

ONTARIO
SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750
ONTARIO INC**

RESPONDING FACTUM OF MANDY COX
Motion for Mareva Injunction Returnable November 10, 2023

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PART I - OVERVIEW

1. The Monitor seeks a Mareva injunction over the worldwide assets of the Respondents, Mr. Glenn Page, Ms. Mandy Cox, and 2658658 Ontario Inc., having delivered its motion record one day ago. The Monitor has not met its burden of presenting a strong *prima facie* case for a Mareva injunction against the Respondents, has not made full and frank disclosure as required when short notice is given on a Mareva injunction, and has not shown the requisite evidence of risk of dissipation of assets. There is no basis for this Mareva injunction motion to proceed on short notice.
2. In addition, as against Ms. Cox specifically, the evidence presented by the Monitor is scant and speculative. The motion against Ms. Cox ought to be dismissed.
3. The Monitor has failed to establish a strong *prima facie* case of fraud against Ms. Cox. The only allegations provided by the Monitor to justify a Mareva injunction against Ms. Cox personally relates to her interest in the matrimonial home that she shares with her husband Glenn Page, and \$90,558 in payments from OTE LP directed to Ms. Cox and Picassofish. With respect to the matrimonial home, there is no assertion in the Monitor's material that any of the allegations of wrongdoing are attributable to Ms. Cox, and Ms. Cox and Mr. Page are prepared to have the net proceeds from the sale of the home be held by Lenczner Slaght in trust, pending resolution of any issues relating to the Mareva injunction. With respect to the payments to Ms. Cox and Picassofish, Ms. Cox had legitimate contractual relationships with OTE LP – both as a former employee and as a service provider – which provide a genuine basis for the receipt of funds. The Monitor has failed to make full and frank disclosure of these facts.
4. The Monitor has failed to demonstrate a risk of dissipation of funds. Ms. Cox has engaged with the CCAA proceedings and has cooperated with the Monitor's Information Requests. Any risk of dissipation can be managed by placing the proceeds of sale of the matrimonial home in trust pending resolution of the merits. Finally, the relief sought is also grossly disproportionate as it relates to the

allegations against Ms. Cox individually – at its highest, the receipt of \$90,000 – and the balance of convenience favours dismissing the Mareva motion against her.

PART II - FACTS

5. Ms. Cox adopts the facts as summarized in the factum filed by Mr. Page and 2658658 Ontario Inc., and notes the following additional facts.

6. Ms. Cox has cooperated with the Monitor from the outset of the CCAA proceedings. She has provided substantial information in response to the Monitor’s Information Requests¹ and has produced thousands of documents on behalf of the various entities she controls.² She has participated actively in these CCAA proceedings, including attending hearings and filing claims on behalf of the various entities she controls.³

7. In March, 2023, a Mareva Injunction was ordered against the Mareva Respondents in respect of the Yacht. In July, 2023, the Mareva Respondents *consented* to a sales process of the Yacht, whereby the Yacht will be sold and the proceeds will be placed in trust until a final determination on the merits. The Mareva Respondents also consented to placing the AirSprint Proceeds in trust pending final resolution.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

8. There are two issues on this motion:

- a. Should the Respondents’ adjournment request be granted?
- b. Should this Court grant a Mareva injunction over Ms. Cox’s worldwide assets, on short notice and on the basis of the record put forward by the Monitor?

¹ Affidavit of Elizabeth Lalonde sworn on November 10, 2023: Exhibit I [“Lalonde Affidavit”], Responding Record of Mandy Cox [“Cox Record”], Tab 1.

² Lalonde Affidavit: Exhibits J and K, Cox Record, Tab 1.

³ See, for example: Lalonde Affidavit: Exhibit H, Cox Record, Tab 1.

9. The Respondent Ms. Cox submits that an adjournment is fair and reasonable in the circumstances. In addition, as against Ms. Cox specifically, the Monitor's request for a Mareva injunction should be dismissed.

