CITATION: *Montesano v. Montesano*, 2025 ONSC 6979
COURT FILE NO.: FS-23-00034603-0000
DATE: 20251216

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
JOANNA MONTESANO	Applicant	*Rahool Agarwal and Jesse Rosenberg,* for the Applicant
– and –		
VITO MONTESANO	Respondent	*Geoffrey Wells*, for the Respondent
		HEARD: SEPTEMBER 18, 2025

VELLA J.

REASONS FOR DECISION – MAREVA INJUNCTION

[1] The Applicant Wife seeks an interlocutory Mareva injunction, pursuant to s. 101 of the *Courts of Justice Act*, R.S.O., 1990, c. C.43, freezing 30 million dollars ($30,000,000) worth of assets allegedly owned by the Respondent Husband. She submits that a Mareva injunction is required due to the Respondent's dishonest conduct surrounding the subject financial assets. She submits that a preservation order under the *Family Law Act, R.S.O. 1990, c. F.3,* is inadequate, because a Mareva injunction will bind non-parties with notice and some of the real property development assets are owned or co-owned by non-parties.

[2] The Respondent opposes the Application and submits the following:

a. the Applicant relies on erroneous property and income valuations against him;
b. her claim in relation to unjust enrichment under a family joint venture is weak;

c. the Application does not meet the test for a Mareva injunction; and
d. in any event, he has no income and his assets are encumbered.

[3] For the reasons that follow, an interlocutory Mareva injunction shall issue with a cap of 20 million dollars.

Background

[4] The parties married on July 15, 2015. They separated on October 7, 2022.

[5] There are no children of the marriage.

[6] The Respondent was previously divorced.

[7] At the date of marriage, the Respondent was operating the umbrella business referred to as Marydel Homes Inc. (with various related corporations, collectively referred to as "Marydel Homes"). Marydel Homes was founded by the Respondent prior to the date of marriage. The name reflects a play on the names of his mother (Mary) and his former spouse (Adele).

[8] The Respondent is in the homebuilding and real estate development business. He generally purchases vacant land, develops them with residential units (condominium units, rental units, single home dwellings) and sells them for a profit. He does this in various ways, including through partnerships and holding and investment companies to generate capital funding and financing. This business is cyclical in terms of profits and losses. It is either feast or famine each year, depending on the stage of development and the timing and success of the particular projects.

[9] He owned four properties known municipally as 1460 Victoria Park Avenue, Toronto, 13042 Yonge Street, Richmond Hill, Lakeland Crescent, Beaverton and 15160 Yonge Street, Aurora prior to marrying the Applicant Wife. Three of those properties survived as of the date of separation. As well he is the owner of a cosmetics business known as Saint Cosmetics Inc. which was started before marriage and is, and always has been, struggling financially.

[10] At the date of marriage, the Applicant was a real estate agent working at ReMax.

[11] The Applicant asserts various claims including equalization of net family properties, which subsumes an unjust enrichment claim pursuant to a joint family venture and seeks a quantum meruit monetary remedy under equalization in lieu of a constructive trust remedy. She also seeks spousal support. In her Application, she also requests, *inter alia*, injunctive relief. She asserts claims over certain of the Respondent's real estate development projects and their underlying properties as will be described more fully and are collectively referred to as the "joint family venture enterprise".

[12] The Respondent denies that there has been any unjust enrichment or any joint family venture and submits that no trust remedy is warranted. In short, he claims that the Applicant contributed nothing significant, directly or indirectly, to his real estate development enterprise over the course of their marriage and therefore she is not entitled to any interest in his businesses or

property ventures, much less a 50% interest in each of his business and real property interests, for purposes of equalization.

[13] The Respondent submits that his individual real estate development projects are struggling and have been since before, as at, and following the date of separation. He is borrowing funds against stronger projects to prop up weaker projects with the hope that the resulting residential units will sell, generate returns on capital and investment income, and he will survive financially.

[14] The Applicant asserts a 50% interest in the following properties in support of the joint family venture enterprise equalization claim:

(a) 7850 Dufferin Street, Vaughan;

(b) 1460 Victoria Park Avenue, Toronto,

(c) 13042 Yonge Street, Richmond Hill

(d) 79 Collier Street, Barrie;

(e) Lakeland Crescent, Beaverton;

(f) 40 Woodburn Avenue, St. Catharines;

(g) 1522 Beaverdams Road, Thorold.

[15] The Applicant also asserts an interest in the Respondent's ownership and/or indirect interest in the following businesses, which own some of the above properties as at the date of separation:

(a) Vitmont Construction Limited's 82% interest in Dufcen Construction Inc. ("Dufcen") which owns 7850 Dufferin Street, Vaughan;

(b) Vijo Holdings Inc.'s ("Vijo") interest in Downing Street Realty Fund No. III Limited Partnership ("Downing III") which owns 1522 Beaverdams, Thorold;

(c) Vijo's interest in Downing Street Realty Fund No. XI Limited Partnership ("Downing XI") which owns 40 Woodburns, St. Catherines;

(d) Pernoi Management Inc.'s ("Pernoi") interest in Downing Street Realty Fund No. XV Limited Partnership ("Downing XV") which owns 1522 Beaverdams, Thorold (Phase III); and

(e) The Respondent's direct 100% interest in Vitmont Holdings (Oak Ridges) Inc. ("Oak Ridges") (collectively, the "Joint Family Venture Enterprise").

[16] The parties purchased 110 Bloor Street West, Suite 2008, Toronto (the "Matrimonial Home"), and title to the Matrimonial Home is in the Applicant's sole name. The Matrimonial Home has recently been listed for sale.

[17] At the date of separation, the parties also jointly owned a condominium located at 806-3200 North Ocean Blvd, Fort Lauderdale, Florida ("Florida condominium unit") worth over $2,000,000 Canadian. It is mortgage free.

[18] From and since the date of separation, the Applicant has lived exclusively at the Matrimonial Home, and the Respondent has "*de facto* exclusive use" (to adopt the Respondent's phrase) of the Florida condominium unit.

[19] Since February 2023, the Applicant has been solely responsible for the carrying costs of the Matrimonial Home, including debt service of a 2-million-dollar line of credit, the proceeds of which were used to invest in the Joint Family Venture Enterprise. Prior to that date, the Respondent was responsible for those carrying costs and advocated to have the matrimonial home sold.

[20] The Respondent either directly or indirectly has an ownership/beneficial interest in the following properties as at the date of marriage:

(a) 1460 Victoria Park Avenue, Toronto;

(b) 13042 Yonge Street, Richmond Hill;

(c) No 10 Lakeland Crescent, Beaverton;

(d) 151160 Yonge Street, Aurora.

Of note, three of the four properties still existed as at the date of separation. One, however, 151160 Yonge Street, Aurora, was sold on October 2, 2015, for a total of $4,450,000.

[21] The Respondent also owned a luxury car collection over the course of the marriage (and at the date of separation), but has since sold some of those vehicles.

[22] He also borrowed funds from the Applicant's mother to the Applicant's knowledge to help shore up funding during the marriage and before separation.

