May 2022.

[6] This application turns on what it means to account to the beneficiaries of an Estate, and to what degree that requires providing information of all expenses being incurred and paid by the Estate, including legal expenses. While I find that Rick’s agreement to the Consent Order is determinative of the application, I will nonetheless address his additional arguments in these reasons for judgment.

[7] Rick does not appear to have a separate lawyer representing him in his roles as the Executor and in his personal capacity as a beneficiary of the Estate. All references to Rick in these reasons for judgment are to Rick in his capacity as the Executor of the Estate.

[9] In short, Rick, as executor, provided bi-monthly accounts to his siblings for a period of 29 months. As part of that accounting, he sent over five invoices from his lawyers. As noted in paragraph 7 of Blake J’s decision, Rick used the same lawyer in his capacity as executor and as beneficiary. Hence, some of the information in the lawyer’s invoices may be privileged.

[10] In the hearing before Blake J., Rick brought an application seeking a declaration that documents he had produced to Teresa as part of his “Estate Accounting” (i.e. the five law firm invoices) are subject to blanket claim of solicitor-client privilege. He sought an order that the five invoices be destroyed by defence counsel. He also sought an order disqualifying Teresa’s lawyers from continuing to act for her on the basis that they had viewed the (allegedly) privileged invoices.

[11] Rick’s application was dismissed by Blake J. (again, 2023 BCSC 1176). Justice Blake held that the applicant waived privilege over the amount he was spending on legal bills when he agreed to provide an accounting pursuant to the

terms of a Consent Order. Justice Blake also made comments about privileged parts of the invoices. I return to those statements below.

[12] Rick appealed Blake J.'s order. His appeal was dismissed on June 19, 2024 (2024 BCCA 225) with one variation; the Court of Appeal granted an additional declaration that Rick was entitled to maintain a claim of privilege over the legal advice that was contained in the descriptions of work performed in the legal invoices. That declaration was consistent with a finding made by Blake J. but was not part of her order. I note that, to date, Rick has not indicated the portions of the five invoices over which he claims privilege.

[13] A reading of the Court of Appeal's decision evinces some frustration with the manner in which this litigation has been proceeding:

[85] During the hearing of the appeal, it became apparent that one of the issues related to the redaction of documents, which have already been disclosed, including the past invoices.

[86] In part, this was because Teresa's counsel acknowledged that solicitor-client privilege was retained by Rick in relation to entries on the invoices that disclosed specific legal advice and which may include entries that described the specific task undertaken in relation to the ongoing litigation between the parties.

[87] Rick's counsel for his part advised that the past invoices could be redacted, and Teresa and her counsel would know what had been redacted since they are in possession of unredacted copies.

[88] I would hope that the parties and counsel can attempt to have this litigation proceed on its merits rather than continuing in its present unsatisfactory state. If, having reviewed these reasons, they are unable to agree on a procedure and timeframe in which:

- Rick is to identify the precise scope of the required redactions;
- Teresa accepts and/or challenges those redactions; and
- The parties address related matters including, but not limited to, whether the unredacted documents are to be returned to Rick, be subject to an application in the Supreme Court for further rulings, including the scope of the redactions sought and the like;

then I would refer these matters to the Supreme Court to be decided in accordance with these reasons.

[14] On August 14, 2024, following the release of the Court of Appeal’s decision, counsel for Rick wrote to Teresa’s counsel and proposed the following steps and chronology (paraphrased):

- a) Teresa’s counsel would return any and all documents or copies of the five invoices and provide confirmation of the same.
- b) Upon receiving the same, Rick’s counsel would deliver the redacted versions of the five invoices.
- c) Teresa and her counsel would then have the ability to challenge the claims of privilege.

[15] Teresa’s lawyers did not accept this offer. Instead, they filed this application on August 28, 2024.

[16] It should be evident that, to a large extent, the dispute between the parties on this application boils down to the sequence in which the following steps are to take place:

- a) Teresa’s counsel returns the five (unredacted) invoices and confirms that all copies have been destroyed.
- b) Rick’s counsel discloses new, redacted, copies of those five invoices.