10. A Mareva injunction is an extraordinary remedy that should only be imposed in the clearest of cases.⁴ To obtain a Mareva injunction over Ms. Cox's worldwide assets, the Monitor must:

- a. Make full and frank disclosure of all material matters within its knowledge;
- b. Establish a strong *prima facie* case on the merits, as a condition precedent to any order;
- c. Give particulars of the claim against Ms. Cox stating the grounds of the claim and the amount thereof, and the points fairly made against it by Ms. Cox;
- d. Give grounds for believing that Ms. Cox has assets in the jurisdiction;
- e. Give grounds for believing that there is a real risk of assets being removed out of the jurisdiction or disposed of within the jurisdiction or otherwise dealt with so that OTE LP and/or the Monitor will be unable to satisfy a judgment awarded against Ms. Cox;
- f. Establish irreparable harm if the relief is not granted;
- g. Show that the balance of convenience favours the granting of the injunction pending trial on the issues between the parties; and
- h. Give an undertaking as to damages.⁵

11. This onerous burden must be met by the moving party in respect of each and every person against whom a Mareva injunction is sought.

A. No strong *prima facie* case

12. The allegations relating to Ms. Cox's alleged fraud are extremely scant. The only bases that the Monitor has identified to justify a Mareva injunction against Ms. Cox individually relate to (1) her

⁴ [Shaw Communications Inc v Young et al, 2021 ONSC 7918](#) at para 9.

⁵ [Ibid](#) at para 10; [Christian-Philip v Rajalingam, 2020 ONSC 1925](#) at paras 8-9.

interest in the matrimonial home that she shares with her husband Glenn Page, and (2) \$90,558 in payments from OTE LP directed to Ms. Cox and Picassofish.

13. With respect to Ms. Cox's interest in the matrimonial home, it must be noted that there is no assertion (let alone a strong *prima facie* case) in the Monitor's materials that any of the allegations of wrongdoing raised by the Monitor in respect of this property are attributable to Ms. Cox. The sole connection identified by the Monitor between Ms. Cox and the home at 118 Main Street North in Waterdown is that Ms. Cox holds an interest in the property, the matrimonial home that she shares with her husband.

14. With respect to the payments received by Ms. Cox and Picassofish from OTE LP, the Monitor has failed to disclose that Ms. Cox was an employee of OTE LP in 2018, and that she continued to provide services to OTE LP on an individual contract basis and then through her company 2745384 Ontario Inc. after she left OTE LP's employ. 2745384 Ontario Inc, a company controlled by Ms. Cox and operating as Picassofish, provided marketing services to OTE LP. There were legitimate business purposes underpinning the receipt of funds by Ms. Cox and Picassofish from OTE LP. Assessed in light of the additional information that the Monitor has failed to disclose, the payments to Ms. Cox and Picassofish that are identified by the Monitor fall well shy of the onerous burden that applies in this context.

Transfers to Mandy Cox - \$13,156.81

15. The Monitor has identified \$13,156.81 in allegedly "suspicious"⁶ payments directed to Ms. Cox. Three of the four payments to Ms. Cox identified by the Monitor date from May 2018, each for the same

⁶ Motion Record of the Monitor dated November 8, 2023 ("MMR"), Tab 5, para. 68

amount, \$1,052.27.⁷ Ms. Cox was an employee of OTE LP in 2018 and received employment income from OTE LP during that year, as confirmed by the T4 issued to Ms. Cox by OTE LP.⁸

16. The Monitor's motion materials fail to disclose the past employment relationship between OTE LP and Ms. Cox. As her former employer, OTE LP is well-aware of its former employment relationship with Ms. Cox. The existence of this past employment relationship between OTE LP and Ms. Cox was expressly brought to the Monitor's attention in the claim filed by 2745384 Ontario Inc. on June 27, 2023 in the context of the claims process within the present CCAA proceedings.⁹