[23] This litigation has been ongoing for over two years. In the course of the litigation, various court orders have been obtained.

[24] By way of litigation history:

(a) The Application was commenced on February 28, 2023;

(b) At a case conference, held on June 20, 2023, Brownstone J. made various orders, including for financial disclosure from the Respondent, delivery of expert reports, and exchange of sworn financial statements;

(c) At a further case conference held on September 13, 2023, Brownstone J. refused to extend the deadlines for delivery of the Respondent's expert (valuation) reports;

(d) The Applicant's long motion (for spousal support, interim disbursements, a preservation order and other relief) was adjourned at the request of the Respondent, on consent, to February 13, 2024, and a new timetable, also on consent, was reached. The consent order included a further extension of time for the delivery of the Respondent's expert reports and sworn financial statement, on condition that he provide the Applicant with an advance payment in the amount of $100,000 to be credited against his equalization or spousal support obligations (Order of Black, J. dated November 1, 2023);

(e) A further adjournment of the long motion was requested by the Respondent. Again, the Applicant consented to the adjournment to May 16, 2024 on the condition that the Respondent advance a further $100,000, agree to a preservation and non-dissipation order against his property and assets pending the return of the motion, and a further extension of time to deliver his expert reports and other outstanding court-ordered disclosure by March 1, 2024, under sections 12 and 40 of the *Family Law Act* (Preservation Order of Kraft, J., dated February 23, 2024). The salient clause of the Preservation Order stated that "**the Respondent shall preserve and be restrained from depleting, transferring, or in any way dissipating any property in which he has an interest, directly or indirectly, legally or beneficially, save and except with the other party's consent or Court Order or in the ordinary course of business**" (emphasis added);

(f) In March 2024, the Respondent requested that the parties attend at a mediation before proceeding with the Applicant's long motion. The motion was accordingly further adjourned to November 19, 2024, on the terms that the Respondent would pay a further lump sum of $150,000 in installments, and that the Applicant's experts would prepare focused disclosure requests that the Respondent must answer prior to mediation. The Respondent did not answer the focused disclosure requests prior to the mediation. Nonetheless, the mediation proceeded but was unsuccessful.

(g) On November 19, 2024, Des Rosiers, J. ordered, on consent, that the Respondent has a continuing obligation to advise the Applicant of any profit distribution in relation to the manner in which the proceeds of sale of three specific property developments (identified as Montebello, and Artisan Ridge Phase 2 and 3) "have been or will be distributed since October 7, 2022 and an accounting and tracing of the distributions the Respondent has received since that date and on an ongoing basis, within 7 days of his receipt of any distributions, together with supporting documents". These are the three projects that the Applicant alleges are either sold and have either been paid or will "imminently" be paid and are part of the Joint Family Venture Enterprises.

(h) The Respondent finally provided disclosure the day before the long motion, but did not answer all of the focused disclosure requests he had previously been ordered to answer. Nonetheless, the Applicant agreed to one further adjournment to April 29,

2025, provided the Respondent pay a further $100,000 in two installments, and deliver the outstanding disclosure;

(i) The day before the return of the Applicant's long motion, Horkins J. granted a further adjournment at the request of the Respondent, *sine die*. This motion has not been rescheduled.

(j) In total, the Respondent has paid $450,000 to be credited towards equalization and/or spousal support but, the Applicant's long motion has yet to be heard; and

(k) At an urgent case conference held on June 23, 2025, Diamond J. scheduled this motion for a Mareva injunction returnable for a full day on September 18, 2025. The Applicant's notice of motion is dated August 5, 2025.

[25] The Applicant alleges that the Respondent has breached the Preservation Order, and that he continues to be in non-compliance with court ordered disclosure (including the focused disclosure requested by her own valuation expert). This issue was raised at an urgent case conference before C. Stevenson, J. on April 17, 2025, with respect to two properties that the Respondent listed for sale in February 2025, arguably in breach of the Preservation Order. However, as stated above, that long motion was not rescheduled, after being adjourned *sine die*.

[26] The Respondent replies that the Applicant is "weaponizing the preservation order [of Kraft J.] even if it results in financial ruin for me".

Brief Overview of the Impugned Business/Property Disputes Driving the Motion

[27] The Respondent solely owns Vijo which is a limited partner of Downing XI and under which, what the parties have described as "the Montebello project" (40 Woodburns, St. Catherines), has been developed. At the time of this motion, 233 of 253 units have closed.

[28] On November 19, 2024, Downing XI paid Vijo $2,549,965 as a return of capital invested in Class A units. On January 10, 2025 Downing XI paid Vijo a further $543,558.49 representing a partial payment of the 20% Internal Rate of Return (IRR) on Vijo's investment of $1,900,000. These funds, in turn, were paid to Downing Street Financial (financing arm of Downing) as payment towards its mortgage registered against one of the disputed properties, 1460 Victoria Park Avenue. These distributions and subsequent payment by Vijo post date the Kraft J. Preservation Order.

[29] The Respondent deposed that Vijo will not get any further funds from this development as its class B units as they are worthless.

[30] As will be seen, The Montebello/Downing XI project is one of the main reasons that the Respondent's and Applicant's respective expert business valuators disagree on the valuation of the Respondent's business interests.

[31] The second significant difference as between the respective valuations is the value of the Downing III real estate development (also described by the parties as Artisan Ridge-Phase II). This

is a low-rise housing development located at 1522 Beaverdams Road, Thorold, Ontario. As at the date of the motion, 145 of the 163 units had closed.

[32] Vijo is entitled to receive the return on its investment in the Class A units and 70% of the profit under the Class B Units, similar to the Montebello project. As well, the Respondent's company, Jomo Management Inc., received management fees as the construction manager. Jomo already received $1,711,500 as management fees and is now paid in full. Vijo has yet to receive its return on capital or its IRR of 20% of the profit. However, its expected IRR as at the date of the motion is $1,187,000 (based on the current number of sold units).

[33] The third main area of dispute in valuations between the two parties is Dufcen, which holds vacant land that has been recently approved to build rental units (7850 Dufferin Street, Vaughan). According to the Respondent's lawyer, this project is the "crown jewel" in the current real estate development portfolio. However, the project's mortgage had gone into default and was listed for sale under power of sale by Vector Financial Services Inc.

Mareva Injunction Test

[34] This court, as a Superior Court of Justice, has jurisdiction to issue a Mareva injunction if it is just and convenient to do so, irrespective of whether the context is a family law application or a civil proceeding, pursuant to s. 101 of the *Courts of Justice Act*.

[35] Statutory remedies specific to family law disputes, including the *Divorce Act* and *Family Law Act*, should be resorted to where such resort will accomplish the same objective as a common law remedy. However, in order to ensure the integrity of the family law dispute resolution regime, resort to common law remedies may be justified where those statutory remedies are not adequate in the circumstances of the case before the court or otherwise fall short: *Dormon v. Dormon*, 2025 ONSC 1023, at para. 67.