[17] Put simply, Teresa says that b) should happen before a). Rick says that a) should happen before b).

The Notice of Application

[18] The defendant’s notice of application seeks the following orders:

1. An order that counsel for Ricardo Barbieri, the estate’s former executor, will deliver to counsel for Teresa White:
 - a) redacted copies of the five invoices that Kuhn LLP legal counsel (“Kuhn LLP”) billed to the estate of Lily Diane Barbieri (the “Estate”);
 - b) copies of all other invoices Kuhn LLP and Waterstone LLP have billed the Estate from November 7, 2018 to present; and

- c) copies of all invoices the Estate has paid for accounting fees or any other pertinent professional services from November 7, 2018 to present.
2. An order that the invoices identified in paragraph 1 will be produced in accordance with this Court's orders pronounced July 11, 2023 in *Barbieri Estate v. White*, 2023 BCSC 1176 and with the Court of Appeal's orders and directions pronounced June 19, 2024 in *Barbieri v. White*, 2024 BCCA 225.
3. An order that the invoices identified at paragraph 1 will be produced no later than seven days from the pronouncement of this order.

[Emphasis added.]

[19] Teresa also seeks costs of this application in any event of the cause.

[20] Rick's overall position in response to this application is that the exchange of documents should occur in the sequence he offered on August 14, 2024. As to the legal basis, he says:

- a) With respect to paragraph 1 (a), (b) and (c), there is no legal basis for an order that counsel (as opposed to the client) has an obligation to produce the invoices (or any documents).
- b) Rick Barbieri is not a party to this action in his own right. This action is brought by the Estate of Lily Barbieri. Rick was the executor of that estate until he was removed by the order of Justice Tammen.
- c) Pursuant to the order of Justice Tammen, as amended by the Court of Appeal, Solus Trust Co. is the administrator pending litigation, and hence Solus is the proper party to disclose these documents.
- d) Privilege over the information contained in the law firm's invoices has never been waived (apart from the quantum of the invoices).
- e) The additional documents (sought in paragraph 1(b) and (c)) should not be ordered produced because:
 - a) the information contained in them is privileged.
 - b) there is no evidence that the information is relevant.
 - c) Rule 7-1(17) is unavailable to the applicant in the circumstances.

[21] I will address the application paragraphs in order.

Paragraph 1 (a), (b), and (c)

[22] Teresa's position is that this issue of the obligation to produce these documents has been litigated and decided upon. She argues that Justice Blake

rejected Rick's argument that a blanket privilege applies to the invoices. Teresa points to paras. 116–117 and 120 of Justice Blake's decision which discuss the nature of the inadvertent disclosure of the privileged information and the appropriate remedy:

[116] The allegedly inadvertent disclosure took place over a period of over two-and-a-half years, and allegedly occurred inadvertently by both Rick and by his lawyers. There were numerous opportunities for the Executor to discover that ongoing disclosure was occurring of what he now alleges to be Privileged Documents. These opportunities were either missed or ignored. One of the arguments made is that the affidavit which included the Privileged Documents (being the affidavit of Teresa filed in December 1, 2020 in support of Teresa's 2020 Application to remove Rick as Executor, and Teresa's affidavit filed November 3, 2021 in her application in the Probate Proceeding that Rick pass the Estate accounts) were not reviewed, as the contents of the exhibits were lengthy, or irrelevant, that there was no reason to review those exhibits, and that the Privileged Documents were "buried in the exhibits of Teresa's previously filed affidavits". In my opinion, that is in not a compelling nor acceptable justification for the significant delay in the Executor realizing these types of documents had been disclosed over the past years. The disclosure was careless, if not reckless, and occurred on the part of many individuals: *Earth Energy* at para. 30. I find Rick, and his lawyers, are now inappropriately blaming Mr. Misner for that which they should take responsibility for.