Transfers to Picassofish - \$77,401.00

17. The Monitor has identified \$77,401 in allegedly "suspicious" payments directed to Picassofish, dating from April 2019 through September 2021. The Monitor identifies Picassofish as a "related entity" of Ms. Cox, on the basis of the fact that Picassofish is a registered business name of 2745384 Ontario Inc., a company in respect of which Ms. Cox is a director and officer.¹⁰

18. Picassofish is indeed a registered business name of 2745384 Ontario Inc., and Ms. Cox is indeed a director and officer of 2745384 Ontario Inc. The Monitor failed to identify, however, that the corporate profile report on which it relied indicates that 2745384 Ontario Inc. was incorporated on February 28, 2020 and registered the business name Picassofish on March 16, 2020, whereas the identified "suspicious" payments to Picassofish began in April 2019.

19. Picassofish was a business incorporated pursuant to the *Canada Business Corporation Act* in 2000, by an individual unrelated to Ms. Cox.¹¹ Picassofish provided services relating to branding, website

⁷ MMR, Tab 5, p. 117

⁸ Cox Record, Lalonde Affidavit: Exhibit A, Tab 1.

⁹ Cox Record, Lalonde Affidavit: Exhibit H, Tab 1.

¹⁰ MMR, Tab 1, p. 19, para 29(e); Monitor's Sixth Report, Appendix R

¹¹ Cox Record, Lalonde Affidavit: Exhibit B, Tab 1.

design, print design, print brokering, promotional products and online promotion services to businesses.¹² On March 9, 2020, 2745384 Ontario Inc. purchased the business of Picassofish, including, specifically, an assignment of the company's registered name as well as its client list. On March 16, 2745384 Ontario Inc. registered the business names Picassofish and Picassofish Creative Design, and updated its active business names.¹³ Following the purchase of Picassofish, 2745384 Ontario Inc proceeded to carry on certain business initiatives as Picassofish, including providing marketing services to OTE LP.

20. The Monitor has identified 14 payments made to Picassofish prior to its purchase by 27453864 Ontario Inc, amounting to \$23,194.19. Prior to its purchase by 27453864 Ontario Inc in March 2020, Picassofish was a going concern owned and operated by an individual who is unrelated to Ms. Cox. The payments by OTE LP to Picassofish that occurred prior to March 2020 have no connection to Ms. Cox.

21. With respect to the payments made by OTE LP to Picassofish after March 2020, the Monitor has failed to disclose material information known to it about the business relationship that existed between 27453864 Ontario Inc. and OTE LP, and the regular provision of services by 27453864 Ontario Inc. to OTE LP. 27453864 Ontario Inc. provided various management services to OTE LP and OTE Logistics LP pursuant to a service agreement, starting from the time of incorporation of 2745384 Ontario Inc. in February 2020 and continuing until approximately July 2022.¹⁴ As the recipient of these services, OTE LP is well-aware of this former contractual service arrangement. The existence of this contractual arrangement between 27453864 Ontario Inc and OTE LP has been known by the Monitor since at least March 8, 2023.¹⁵ This service agreement – and the provision of services by 2745384 Ontario Inc. to the OTE Group under the terms of this agreement – also forms the basis of the claim submitted by 2745384 Ontario in the context of this CCAA proceeding.¹⁶

¹² Cox Record, Lalonde Affidavit: Exhibit **D**, Tab 1.

¹³ Cox Record, Lalonde Affidavit: Exhibits **C**, **E** and **F**, Tab 1.

¹⁴ Cox Record, Lalonde Affidavit: Exhibit **H**, Tab 1; see especially Appendix A, Service Agreement.

¹⁵ Cox Record, Lalonde Affidavit, Exhibit **I**.

¹⁶ Cox Record, Lalonde Affidavit, Exhibit **H**.