[36] In this case, as will be seen, the *Family Law Act* remedy of a preservation order is not adequate to protect the Applicant's family law claims, notably her claim for equalization (based in large part in her claim of unjust enrichment).

[37] The Applicant must demonstrate, on a balance of probabilities, the following elements:

(a) A strong *prima facie* case on the merits;

(b) The Respondent likely has assets in Ontario;

(c) There is a real risk that the Respondent is removing or will remove the assets from this jurisdiction or will otherwise dissipate the assets;

(d) The Applicant will suffer irreparable harm if the relief is denied;

(e) The balance of convenience favours her in granting a Mareva injunction (including the appropriate cap, if any, on the quantum and assets restrained by the proposed injunction); and

(f) Provide an undertaking as to damages.

Chitel v. Rothbart (1982), 39 O.R. (2d) 513, (Ont. C.A.); *Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2024 ONSC 2430, at para. 55.

Analysis

[38] There is a hole in the Respondent's responding record. He failed to properly tender his expert valuation report by Kalex Partners Inc. dated March 12, 2024 and entitled "Calculation of the Fair Market Value of the Business Interests of Vito Montesano as of July 25, 2015 and October 7, 2022" (the "Kalex Report") into evidence on this motion, despite his heavy reliance on those findings and conclusions in his argument and in his own affidavit evidence. There is no expert affidavit from Kalex attesting to the veracity of the findings, opinions and conclusions reflected in its expert report. Rather, the Kalex Report was attached as an exhibit to the Applicant's supplementary affidavit sworn July 31, 2025. This is not a proper way to tender expert opinion evidence for the truth of its content, irrespective of which party attaches it to their affidavit. The Applicant's purpose in attaching the Kalex Report was as a point of reference to understand her own, properly tendered, expert reports of Cushman Wakefield (Michael Parsons) dated October 16, 2024 and providing its own property valuation estimates, and of Marmer Penner Inc. (Steven Ranot) dated July 31, 2025 providing its own business valuation estimates (incorporating Cushman Wakefield's property estimates), responding the Kalex Report.

[39] Similarly, the Kalex Income Report (valuing the Respondent's income for support purposes for 2019 to 2022) was not properly tendered through an expert's affidavit. It was attached as an exhibit to the Respondent's affidavit sworn November 13, 2024, sworn in support of the adjourned long motion that has not been heard.

[40] The fact that the Respondent failed to adduce his respective experts by way of tendering their own affidavits deprived the Applicant from the right to cross-examine the experts. This is not a minor issue to be overlooked by the court.

[41] There is no suggestion that there was any consent to admission of this expert report for the truth of its content through the Applicant's affidavit.

[42] The Applicant did not move to strike either of the Kalex Report or Kalex Income Report.

[43] Accordingly, the Kalex Report is admitted into evidence for the limited purpose of the fact that it was prepared and as a reference point to understand the Cushman Wakefield and Marmer Penner expert reports which were properly adduced into evidence. I attach no weight to the Kalex Income Report.

[44] As a result, the only admissible evidence separately adduced by the Respondent for the truth of its content in support of the Respondent's position is his own affidavit dated September 5, 2025, and his earlier affidavits sworn November 18, 2024 and April 22, 2025 (responding to the allegations that he is in breach of various disclosure orders, including Kraft J.).

[45] In his Responding affidavit dated September 5, 2025, the Respondent provides a critique of the respective findings of Mr. Ranot and Mr. Parsons, including the observation that Mr. Parsons' report does not, as it states, comply with the Canadian Uniform Standards of Professional Appraisal Practice 2024 (CUSPAP). However, in submissions at the conclusion of the motion, his lawyer conceded that the Kalex Report also was not in compliance with CUSPAP and matches the same standard (illustration/calculation) as the Marmer Penner report, and that he had been in error suggesting otherwise.

[46] The stated reason in Mr. Parsons' report for this noncompliance is the alleged failure of the Respondent to provide fulsome financial disclosure necessary for a formal appraisal report by Mr. Parsons of Cushman & Wakefield. Cushman & Wakefield sent a focussed request for information dated April 22, 2024 which was not responded to in light of the Respondent's position that this request was not a "focused request pursuant to the Order of Justice Kraft" (see Exhibit B to the Respondent's Affidavit sworn April 22, 2024).

[47] Nonetheless, the only expert evidence before this court on this motion are the expert reports of Mr. Parsons and Mr. Ranot. The expert evidence does not provide an exact calculation of the business valuations of the Joint Family Venture Enterprise. It does, however, provide the court with evidence upon which to assess the elements the Applicant must establish for a Mareva injunction, including whether a cap should be imposed and if so in what quantum.

The Expert Joint Family Venture Enterprise Valuation Reports

[48] Mr. Parsons is an accredited Appraiser with the Appraisal Institute of Canada, a Professional Land Economist, and an Executive Vice President with Cushman & Wakefield, as well as the Leader of the Dispute Analysis and Litigation Support practice for Canada. He was retained by the Applicant to review the real property value indications relied upon in the Valuation Report prepared the Kalex Report which calculated the Values of the Respondent's business interests as at the parties' date of marriage (July 25, 2015) and date of separation (October 7, 2022).

[49] Mr. Parsons' report entitled "Memorandum of Preliminary Findings, dated October 16 2024" (the "Memorandum") set out his preliminary observations, in part because he is still awaiting disclosure from the Respondent as set out in his affidavit (outstanding since April 22, 2024 and August 29, 2024). Mr. Parsons provided a limited valuation of each property which provided a high and low estimate.

[50] Mr. Parsons' summary of values and range of values posited that the total value of the seven joint family venture business properties (Dufferin St., Victoria Park, Yonge St., Collier Street, Lakeland Crescent, Woodburn, and Beaverdams) on a preliminary basis is between $169,500,000 and $182,450,000 at the date of valuation/separation. The value of the four date of marriage properties (Victoria Park, Yonge St., Lakeland Crescent and 15160 Yonge Street) was $15,478,135, as Mr. Parsons adopted Kalex's value of the date of marriage properties as reasonable. However, he differed with respect to the date of separation values to varying degrees. Mr. Parsons observed in his report that Kalex valued the joint family venture properties as at date of separation at $117,870,706 which is lower than the low range of Mr. Parsons' valuation.

[51] Mr. Steve Ranot is a Chartered Professional Accountant, a Designated Specialist in Investigative and Forensic Accounting and Designated Specialist in Business Valuation with the Institute of Chartered Accountants of Ontario, a Chartered Business Valuator with the Canadian Institute of Chartered Business Valuators, and a Partner with Marmer Penner Inc.

[52] Mr. Ranot was retained by the Applicant to provide a preliminary calculation of the fair market value as to October 7, 2022 (the date of separation) of the specified direct and indirect interests of the Respondent in five entities: Vitmont Construction Limited's interest in Dufcen, Downing III, Downing XI, Downing XV, and Oak Ridges in response to the Kalex Report (the "Entities").