[117] Upon a full consideration of the factors set out in *Celanese*, and in all of the circumstances of this matter, I do not accept that the test to disqualify Mr. Misner and Legatum Estate Litigation is met. Rather, if I had accepted that Mr. Misner was in possession of allegedly privileged information (which I do not, for the reasons set out above), I would have found that the public represented by the reasonably informed person would be satisfied that no use of confidential information would occur if the following orders were made:

- a) a declaration that the Privileged Documents are privileged and confidential;
- b) an order preventing Teresa, and her lawyers, from retaining, disseminating, or making any use of the Privileged Documents in any way; and
- c) an order requiring the return of any and all documents or copies of documents comprising any or all of the Privileged Documents, the destruction of all electronic copies of Privileged Documents and all counsel notes and work product relating to the same, and for Teresa's lawyers to provide confirmation of the same.

...

[120] As noted above, this application proceeded on the basis that the Executor was advancing a blanket privilege over all of the Privileged Documents. No specific argument was advanced that any of the Legal Invoices contained legal advice that would properly be subject to

litigation privilege. Accordingly, based upon that assumption, I find the Executor has clearly waived solicitor-client privilege over all of the Privileged Documents.

[Emphasis added.]

[23] In response, Rick notes that both Justice Blake and the Court of Appeal found that solicitor-client privilege had not been waived over the substance of the legal work described in the invoices. Justice Blake wrote:

[100] Notwithstanding this determination, while I am satisfied that Rick has both expressly and implicitly waived the quantum of the legal fees he has been expending from the Estate, to be clear, I am not satisfied that he has waived his right to solicitor-client privilege over the legal advice he has been receiving in pursuing litigation in the name of the Estate against Teresa. I am concerned that there may be legal advice contained within the five Legal Invoices that were disclosed, that may not have been properly redacted. While I have found that Rick waived solicitor-client privilege over the quantum of legal fees he expended from the Estate, I do not accept that he waived solicitor-client privilege over the legal advice he was receiving as Executor. I do not find that there has been a waiver of that legal advice, if any is contained within the five Legal Invoices themselves. This issue is dealt with further below.

[Emphasis added.]

[24] The Court of Appeal agreed with Justice Blake but amended her remedy to the following extent:

[79] In my view, while the judge did misspeak in referring to “litigation privilege”, this was not material to her analysis or conclusions. Reading the reasons contextually and as a whole, she was attempting to convey that litigation advice received by Rick in his capacity as executor, in the context of the broader litigation with Teresa, was subject to solicitor-client privilege and had not been waived.

[80] The issue then becomes whether the judge ought to have provided a remedy in the form of a declaration and related orders, in respect to past Estate Accountings as she did to those “moving forward”.

[81] Respectfully, in my view, she erred in not doing so. The chambers order should be varied to be consistent with the judge’s findings that Rick has not waived solicitor-client privilege over legal advice he has received in relation to the five invoices in question.

[Emphasis added.]

[25] It follows that I do not accept Teresa’s position that this issue has been decided in her favour. It is clear that the Courts have protected Rick’s right to claim privilege.

[26] As a result, I turn to Rick’s submissions.

[27] In deciding the specific issue on para. 1(a)–(c) of the notice of application, I accept Rick’s first argument relating to the wording of the notice of application. Paragraph 1 of the notice of application is improperly drafted. It seeks production of documents from “counsel for” the plaintiff. There is no legal authority to compel litigation counsel produce those invoices. On that point, if I were to grant an order in the form consistent with the wording of the notice of application, and if the documents were not produced, then counsel (as opposed to the client) would be at risk of a contempt order. That would be an improper result.

[28] I accept that the naming of counsel (as opposed to the party) is a result of defence counsel’s imprecise drafting of the notice of application. In another case, on different facts, a chambers judge might excuse that imprecision, allow an amendment and grant an order for production against the party.

[29] The trouble in this case is the history.

[30] As noted, this is litigation wherein hard positions have been taken by both sides. The relationship between the parties is clearly toxic. As matters stand, Teresa and her counsel are in possession of documents over which some form of privilege is (or may be) claimed. Teresa and her counsel argue that the opposing side, and their counsel, were negligent, if not reckless, in the disclosure of those documents. Having taken that position, in my opinion, Teresa and her counsel are precluded from asking for a concession or an alternate reading of the notice of application. Put another way, Rick and his counsel entitled to hold Teresa’s counsel to the strict wording of the notice of application.

