

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *12007231 Canada Inc. v. Foster,*
2026 BCSC 92

Date: 20260122
Docket: S220125
Registry: Vancouver

Between:

**12007231 Canada Inc. dba JJK Supply, AMA Internation Group,
Inc., Jason Wouters and Kirk Aldridge**

Plaintiffs

And

**Brian Foster, Kelly Barber, and
Bags Sari Consulting (Canada) Ltd.**

Defendants

Before: Associate Judge Robinson

Reasons for Judgment

Counsel for the Plaintiffs:

P. Kurek

Counsel for Defendant, Kelly Barber:

E. Hatch

Place and Date of Hearing:

Vancouver, B.C.
January 15, 2026

Place and Date of Judgment:

Vancouver, B.C.
January 22, 2026

Introduction

[1] This is an application by the plaintiffs for the production of documents from the defendant, Kelly Barber and from National Bank of Canada Financial Inc. (the “Bank”), which is not a party to the litigation.

[2] Ms. Barber has provided many of the documents sought on the application. However, to the extent that the plaintiffs seek further and better production, she is opposed. Primarily, she argues that the documents do not meet the threshold of relevancy.

[3] For its part, the Bank has not taken a position on this application and has disclosed a willingness to provide the documents sought upon being ordered to do so.

Background

[4] This application arises in the context of a commercial dispute. The plaintiffs contend that they were the victims of a “fraudulent scheme” which resulted in the transfer of approximately \$850,000 to the defendants, Brain Foster and/or Bags Sari Consulting (Canada) Ltd. (“Bags Sari”). The transfers occurred over a three-month period from March to May of 2021. The plaintiffs say that they advanced those monies with the expectation that they were investing in a venture which involved the sale and supply of vaccines and medical equipment to certain West African nations in the midst of the COVID pandemic.

[5] The plaintiffs claim that after transferring the monies, they discovered that the purported business venture was a “sham”, and that the monies were used by the defendants, including Ms. Barber, for their own personal uses and gains.

[6] Ms. Barber’s alleged involvement in the alleged “fraudulent scheme” is largely indirect. She is the common law spouse of Mr. Foster. She resides with him at a home, registered solely in her name, located at 3617 West 15th Avenue, Vancouver (the “3617 Property”). Among other things, it is alleged that she knowingly received

and used monies arising from the alleged “fraudulent scheme” to pay her personal expenses.

[7] Ms. Barber denies liability. She argues that notwithstanding that she and Mr. Foster are spouses (having lived with one another in a marriage-like relationship for approximately 30 years), they have maintained separate finances throughout. She further denies that Mr. Foster has any legal or beneficial ownership in real property registered in her name and argues that she has been solely responsible for all costs associated with the acquisition and maintenance of the 3617 Property and another property which she also owns, located nearby at 3625 West 15th Avenue, Vancouver, BC (the “3625 Property”). She says that Mr. Foster’s monetary contributions have been limited to a monthly “rent” payment of \$4,000 which he has paid consistently since at least 2007.

Present Application

[8] Insofar as better and further production of documents is sought from Ms. Barber, they fall within five categories, as follows:

- a) Accountment statements for an investment account held in Ms. Barber’s name with the Bank for the years 2019 to 2022, inclusive;
- b) Statements in respect of credit cards in Ms. Barber’s name for the years 2019 to 2022, inclusive;
- c) Full monthly account statements (including cheque images and e-transfers) from all accounts in the name of Ms. Barber, including accounts in her name jointly with any other person, from 2019 to 2022, inclusive;
- d) Ms. Barber’s complete income tax returns, including all “T-slips”, Notices of Assessment and schedules for the years 2017- 2024, inclusive; and
- e) Copies of all documents, including leases and payment records, related to the rental of the 3617 Property and the 3625 Property from 2007 to 2022, inclusive.

- [9] With respect to the Bank, the plaintiff seeks:
- a) Mobile deposit slip images for all bank accounts held in Ms. Barber's name for the years 2019 to 2022, inclusive;
 - b) Copies of all correspondence, mortgage applications, mortgage renewals and promotional materials related to mortgages registered on title to the 3617 Property or the 3625 Property from the earliest date in which such documents can be obtained; and
 - c) All documents related to pre-authorized debit agreements or payment instructions in respect of any mortgage registered on title to either the 3617 Property or the 3625 Property.