[53] Mr. Ranot prepared a report dated July 31, 2025, which was appended to his affidavit. It is neither a comprehensive valuation report nor an estimate valuation report because of the outstanding disclosure on the part of the Respondent. Accordingly, Mr. Ranot's report (like the Kalex Report) is for illustration purposes only. Mr. Ranot relied on the property values set out in Mr. Parsons' Memorandum.

[54] Mr. Ranot's opinion was heavily qualified due to the lack of response by the Respondent to Cushman & Wakefields' focussed Request for Information dated April 2024, which was still outstanding as at the date of this hearing.

[55] Mr. Ranot was instructed to assume that the majority of the assumptions and calculations made in regard to the valuation of the Entities in the March 12, 2024 Kalex Report are accurate, with the following exceptions:

(a) Mr. Ranot adopted the valuations for the real estate held by the Entities on the basis of Mr. Parsons' Memorandum dated October 16, 2024, which were generally higher than Kalex used and adopted Mr. Parsons' estimate that the selling costs of the real estate will be up to 2% rather than the 5% used by Kalex;

(b) Mr. Ranot determined that the appropriate income tax rate on the accrued real estate gains was the 26.5% rate on corporate income earned in excess of the annual $500,000 small business limit. Kalex deducted income tax from the real estate gains at the 19.5% rate applicable to investment income, less the refundable portion of that income tax;

(c) Mr. Ranot relied on the advice that each of the partners of Downing III, Downing XI and Downing XV were entitled to 20% per annum interest before profits were shared, and that Vijo and Pernoi were then entitled to 70% of the remaining profits; and

(d) Kalex discounted expected income tax and selling costs by 50% whereas Mr. Ranot discounted these at only 5.77%, expecting that they would be incurred sooner for reasons explained in his report.

[56] Mr. Ranot adopted the adjusted book value approach in determining his preliminary valuation of the Respondent's business interests. Mr. Ranot's conclusion was that the total fair

market value as at date of separation of the Respondent's business interests was $35,770,000 as contrasted to Kalex's value of $10,556,478.

[57] The Respondent submits that I should reject Mr. Ranot's opinion as it is not really "opinion" evidence. Mr. Ranot's opinion relies in part on the property valuations made by Mr. Parsons which are not formal appraisals. However, the Respondent also failed to adduce into evidence the opinion evidence of his appraiser (Colliers), which was relied upon by Kalex, and Mr. Parson's evidence is the best evidence before the court on this issue.

[58] The Respondent's other major complaint against Mr. Ranot's opinion was that his report was an illustration/calculation report (the lowest level of estimate) as contrasted with the Kalex Report. However, as stated, the Respondent ultimately conceded that in fact the Kalex Report was also an illustration/calculation report undermining this submission and indeed supporting the Applicant's position as to the evidentiary value of Mr. Ranot's expert opinion.

[59] In reaching my conclusions, I considered the Respondent's sworn evidence regarding the state of his business and financial affairs, including his critique of the Applicant's expert and lay evidence, in support of his position that he only owes $850,000 as an equalization payment to the Applicant, of which he has already paid $450,000, and that the net worth attributed to his corporate and personal financial interests is far less than what those experts opine, in line with the Kalex Report. However, for reasons that will be explained, including his demonstrated tendency to fabricate his financial net worth when it suits his needs, I find the Respondent to lack credibility. Where his evidence diverges on a material issue of fact from the Applicant's evidentiary record, I favour the Applicant's evidentiary record over his evidentiary record.

[60] That said, I am mindful of the fact that it is the Applicant's burden to prove each element for a Mareva injunction. I am also aware of the fact that the Applicant's respective expert reports are very preliminary and do not meet the standards of the higher-level estimate or comprehensive reports.

[61] The Applicant's expert reports are the best evidence before this court. They are from independent experts and are entitled to more weight than the Respondent's self-interested affidavit evidence.

[62] In the circumstances of this motion, I accept Mr. Ranot's opinion evidence regarding the net financial worth of the Respondent's real estate development projects that are the subject of this motion for the limited purpose of determining a cap for the Mareva injunction and assessing the veracity of the Respondent's own evidence on this issue.

[63] Also of importance, Downing Realty was given notice of these proceedings and have agreed to the form of order proposed by the Applicant. However, Downing Realty takes no position on the merits of the Applicant's claim and is not agreeing with, or consenting to, the relief being sought. Downing only engaged in negotiation of the revised form of order to ensure that it is not drawn into the marital dispute.

Mareva Injunctions

[64] A Mareva injunction is an extraordinary pre-judgment remedy because it is places constraints on how the responding party may deal with his/her/their property and assets before the applicant has proven her case at trial and based on an incomplete evidentiary record: *Bronfman v. Bronfman* (2000), 51 O.R. (3d) 336 (Ont. S.C), at para. 22. Therefore, the moving party has a high threshold to meet.

[65] The injustice that the Mareva injunction seeks to remedy is to prevent the responding party from engaging in an illicit scheme to arrange its assets with a view to depriving the moving party of an ability to recover a judgment at trial.

[66] In this case, the Applicant must demonstrate that she is almost certain to succeed at trial in establishing her claim, though she is not required to demonstrate the exact quantum of her claim: *Catalyst Capital Group*, at paras. 58-59 and 78. She must set out the assets with specificity that she is seeking to be restrained from dissipation.

[67] The burden of proof is on the Applicant to establish each element of the test (as set out by issues below, derived from *Chitel v. Rothbart*, and as applied and developed by subsequent jurisprudence, particularly in relation to family law claims: *Dormon,* at para. 47) to be successful.

Issue 1: Strong Prima Facie Case

[68] The Applicant is seeking spousal support, equalization of net family property and a quantum meruit damages remedy under an unjust enrichment claim. Her equalization claim includes the joint family venture enterprise and other assets owned, directly or beneficially, by the Respondent.

[69] The Applicant has established, based on the existing preliminary experts and other evidence, a strong prima facie case giving her a strong likelihood of success that she will be awarded a substantial equalization payment.

[70] According to the Applicant, the Respondent likely had a net worth of $1,000,000 as at the date of marriage. The Respondent claims a higher net worth of $4,600,000 at the date of marriage which is obviously advantageous to him in this proceeding. However, the Respondent claimed for purposes of the divorce proceedings against his prior spouse (on that date of separation) that his net worth a couple of months before his marriage to the Applicant was only $1,000,000. As will be seen, this is an example of the Respondent's habit of inserting different values for comparable assets and time periods to suit whatever was in his best financial interests at the time of making the assertion.

[71] The differences between the parties' respective valuations of the Respondent's property and other interests as at the date of separation is much larger. The Applicant claims that the Respondent's net worth is at least more than $35,770,000 based on her own expert opinion evidence regarding the family joint venture business as at the date of separation, and that his total net worth is most likely $63,000,000. This latter figure is based on a personal total net worth statement prepared by the Respondent for other purposes prepared in support of a loan application

with Tarion, which includes assets within the alleged Family Joint Venture Enterprise but includes other assets she asserts forms part of the net family property.

[72] In a personal net worth statement dated February 26, 2024 (prepared for Downing Street Financial, Moya Financial Credit Union and Canada ICI Capital Corporation), the Respondent valued the business interests at $74,285,402 as of that month.

