

CANADA / JUDGMENT

Barbieri v. White

2025 BCCA 323

COURT

British Columbia Court of Appeal

DECIDED

15 September 2025

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2025 BCCA 323 Barbieri v. White COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Barbieri v. White, 2025 BCCA 323 Date: 20250915 Docket: CA50088 Between: Ricardo Joseph Barbieri, on behalf of the Estate of Lily Diane Barbieri Appellant (Plaintiff) And Teresa Diane White Respondent (Defendant) And Steven Barbieri Respondent Before: The Honourable Chief Justice Marchand The Honourable Justice Griffin The Honourable Justice Mayer Supplementary Reasons to Barbieri v. White, 2025 BCCA 253, Vancouver Docket CA50088. Counsel for the Appellant: J.B. Maryniuk A. Cochrane Counsel for the Respondent, Teresa Diane White: J.J.L. Brun, K.C. K. Jamison, Articled Student Place and Date of Hearing: Vancouver, British Columbia June 11, 2025 Place and Date of Judgment: Vancouver, British Columbia July 18, 2025 Written Submissions Received: August 25, September 2 and 5, 2025 Place and Date of Supplementary Judgment: Vancouver, British Columbia September 15, 2025 Written Reasons of the Court Summary: The parties dispute the appropriate award of costs, following the appeal indexed as 2025 BCCA 253. The appeal was allowed on one ground, but not on other grounds. Held: each party shall bear their own costs of the appeal. The ground of appeal that was allowed arose because both parties did not address, in the trial court, a problem with the form of court order. Both parties contributed to the costs of the appeal and the necessity for ongoing litigation on the issue in the trial court. Supplementary Reasons of the Court:

- [1] By reasons for judgment indexed as 2025 BCCA 253, this Court allowed Mr. Barbieri's appeal on one ground.
- [2] The parties seek a ruling on costs of the appeal.
- [3] The issue is not entirely straightforward. Mr. Barbieri "won" the appeal in that the appeal was allowed and the matter was remitted to the trial court on one ground concerning the scope of the appointment of Solus Trust Company Limited ("Solus") as administrator of the estate. However, the respondent, Ms. White, "won" the issue of whether Mr. Barbieri should have been removed as executor.
- [4] Mr. Barbieri submits that the parties ought to bear their own costs, as success was divided. Ms. White seeks costs in her favour, submitting she had substantial success on the appeal.

- [5] The issue on which Mr. Barbieri succeeded on appeal had to do with the form of order appointing Solus as administrator which stated it was made "Pending Legal Proceedings pursuant to s. 103" of the Wills Estates and Succession Act, S.B.C. 2009, c. 13. This form of order was submitted to the court below by counsel for Ms. White. There are apparent problems with this form of order but these problems were not expressly raised by Mr. Barbieri in the court below. In our view, it is due to the oversight of both parties in addressing the form of order in the trial court, that the appeal was allowed. As a result, both parties have contributed to the costs of this appeal and to the need for ongoing litigation on this issue.
- [6] It is our view, therefore, that each party should bear their own costs of the appeal. "The Honourable Chief Justice Marchand" "The Honourable Justice Griffin" "The Honourable Justice Mayer"

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Prepared on 27 October 2026 · Esheria