Law

[10] As a starting point, Master Bouck (as she then was) helpfully summarized the principles governing document production under Rule 7-1 in *Edwards v. Ganzer*, 2012 BCSC 138:

[41] I understand the principles outlined in these various decisions, together with the applicable Rules, to be as follows:

- a. The initial production obligation under Rule 7-1 (1) (a) (i) is limited to what is required to prove or disprove a material fact: *Biehl v. Strang* at para. 14;
- b. Rule 7-1(10) allows the opposing party to issue a written demand requiring the listing party to amend the original list and produce documents that should have been disclosed under Rule 7-1(1)(a)(i);
- c. In addition, Rule 7-1(11) allows the opposing party to issue a written demand requiring the listing party to amend the list and produce documents which ought to be disclosed under a test "close to" that set out in *Compagnie Financiere et Commerciale du Pacifique v. Peruvian Guano Company* (1882), 11 Q.B.D. 55 at 63, (the "Guano test"): *Global Pacific* at para. 9;
- d. The distinction between the two types of disclosure provided for under Rule 7-1 is stated in *Global Pacific* as follows:

The question is whether a document can properly be said to contain information which may enable the party requiring the document either to advance his own case or damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, or if it may have either of those two consequences. Therefore, it is acknowledged

that the initial disclosure under Rule 7-1(1) relates to a materiality requirement, but that a party can apply to the court, as the defendant did here, for broader disclosure pursuant to Rule 7-1(14). para. 9

e. Both the demand by the requesting party and the response of the opposing party should be set out in writing addressing the terms and criteria used in Rule 7-1. Whether the demand and response provide sufficient particularity is a matter of the court's discretion;

f. If an application is brought under Rule 7-1(13) for the listing or production of documents, the court may either order compliance with the demand, excuse full compliance, or order partial compliance: Rule 7-1(14);

g. The objectives of the SCCR, including proportionality, may be taken into account by the court when exercising its discretion under Rule 7-1(14). The proportionality rule can be applied to either expand or restrict the required production of documents: *Global Pacific* citing *Whitcombe v. Avec Insurance Managers Inc.*, 2011 BCSC 204.

[11] In respect of the documents sought from Ms. Barber, the plaintiffs bring this application pursuant to Rule 7-1(11). That subrule contemplates an order for the production of documents which, although perhaps not probative of a material fact or perhaps not documents to which the party intends to refer at trial, may be ordered produced if they are within the listing party's "possession, power or control" and they "relate to any or all matters in question in the action". In effect, the test for an application under subrule 7-1(11) is premised on a test akin to the Guano Test: *Imperial Parking Canada Corporation v. Anderson*, 2014 BCSC 989 at para. 23 ("*Imperial Parking*").

[12] The Court in *Imperial Parking* made clear that a demand for documents under Rule 7-1(11) must be accompanied by:

- written demand identifying the additional documents or classes of documents with reasonable specificity; and
- an indication of the reason why such additional documents or classes of documents should be disclosed.

[13] On this application, there is no real question about the plaintiffs' adherence to the process contemplated by subrule 7-1 (11) nor the sufficiency of the demand described by the Court in *Imperial Parking*. The Plaintiff sent multiple letters wherein

each of the requested documents and classes of documents were described with specificity such that, upon receipt, Ms. Barber would have been able to discern what was being asked of her. Moreover, the plaintiffs expressly set out the basis on which they said that documents were subject to production by explaining their relevance to the issues in dispute.

[14] Insofar as the documents from the Bank are concerned, the test is different. While I was not taken to any authorities in this regard, it is my view that production of records from a non-party must be subject to a high standard of specificity. Since a non-party is not subject to any presumed disclosure obligations, it is necessary that the independent interests of non-parties be safeguarded so that they are not required to embark on what may be an onerous task of finding, collecting and disclosing records where the probative value of such records is limited to potentially leading to a further train of inquiry. An order under subrule 7-1(18) should be narrow and confined to those documents which are themselves relevant and potentially capable of proving or disproving a material fact.

Discussion

(a) Demand under R. 7-1(11)

[15] As stated in the foregoing, there can be no real debate about the plaintiffs' adherence to and compliance with the process contemplated by subrule 7-1(11). Moreover, it was not contested that all of the documents sought from Ms. Barber were within her "possession, power or control". The issue for determination is whether the documents sought "relate to any or all matters in question in the action".