[73] This is contrasted with the Respondent's March 2024 financial statement prepared for this litigation in which he indicated that the value of his business interests as at March 25, 2024 were unknown.

[74] In a subsequent personal net worth statement dated January 22, 2025 (prepared for KingSett Capital), the Respondent claimed his business interests had a total value of $100,983,554.

[75] In his September 5, 2025 sworn financial statement, the Respondent values his total business interests at $11,881,000 as at the date of valuation though many of the businesses' values are noted as not applicable, and the current values of the businesses are listed as to be determined or having a zero value.

[76] The Applicant produced a chart of net worth calculations prepared by the Respondent for this litigation and contrasted it with a chart of net worth calculations prepared for other purposes in her affidavit. The chart illustrates a significant discrepancy with much higher net worth calculations (by approximately $40,000,000 – $63,000,000) between 2022 and 2025.

[77] The Respondent asserts that his personal net worth as at the date of separation is just under $800,000. This is lower than Kalex's estimate of $10,556,478 with respect to the alleged Family Joint Venture Enterprise as at the date of separation, in large part because the Respondent has excluded all of the assets that the Applicant claims under the alleged Family Joint Venture Enterprise.

[78] The Respondent submits that the Applicant has not established a strong prima facie case with respect to the quantum of money on equalization she is seeking or her claim for unjust enrichment pursuant to a joint family venture.

[79] The Applicant has demonstrated that she will be entitled to an equalization claim. However, to justify the substantial equalization claim she advances, she must also demonstrate that there was a joint family venture. Determining whether there was a joint family venture is a question of fact and will be assessed having regard to all of the relevant circumstances, namely factors relating to mutual effort, economic integration, actual intent and priority of the family: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at para. 100.

[80] To be successful in a claim based in unjust enrichment, the applicant must prove that the respondent was enriched, and she suffered a corresponding deprivation, and that there is no juristic reason for the respondent to retain the benefit: *Kerr*, at paras. 36-45.

[81] The Respondent concedes that the Applicant has a strong prima facie case in relation to her claim for equalization on a basis excluding the assets under the alleged Joint Family Venture

Enterprise. He admits that he owes her an, albeit much smaller, equalization payment. He also notes that, as per *McNamee v. McNamee*, 2011 ONCA 533, 106 O.R. (3d) 401, at para. 66, "in the vast majority of cases, any unjust enrichment that arises as the result of a marriage will be fully addressed through the operation of the equalization provisions under the *Family Law Act*". (See also *Martin v. Sansome,* 2014 ONCA 14, 118 O.R. (3d) 522, at paras. 64-67; and *Iredale v. Dougall*, 2025 ONCA 266, 15 R.F.L. (9th) 67, at paras. 22-23.)

[82] The Respondent submits that the Applicant will not be able to establish an unjust enrichment claim and has not adequately addressed that claim in her evidence.

[83] The determination of an unjust enrichment claim will precede and then inform the calculation of an equalization payment (*McNamee*, *Martin, Iredale*).

[84] The Respondent also states that the Applicant has yet to properly quantify her equalization claim in a Net Family Property Statement, having only filed a sworn Financial Statement.

[85] The Applicant must demonstrate a strong prima facie claim on the merits of her claim of equalization for damages, but she need not prove the extent of those damages at least on a dollar for dollar basis in order to meet the strong prima facie case at this stage of the test: *Catalyst Capital Group*, at para. 78. However, the quantum of damages is relevant to the balance of convenience stage and the issue of whether, and if so to what extent, a cap on the Mareva injunction to be.

[86] That said, and contrary to the Respondent's submissions, there is strong evidence in the record showing that the Applicant directly and indirectly contributed to the alleged Joint Family Venture Enterprise over the course of their marriage, prior to separation. For example, the Matrimonial Home, which is in her sole name, was used as collateral for loans on Marydel Home's development projects as evidenced by the parcel register showing the subject charge in favour of HMT Holdings Inc. Furthermore, in May 2019, she personally guaranteed Marydel Home's debt. In 2022, before the date of separation, she consented to the Respondent placing a $2 million dollar line of credit on the Matrimonial Home to finance the Joint Family Venture Enterprise. The Respondent took the money and applied it to the enterprise. The Respondent acknowledges this contribution.

[87] In addition, the Applicant is, unwittingly, on the hook for more than three-million-dollars in potential obligations to Tarion by way of a personal guarantee of one of the development projects (of which more will be discussed later).

[88] She also contributed her real estate agent skills for the sale of properties for no commission or a below-market commission, though the Respondent disputes the magnitude of these efforts and notes that her agency, Remax was paid commissions.

[89] The Respondent does not dispute that the Applicant contributed to the development of the various projects asserted under the Joint Family Venture Enterprise. Rather, he minimizes her role and does not acknowledge the financial liabilities and risks she took on as contributions to those projects. The Respondent's affidavit evidence is weak on this issue, focussing largely on the net worth of the various projects and the related calculations.

[90] The Applicant has demonstrated a strong prima facie case that she is entitled to an equalization payment from the Respondent and that she will almost certainly also succeed in her claim for unjust enrichment pursuant to the joint family venture she asserts. Based on the Applicant's expert valuation opinion evidence in the record that is unanswered by expert evidence on the part of the Respondent, her remedy will be substantial, and far in excess of the approximate $800,000 the Respondent claims.

[91] It is not possible to calculate the exact amount of equalization that will be owed at this stage of the proceedings. However, it is clear that a significant amount will be owing. Based on the evidentiary record before me, the amount that will likely be owing is much more significant than the Respondent claims. Also, it is notable that the reason why a full valuation by Mr. Ranot was not possible was because of the Respondent's neglect in providing further financial disclosure. The Respondent ought not be able to rely on his own delays to thwart the Applicant's request for a Mareva injunction.

[92] Furthermore, the Applicant has established a prima facie claim for spousal support. The Respondent relies on his inadmissible Kalex Income Report which shows that his income has decreased year over year from 2019 to 2022 from $894,000 to $342,000 to $337,000 to $14,000 in 2022. However, once again, the Respondent made a prior inconsistent statement with respect to his income in 2022. It is also clear on the evidence before me that the Respondent is receiving large sums of money by way of return of capital and revenue on the investments in the impugned home building real estate development enterprise, and that he has other active businesses which are not the subject of the Applicant's claims. Furthermore, the Respondent's lifestyle expenses far exceed the minimal income he claims to earn.

Issue 2: The Respondent Has Assets in Ontario

[93] There is no dispute over this issue. The Respondent has assets in Ontario, including real estate development projects in Southern Ontario, a vintage and exotic automobile collection, and his businesses are incorporated in Ontario.

Issue 3: There is a Real Risk of Dissipation of Assets

[94] The Applicant must demonstrate that the Respondent has dissipated assets in order to avoid his obligation to her, or that there is a real risk that he will do so. In appropriate cases, such as this one where the Respondent is prone to overstate or understate his financial worth to suit his own needs, the risk can be established through inference from the surrounding circumstances, including evidence of the badges of fraud: *OPFFA v. Paul Atkinson et al*, 2019 ONSC 3877, at paras. 7-8.