[31] As a result, I dismiss the defendant's application for the relief sought under para. 1(a)–(c) of the notice of application. That paragraph seeks relief from an improper person.

[32] This ruling, if reached in isolation, would lead to an unfortunate result that does not (as the Court of Appeal recommended) move litigation closer to resolution. As such, I now move on to para. 2 of the notice of application.

Paragraph 2

[33] The defendant's notice of application (para. 2) also seeks an order that the invoices identified in para. 1 be produced in accordance with the orders of Justice Blake and the Court of Appeal.

[34] I note that para. 2 does not seek relief relating to the plaintiff's counsel. It simply seeks an order that the invoices described in para. 1(a)–(c) be produced.

[35] In response, the plaintiff's position is:

- a) The prior orders did not require production of the invoices.
- b) Rick is not a party to this action in his own right. He was only involved in this litigation in his capacity as executor and trustee. He was removed from those roles before this notice of application was filed.

[36] I pause to note that the defendant's application seeks to considerably expand the scope of the documents that were considered by Blake J. and the Court of Appeal. The documents listed in

- a) para. 1 (a) comprise the five invoices; but
- b) para. 1 (b)–(c) seek additional legal and accounting invoices.

[37] In my opinion, the documents sought in para. 1 (b)–(c) are requests that should be made to the (new) administrator pending litigation. I dismiss those items of

relief specifically as against Rick in his capacity as executor. I grant leave to bring a similar application seeking the same documents from Solus Trust.

[38] However, I take a different view of the five invoices that were the subject of Blake J.'s decision.

[39] I noted above para. 88 of the Court of Appeal's decision (2024 BCCA 225). I consider that paragraph to be a recommendation that is close to a direction:

- a) The parties should attempt to agree on a procedure and the timeframe in which:
 - i. Rick will identify the precise scope of required redactions to the five invoices;
 - ii. Teresa will accept or challenge those redactions;
 - iii. The parties agree on whether the five unredacted invoices will be returned to Rick.
- b) If the parties cannot agree on the above, then the issue should be referred to the Supreme Court to be decided in accordance with the Court of Appeal's decision.

[40] In my opinion, one of the two fact scenarios anticipated by the Court of Appeal has transpired. The parties could not reach agreement. Hence, this application represents a reference to the Supreme Court to decide the outstanding matters in accordance with the Court of Appeal's decision.

[41] In my opinion, the only way to achieve the intention of the Court of Appeal is for Rick to provide further copies of the five legal invoices, with redactions for the (claimed) privileged information. If Rick does not claim any privilege, then no further steps are required. However, until Rick provides his redacted copies of the five invoices, the defendant does not know whether privilege is, in fact, claimed over any part of those documents. Hence, in my opinion, Rick must act first.

[42] Although Rick is no longer the executor, he was the executor (and he received the five legal invoices) at the relevant time. Hence, to the extent he had an obligation to produce the redacted documents, he cannot avoid that obligation by stalling until he is removed from that role. Further, it is Rick who claims privilege, not Solus. They are not Solus' documents. It is not Solus' privilege. Hence, Rick must produce the redacted invoices.

[43] At some point, from a practical standpoint, the procedural standoff must end. For all the reasons discussed above, I order that, pursuant to para. 2 of the notice of application, the five invoices identified para. 1(a) be produced, with Rick identifying the precise scope of the required redactions.

[44] That is the extent of my order. However, following receipt of those invoices, I would expect (*i.e.*, I recommend) the parties should follow the Court of Appeal's directions and:

- a) Teresa will be at liberty to either accept or challenge those reactions;
- b) Any dispute over those issues can be the subject of a further application to this Court; and
- c) The parties can decide whether the defendant must return the five unredacted invoices. Alternatively, the court can decide.

[45] I am not aware of any urgency in the disclosure of these redacted documents. However, this matter has been delayed long enough. The redacted invoices should be disclosed within 30 days of the release of these reasons. There has been mixed success. I award costs in the cause.

"A. Ross J."