22. The Monitor has identified 12 payments to Picassofish after its purchase by 2745384 Ontario Inc. in March 2020, amounting to \$54,206.74. In the limited time available to respond to the Mareva Motion, Ms. Cox has assembled the Picassofish invoices corresponding to \$53,020.50 of the \$54,206.74 in payments identified by the Monitor – that is, invoices corresponding to all of the payments identified by the Monitor, except for the two payments that occurred immediately following the date of the purchase of Picassofish by 2745384 Ontario Inc.¹⁷ These invoices indicate that the payments were for the provision by Picassofish of marketing services.

23. In light of these facts – which are known or ought to be known by the Monitor, and ought to have been disclosed in the Monitor’s motion materials – the evidence put forward by the Monitor in relation to Ms. Cox falls well short of the strong *prima facie* case of fraud that is required to justify the extraordinary remedy of freezing Ms. Cox’s worldwide assets. Of \$90,557 in payments identified by the Monitor as allegedly suspicious, \$53,020.50 is attributed to marketing services provided by 2745384 Ontario Inc carrying on business as Picassofish, and \$23,194.19 were payments made to Picassofish before it was purchased by 27453864 Ontario Inc., when Ms. Cox had no connection to the business. Of the remaining \$14,362.31, a further \$3,156.81 was paid to Ms. Cox during a year that she was an employee of OTE LP. In light of the limited time available to respond to the Mareva Motion, investigations are ongoing into the remaining payments identified by the Monitor.

B. Real risk of dissipation of assets not established

24. The evidence presented by the Monitor is entirely insufficient to establish that there is a real risk of assets being removed out of the jurisdiction by Ms. Cox or disposed of within the jurisdiction by Ms. Cox or otherwise dealt with by her so that OTE LP and/or the Monitor will be unable to satisfy a judgment awarded against Ms. Cox. The only suggestion of any risk of dissipation of assets proffered by the Monitor relates to the sale of the matrimonial home. The mere fact that the home was publicly listed for sale many months ago, and has now sold, is not alone sufficient to meet the applicable standard. In

¹⁷ Cox Record, Lalonde Affidavit: Exhibit G, Tab 1.

any event (and without conceding that the Monitor has met its burden to establish a real risk of dissipation), Ms. Cox and Mr. Page have indicated that they are prepared to place the proceeds of the sale of the home into trust with Mr. Page's legal counsel. This measure entirely disposes of any risk of dissipation of this asset.

C. The balance of convenience strongly favours Ms. Cox

25. Further, and in the alternative, ordering a Mareva injunction and freezing Ms. Cox's worldwide assets in the circumstances would be grossly disproportionate, and inconsistent with the extraordinary nature of a remedy that is to be reserved for the clearest of cases. At its highest, the allegedly "suspicious" transfers directed to Ms. Cox that have been identified by the Monitor amount to \$90,557. The record put forward by the Monitor does not include any evidence of Ms. Cox's involvement in the direction of payment of OTE LP funds, including with respect to payments made towards her home.

26. The record presented by the Monitor in relation to Ms. Cox is grossly insufficient to justify the extraordinary remedy of freezing her worldwide assets. The prejudice that Ms. Cox would suffer as a result of this order – understanding that the Monitor's allegations at their highest relate to a mere \$90,000 – would far outweigh the prejudice suffered by OTE LP if it were unable to recover this sum from her. As such, the balance of convenience strongly favours Ms. Cox.

PART IV – ORDERS REQUESTED

27. Ms. Cox requests that the Court dismiss the Monitor's Mareva Motion as against her, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of November, 2023.

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SCHEDULE A

Tab	Title	Pinpoints
1	<u><i>Shaw Communications Inc v Young et al</i>, 2021 ONSC 7918</u>	9-10
2	<u><i>Christian-Philip v Rajalingam</i>, 2020 ONSC 1925</u>	8-9

ORIGINAL TRADERS ENERGY LTD.
Applicant

GLENN PAGE et al.
Respondents

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

REPLY FACTUM
MOTION RETURNABLE NOVEMBER 10, 2023

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