[95] The risk of dissipation of assets can be proven by a pattern of prior fraudulent conduct where it supports a reasonable inference that there is a real risk that the conduct will continue unless prevented by the issuance of a Mareva injunction: *Sibley & Associates LP v. Ross*, 2011 ONSC 2591, 106 O.R. (3d) 494, at para. 64.

[96] The Applicant has satisfied me that if a Mareva injunction is not granted there is a real risk of dissipation of assets which is intended by the Respondent to pay her less than she is entitled to

under equalization of net family properties. The Respondent has engaged in a pattern of fraudulent conduct that directly reflects his propensity to misrepresent his financial assets and net worth in order to gain the result he desires, and has shown a flagrant disregard of the temporary preservation order already issued against him by Kraft J. to prevent the very dissipation of assets that are at risk.

[97] The Respondent admitted that he prepared a personal net worth statement dated October 1, 2022, and submitted to Tarion, stating that his net assets were $63 million after deduction of liabilities and that he had an income of $315,000. He signed this document on October 13, 2022 which is in the same month as the date of separation. He now claims his 2022 income was $14,000 for the purpose of determining spousal support.

[98] The suggestion that the Respondent earned $14,000 in 2022 is at odds with his admission on questioning that he spent $69,000 on lifestyle expenses from October to November 2022, and paid of the sum of $41,000 in credit card expenses the month before. He did not deny spending the money but explained that the money was incurred on behalf of his "partner" (and former girlfriend), who signed a promissory note but has not paid him back. The alleged promissory note was not produced in evidence. There is no evidence from the Respondent advising how he financed his living expenses in 2022 other than credit cards that he paid off from his own funds.

[99] The Respondent also agreed at questioning that he bought a Ferrari for $500,000 in October 2022 which he then sold later for $470,000.

[100] The Respondent admitted on questioning on his Affidavits sworn November 13, 2024, April 22, 2025 and September 5, 2025, held on September 13, 2025, that he fabricated his personal net worth statements prepared for lenders so that he could get the requested credit, including the $63 million personal net worth value he gave to Tarion:

> Q. 156: Yeah. And you say you didn't necessarily know what the value is, but I take it, sir, you made your best effort to give an accurate value, fair?
>
> A.: No. I just made – I just put a value that would work for me to obtain financing.
>
> Q. 157: So you only put a value that would work for you regardless of whether it was accurate; is that your evidence, sir?
>
> A.: Sometimes, yes.
>
> Q. 158: Okay. And did you make any effort to determine whether it was accurate or no?
>
> A. No.
>
> Q. 159: Okay. And you were comfortable giving information that you knew could be false to lenders?
>
> A. Yes.

Q. 160: Did you advise the lenders that the information you were giving them could be false?

A.: No. Again, it's up to them to do their due diligence. I gave accurate information as to what the mortgages were on those properties, but as far as value, there's no accurate – there's no determination by my part other than just putting a number there.

Q. 161: So your evidence, sir, is that you just wrote down whatever number you thought would be helpful to you, regardless of whether it was true or not?

A. Correct.

Q. 162: In fact, you intentionally wrote down numbers that weren't true at times in order to get more financing, correct?

A. If need be.

Q. 163: And you intentionally failed to include liabilities at times?

A. Correct.

[101] The Respondent does not resile from the above admissions.

[102] The Tarion net worth statement is also at odds with the Respondent's sworn Financial Statement dated April 6, 2023 where he lists his 2022 income at zero dollars contrasted with $315,000 in the former statement.

[103] On November 19, 2024, the Respondent swore that Vijo received its return of capital of $2,549,965.00 and that it is due to receive $1,872,257.02 as the remaining balance on the 20% IRR subject to funds available because the carrying costs of the mortgage pending sale of the remaining units is decreasing the equity investors' return. He also deposed that the latter funds will now be paid to Downing Street Financial (financing arm of Downing Street) to pay their mortgage on 1460 Victoria Park Avenue property as a term of the refinanced mortgage the Respondent took out.

[104] In the sworn financial statement, form 13, sworn November 11, 2015 for the purposes of the prior family law proceedings involving his former spouse, the Respondent swore that his actual net worth was just over one million dollars. However, for the purposes of this litigation his sworn financial statement states that his actual net worth as of July 2015 as at date of marriage was four million dollars. There is no plausible explanation for this significant discrepancy transpiring between July and November 2015 except that a higher date of marriage value in this litigation is more advantageous to the Respondent, whereas a lower date of separation value was advantageous to the Respondent in his prior family law proceedings.

[105] The Respondent is in breach of Justice Kraft's Preservation order as related to the disclosure portions.

[106] The Respondent failed to produce all of the financial documents required by the Kraft J. Order, including those necessary to prepare a comprehensive, higher standard, valuation report, as evidenced by the affidavit of Mr. Parsons who made a focussed request on April 22, 2024. While the Respondent states that Justice Kraft's order did not require him to produce information requested by Mr. Parsons as it was the onus of the Applicant to make the request, I find that to be an overly technical argument. The fact that Mr. Parsons made the requests as the Applicant's expert and on her behalf, instead of directly from the Applicant, makes it no less compellable under the Kraft J. Order. The spirit of the disclosure order is to provide relevant financial disclosure required by the Applicant in order to assess and advance her claims and to provide financial transparency.

[107] The Respondent is also in breach of the interim preservation provision of the Preservation Order requiring the Respondent to preserve his assets in Ontario, and not to dissipate same without consent of the Applicant or court order or if done in the ordinary course of business.

[108] Since the making of the temporary preservation order, the Respondent has sold around 3.1 million dollars worth of his antique and exotic car collection without providing prior notice, much less consent or court order, or disclosing where those funds have gone. These transactions were discovered as a result of the Applicant's investigation and reflect a breach of the temporary preservation order. I do not find that selling 3.1 million dollars worth of cars, which were subject to the preservation order, constitutes a transaction in the ordinary course of business. There is also no reason justifying why the Respondent failed to provide advance notice of these transactions to the Applicant. These car sales were done surreptitiously by the Respondent and now those funds appear to be gone.

[109] Furthermore, the Respondent registered mortgage debt on the Victoria Park property in the total amount of 12 million dollars without notice to the Applicant. The mortgage debt is now in excess of the likely current fair market value of Victoria Park (which was according to Cushman Wakefield's Memorandum, approximately 8.5 to 9 million dollars), and the Respondent also pledged certain future profits to this mortgage commitment. Furthermore, the terms of the new mortgage feature a high interest rate of 33.5%. The Respondent testified this was an arms-length transaction but that he had never agreed to such onerous terms before.