[16] I am satisfied that the application meets this relatively low threshold. The heart of the plaintiffs' claim against Ms. Barber is that she received some or all of the monies transferred by the plaintiffs to Mr. Foster and/or to Bags Sari and then used those monies for her own benefit and personal expenses. The extent to which Ms. Barber and Mr. Foster comingled their finances is directly at issue in the litigation and has been placed in issue by Ms. Barber. In her response to civil claim, she has expressly pleaded, *inter alia*, that:

“... (she) has never had any involvement in any capacity or had control over ... any business of Foster ...”;

“... (she) denies being a participant in or having knowledge of ... the so-called Fraudulent Scheme ...”;

“... Foster has no and has never had any ownership interest in the (3617 Property), including any beneficial interest...”;

“...(she) has not received directly or indirectly, the Advances or any portion thereof, and ... none of the Advances or any portion thereof have been applied towards the mortgage registered against the (3617 Property) or any other expenses related to improvements of the (3617 Property)...”; and

“... All payments made towards the mortgage ... have been made solely by Barber...”.

[17] In the circumstances, the categories of documents sought from Ms. Barber are all relevant to the foregoing pleadings. The plaintiffs are entitled to test Ms. Barber’s assertions and to determine whether the monies allegedly transferred to Mr. Foster were subsequently entrusted to Ms. Barber. All of the records sought will allow for that inquiry. Depending on the information obtained therein, it is reasonable to expect that the documents will either demonstrate that Ms. Barber has unexplained income or sources of income, or they may be entirely supportive of her position. In either case, the documents are undeniably related to the matters which are in issue in the litigation.

[18] In reaching this conclusion, I am also satisfied that the scope of disclosure is appropriate. Notwithstanding that the alleged “fraudulent scheme” occurred within a discreet period in early 2021, there are compelling reasons why Ms. Barber ought to provide documents which predate that period. Banking and credit card statements from 2019 will serve to establish a benchmark against which subsequent changes to her financial position (if any) may be assessed and measured.

[19] Likewise, records related to rental income realized by Ms. Barber are relevant to assess her income stream which may then be contrasted with her spending habits. In other words, this information may lead to a relevant train of inquiry.

[20] In the circumstances, I am satisfied that the plaintiffs have met the onus that belongs to them on this application and to the extent that Ms. Barber has not already

done so, I order her to provide the documents as described in Schedule “A” to the plaintiffs’ Notice of Application. Those documents are to be provided within 21 days of the release of these reasons.

(b) Demand under R. 7-1(18)

[21] It bears restatement that, in my view, an application under subrule 7-1(18) ought to be restricted to documents which are described with specificity and which are potentially capable of proving or disproving a material fact.

[22] With that in mind, I am satisfied that the documents sought from the Bank meet those criteria. They are described with precision such that the Bank, as a non-party, will have no difficulty in determining the scope of its disclosure obligations and will not find itself attempting to decipher an order arising in litigation in which it has no interest. Moreover, it is clear that the documents are potentially capable of proving or disproving a material fact.

[23] In this regard, Ms. Barber has previously disclosed a number of her personal banking records. In doing so, she has at least tacitly recognized that such records are subject to production. The records that have been provided, contain references to various deposits described as “mobile deposits”. The plaintiffs are entitled to details of those deposits, including who made them and for what purpose. This information is relevant to assessing the extent to which Ms. Barber and Mr. Foster maintained (or failed to maintain) separate finances and also to properly ascertain her means of income.

[24] Similarly, documents related to the mortgages registered on title to properties owned by Ms. Barber is likely to show her stated income when mortgages were obtained as well as the identity of any guarantors. They may also show any change in Ms. Barber’s wealth over an extended period of time which is unquestionably relevant to the issues with which this litigation is concerned.

[25] In the circumstances, I am satisfied that the plaintiffs are entitled to the relief sought at para. 2 of Part 1 of their notice of application and I order that the Bank

provide the documents enumerated therein within 21 days of being served with a copy of the order arising from these reasons.

[26] As a corollary to this order, I further order that the plaintiffs are responsible for paying the Bank's reasonable charges incurred in complying with this order and I further order that within seven days of receiving the aforementioned documents from the Bank, counsel for the plaintiffs must arrange to send complete, unredacted copies to counsel for Ms. Barber.

Conclusion

[27] In summary:

- a) Within 21 days of the release of these reasons, to the extent that she has not already done so, Ms. Barber is required to disclose and provide to counsel for the plaintiffs copies of the documents as set out in Schedule "A" to the plaintiffs' notice of application;
- b) Within 21 days of being served with a copy of the order arising from these reasons, the Bank is required to provide counsel for the plaintiffs with copies of all documents as enumerated in para. 2 of Part 1 of the plaintiff's notice of application;
- c) The plaintiffs are responsible for paying the Bank's reasonable charges incurred in complying with this order; and
- d) The plaintiffs must provide counsel for Ms. Barber with complete, unredacted copies of all documents obtained by from the Bank within seven days of receipt.

[28] The plaintiffs have been entirely successful on this application and shall receive costs, in the cause.

"Associate Judge Robinson"