[110] The impugned mortgage is with an entity known as FM Capital Partners. Mr. Montesano acknowledged that he knows the principal, Nick Masucci, whom he met through a friend, Raymond Commisso. There is evidence suggesting that FM Capital Partners is not a legitimate lender as it has no public presence. Furthermore, it appears that the 4.5 million dollar loan agreement over the Victoria Park property was entered into by Oak Ridges on a date prior to the incorporation of FM Capital. This temporal inconsistency makes the *bona fides* of this loan transaction in this property suspicious. The transaction eliminates the preexisting equity in the property, and was not registered until almost three years after the loan agreement was entered into. The Respondent did not provide an explanation for this seeming anomaly and agreed that this mortgage transaction also post dated the preservation order and was made without notice to the Applicant. On the same day, the Respondent registered an additional 7 million dollar charge over this property in favour of Downing Street Financial Inc which is an affiliate of Downing Street Group. The property is currently listed for 6.9 million dollars which is significantly less than the encumbrances now registered against it. The property appears to be listed significantly under its

fair market value based on the Parsons and Ranot reports which, on this property, were ad item with the Kalex Report, valuing the property at 9.3 million dollars as of the date of separation.

[111] The Respondent explained that he needed to leverage the Victoria Park property in order to prop up the struggling Dufcen project which went into default of mortgage in March 2024 and had commenced power of sale proceedings in October 2024. By borrowing money from Downing Street of $7 million dollars, he was able to stop the foreclosure proceedings. However, in the process he has completely decimated any equity in Victoria Park, and previously profitable venture, and did not provide notice to the Applicant of these transactions. There is no guarantee that the Dufcen project will ultimately be successful.

[112] These mortgage transactions were without notice to the Applicant, done without court approval, and were not done in the ordinary course of business pursuant to the terms of the Kraft J. Preservation Order.

[113] The breach of a court order, and in particularly this order which was to prevent the dissipation of the Respondent's assets by him, is a badge of fraud. In *Purcaru v. Seliverstova et al*, 2015 ONSC 6679, 69 R.F.L. (7th) 388, at para. 11, this court held that "the law provides that the court can infer the existence of a transferor's fraudulent intention to defeat or delay creditors where there are recognized "badges of fraud" associated with a transaction. The badges of fraud are facts or fact patterns that the courts have held to be indictive of fraudulent transactions." The court specifically recognized the breach of family law orders requiring a party to preserve his or her assets pending a trial as a badge of fraud. Once a badge of fraud is proven, the burden switches to the responding party to explain their conduct to try to rebut the inference of a fraudulent intent.

[114] The Applicant is concerned that the assets she claims the Respondent is about to receive from the Artisan Ridge and Montebello properties are easily transferable and difficult to trace. The Respondent counters that he does not know when he will receive any distributions from these real estate projects and does not control the distribution. The timing of the distributions will be made by Downing XI, III and XV.

[115] The Respondent has also demonstrated, for example through his admissions on questioning referenced above, that he will fabricate his net worth depending upon the audience he is targeting.

[116] On October 1, 2022, the Respondent listed his personal net worth at $63,471,776.64 in support of a financing application from Tarion. The Respondent agreed under questioning (cross-examination on his affidavit) that he provided false information to both Tarion and the Home Construction Regulatory Authority (HCRA) in order to secure funding and licensing approval for the joint family property business.

[117] In February 2024, the Respondent listed his total personal net worth at $56,596,641.73.

[118] The Respondent admits he prepared these personal net worth statements, but explains them away by saying they are not sworn statements, and therefore the court should accept his current position as reflected in his affidavit evidence. However, the fact is the Respondent made these financial statements in a manner that were beneficial to his personal interests, irrespective of

whether they were accurate and truthful. This pattern of behaviour adversely impacts his credibility in these proceedings when he claims that his net worth is far less than the Applicant's preliminary expert opinion evidence suggests.

[119] In addition, the Respondent acknowledged on questioning that the Applicant's signature on a guarantee of obligations to Tarion (in support of his funding application) was forged, though he said it was someone in his office who put that signature on the agreement. His contact information was inserted on the form for the Applicant, so she did not receive a confirmation from Tarion. To date of the hearing, the Applicant continues to be bound by this financial commitment in the sum of 2 million dollars to Tarion underlying the home building and real estate development enterprise developed and/or advanced during the course of the marriage to the date of separation (and beyond).

[120] The Respondent admitted during cross examination that he forged the Applicant's signature on a Ministry of Transport car ownership form. He had gifted two luxury cars to her early in the marriage. After separation, she needed to sell these cars, but the Respondent declined to cooperate. When she went to the Ministry of Transport she discovered her name had been forged on a form transferring ownership from her to the Respondent. He sold these cars without notice to her.

[121] The relevant cross-examination excerpt from Questioning is as follows regarding the cars:

> Q 366: Sir, you said that this car was in Ms. Montesano's name for a time?
>
> A: For a short time, yes.
>
> Q 367: How did it come to be transferred from her name into either your name or the name of Pernoi Management Inc.?
>
> A: I transferred it.
>
> Q. 368: Okay. Did you ask Ms. Montesano before you did that that [sic]?
>
> A.: No.
>
> Q369: How were you able to transfer the ownership of the car without Ms. Montesano knowing?
>
> A.: I signed the paperwork on her behalf.
>
> Q. 370: Okay. And when you say "signed on her behalf", you mean you signed it in her name, correct?
>
> A.: Correct.
>
> Q 371: Have you signed paperwork for any other cars in Ms. Montesano's name?

A. Just the two that were in her name at the time.

[122] Mr. Montesano then confirms that the cars in question were a Belair and a Trans Am (Q. 374-375).

[123] I reject the Respondent's explanation that (a) he only fabricates financial information when it is outside of court documents, (b) he had no idea that the Applicant's signature was forged on the loan document filed on his behalf to Tarion and for his financial benefit, and (c) he is effectively financially destitute. On the latter point, while he may have been relatively "cash (income) poor" on paper on the date of separation, his enterprise is cyclical and requires an influx of money via mortgages and loans to finance the projects, they generally pay off when a specific real estate development is completed and the residential units sold resulting in a great influx of capital to the Respondent and his companies. The Respondent submits that he had bad years (a "financial storm") in 2015 (date of marriage) and 2022 (date of separation), but I observe, not in between those years. It appears that the Respondent is playing a shell game with the Applicant to hide his financial net worth at the relevant dates.

[124] The Applicant has demonstrated that the Respondent has engaged in a pattern of conduct that reflect the badges of fraud:

(a) He has engaged in a pattern of fabricating his financial net worth statements and incomes in order to suit his personal needs;

(b) He has engaged, either directly or recklessly, in forgery to the Applicant's financial detriment;

(c) He has breached the temporary preservation order issued in these proceedings;

(d) He has breached the financial disclosure order, thwarting the Applicant's real estate appraiser's and valuation expert's ability to engage in a higher level valuation opinion of the Respondent's assets;

(e) He has engaged in a pattern of dissipating or encumbering the financial assets to date.

[125] Two of the Marydel Homes projects, Montebello (St. Catherines) and Artisan Ridge Phase 2 (Thorold), are substantially complete meaning that a distribution of capital and profit, if any, could be made shortly and in any event almost certainly before a trial which has not been scheduled. If any of these projects come to fruition and are paid out, the funds will be impossible to trace and the Applicant's claim will be compromised.

[126] I am satisfied that the Applicant has demonstrated a real risk that the Respondent will dissipate the assets belonging to the joint family venture business such as to render a future tracing of those funds impossible or remote: *Chitel,* at p. 41-42.

Issue 4: The Applicant will Suffer Irreparable Harm if the Mareva Injunction is Denied

[127] As stated, issues 3 and 4 are factually intertwined. Irreparable harm speaks to the nature of the harm that will be suffered rather than its magnitude. It is harm that either cannot be quantified in monetary terms or cannot be cured generally because the moving party will not be able to collect the monetary award by the time of trial should the Mareva injunction be denied: *RJR-MacDonald Inc. v. Canada (Attorney General),* [1994] 1 S.C.R. 311 (S.C.C.).

[128] In this case, the Applicant's inability to enforce her equalization claim will be frustrated due to the real risk that the Respondent will dissipate the very assets over which the Applicant bases her claim for equalization of net family property with an intent to defraud her as inferred based on his past pattern of misconduct encumbering or attempting to sell these assets without notice, court approval and outside the ordinary course of business.

[129] The claim of irreparable harm is also enhanced by the fact that the Respondent has a real presence in Florida where his de facto residence is located.

Issue 5: Balance of Convenience

[130] A Mareva injunction is a form of equitable relief. It will be granted when it "appears to a judge to be just or convenient to do so": s. 101, *Courts of Justice Act*. The last stage of the underlying test is whether granting a Mareva injunction favours the Applicant and not the Respondent and is measured by which party will bear the most prejudice: *Gold Star Renovations Inc. v. Vinnik*, 2012 ONSC 6575, at para. 5. Again, the burden of proof continues to lie on the Applicant at first instance and will switch to the Respondent to rebut.

[131] On one hand, the Applicant is much more vulnerable than the Respondent in terms of access to financial assets developed and/or accrued over the course of the marriage and will be moving out of the matrimonial home which is now listed for sale, while the Respondent is residing in a two bedroom apartment in Richmond Hill owned by his company, Oak Ridges, and has *de facto* exclusive use of the parties' jointly owned Florida condominium which is mortgage free and worth over 2 million CDN. Furthermore, the Respondent has been selling the luxury car collection and has had sole access to those sale proceeds.

[132] Furthermore, given the Respondent's assertion that his other assets (falling outside the net family property calculation) are in poor financial shape, if a Mareva injunction is not granted, all facts considered, the Applicant's prejudice in the form of non-recoverability will outweigh the Respondent's prejudice. The restrictions on the Respondent's ability to handle his projects in the joint family venture business proposed by the Applicant will be mitigated by the usual exception allowing transactions that are in the ordinary course of business and permitting either party to move to vary the Mareva injunction in the appropriate circumstances.

[133] On the other hand, the Respondent submits that any Mareva injunction will cause financial ruin as he will not be able to refinance Dufcen which is, according to him, the crown jewel in his portfolio. However, as stated, the Mareva injunction will carve out an exception for him to carry out transactions which are in the ordinary course of business and hence it should not be a barrier

to his ability to refinance Dufcen. It is not in the Applicant's interest to bring about financial ruin with respect to Dufcen, as it forms part of her unjust enrichment claim.

[134] Of note, he already signed a listing agreement for the sale of 1460 Victoria Park on February 12, 2025 in order to "de-leverage and pay debt". He has received a letter of intent on August 21, 2025 regarding a potential sale for $6,500,000. He also has signed a listing agreement for the sale of 13042 Yonge Street on February 14, 2025 "to use any excess funds to invest in Dufcen Construction Inc. and use to avoid default on the Vector Financial Services mortgage. The latter property is listed for $39,995,000. As stated, these steps were taken without notice to the Applicant causing further distrust between the parties and concern that these transactions were not in the ordinary course of business.

[135] However, the amount of assets to be frozen by a Mareva injunction must be proportionate to the amount of the claim and specified to the greatest degree possible. In my view this consideration is relevant in determining the relative prejudice to each party.

[136] Here, the Applicant relies on the personal net worth statement signed by the Respondent and provided to Tarion in the sum of $63,000,000 as reflecting his net family property as at the date of separation, and seeks one half reflecting her claim of 50% beneficial ownership by way of an equalization payment. However, I have found that the Respondent's financial representations to be unreliable and the Applicant has not satisfied me that the Respondent's net financial worth as at the date of separation is $63,000,000.

[137] However, her own expert evidence puts the Respondent's net fair market value of the date of separation joint family venture business interests, albeit in a preliminary way only, is $35,770,000. The majority of evidence and submissions focussed on these assets and values. That said, it is also clear on the evidence that the equalization payment owing to the Applicant will also include other referenced financial assets and properties such as the luxury car collection. I favour the Applicant's expert evidence as the appropriate measure by which to approximate the Applicant's equalization claim with respect to the Joint Family Venture Enterprise, insofar as possible on this limited evidentiary record.

[138] In my view, the Applicant is entitled to a Mareva injunction capped at $20,000,000 (twenty million dollars). This reflects one half of Mr. Ranot's valuation of the Joint Family Venture Enterprise plus an approximation of the one half of the assets that fall outside the scope of those projects, and some legal and expert fees insofar as I have evidence on those items. The Mareva injunction will attach to the various items, corporations and partners (with notice) as generally set out in Schedules A, B, C and D to the draft Order (which complies with the model form). The Order is, in turn, attached as Schedule A to these Reasons. The attached Order follows the model Mareva injunction order as tailored to these proceedings by the Applicant, but must be modified in accordance with these Reasons. Either party may seek to decrease or increase this cap as per the terms of the Order as financial disclosure becomes fuller and elevated levels of expert reports are produced.

Undertaking as to Damages

[139] I am satisfied that the Applicant has given a satisfactory undertaking as to damages in her affidavit sworn June 18, 2025.

Order

[140] The Mareva injunction is granted in the general form and content attached as Schedule A, capped at $20,000,000.00 (twenty million dollars), effective immediately and is binding to all those that are provided notice of the Order.

[141] The Applicant may provide me with a clean copy of the Order, reflecting the $20,000,000 cap, for my review and signature on notice to the Respondent by forwarding same to my judicial assistant (Maria Kolliopoulos) by email.

[142] If the parties cannot agree on costs, the Applicant shall submit her costs outline and written submissions within 10 days from today, and the Respondent shall submit his responding costs outline and submissions within 10 days thereafter by email to my judicial assistant and uploaded. The respective written submissions shall not exceed 3 pages double spaced each.

Vella. J.

Justice S. Vella

Released: December 16, 2025

CITATION: *Montesano v. Montesano*, 2025 ONSC 6979
COURT FILE NO.: FS-23-00034603-0000
DATE: 20251216

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNA MONTESANO

Applicant

– and –

VITO MONTESANO

Respondent

REASONS FOR JUDGMENT

Vella J.

Released: December 16, 2025