

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

**RESPONDING APPLICATION RECORD OF
TRADE CAPITAL FINANCE CORPORATION
Returnable December 4, 2018
(Volume 2 of 2)**

December 2, 2018

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Corporation

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SERVICE LIST

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Lawyers for the Applicant,
Buduchnist Credit Union Limited

AND TO: 2321197 ONTARIO INC.
211 Woodland Acres Crescent
Vaughan, ON L6A 1G1

Respondent in respect of 87 Elm Grove, Richmond Hill, Ontario (“Elm Property”)

AND TO: LAX O’SULLIVAN LISUS GOTTLIEB LLP
145 King Street West, Suite 2750
Toronto, ON M5H 1J8

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punderwood@counsel-toronto.com

Lawyers for the Respondent, Carlo Demaria in respect of the following real properties:

- (a) The Elm Property;
- (b) 211 Woodland Acres Crescent, Richmond Hill, Ontario (“Woodland Property”); and,
- (c) 46 Puccini Drive, Richmond Hill, Ontario (“Puccini Property”).

AND TO: SANDRA DEMARIA

211 Woodland Acres Crescent
Vaughan, ON L6A 1G1
Email: sandra@vapz.com

Respondent in respect of the Woodland Property and 506 Wilson Heights Blvd.,
Toronto, Ontario (the “Wilson Heights Property”)

AND TO: 2321198 ONTARIO INC.

211 Woodland Acres Crescent
Maple, ON L6A 1G1

Respondent in respect of the Puccini Property

AND TO: SASI MACH LIMITED

211 Woodland Acres Crescent
Maple, ON L6A 1G1

Respondent in respect of the Wilson Heights Property

AND TO: VICAR HOMES LTD.

80 Bass Pro Mills, Suite 11-A
Vaughan, ON L4K 5W9

Respondent in respect of the Woodland Property and in respect of the Elm Property
(as vendor)

AND TO: KSV KOFMAN INC.

150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Bobby Kofman

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David Sieradzki

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Receiver of the Elm Grove Property and Interim Receiver of the Puccini Property

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5000 Yonge Street
North York, ON M2N 7E9

George Benchetrit

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Email: george@chaitons.com

Lawyers for KSV Kofman Inc., in its capacities as Receiver of the Elm Grove Property and Interim Receiver of the Puccini Property

AND TO: HORLICK LEVITT DI LELLA LLP

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North York, ON M2N 6N5

Brian Horlick

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Lawyers for Sylvia Conforti, potential purchaser of the Elm Property

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Insolvency.Toronto@dentons.com; mmcwilliams@loonix.com; pcarey@loonix.com;
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

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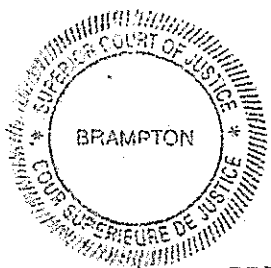
TAB F

This is Exhibit "F" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.



Court File No. *CV-13-4787-00*

ONTARIO
SUPERIOR COURT OF JUSTICE
APPLICATION UNDER Rule 14.05(3)(g) of the *Rules of Civil Procedure*

THE HONOURABLE) *Monday*
JUSTICE *RICCHETTI, J.*) FRIDAY, THE 28TH DAY
) OF OCTOBER, 2013

BETWEEN:

TRADE CAPITAL FINANCE CORP.

Applicant(s)

- and -

THE TORONTO-DOMINION BANK also known as TD CANADA TRUST, THE BANK OF NOVA SCOTIA also known as SCOTIABANK, CANADIAN IMPERIAL BANK OF COMMERCE also known as CIBC, ROYAL BANK OF CANADA also known as RBC, BANK OF MONTREAL also known as BMO and WELLS FARGO BANK, NATIONAL ASSOCIATION

Respondent(s)

ORDER

THIS APPLICATION, brought by the Applicant without notice for a *Norwich Pharmacal* Order was heard this day at the Brampton Courthouse at 7755 Hurontario Street, Brampton, Ontario.

ON READING the Application Record and the Affidavit of Darcy Thompson sworn on October 24, 2013, filed, and on hearing the submissions of counsel for the Applicant, and on noting the undertaking of the Applicant to abide by any Order this

Court may make concerning costs of compliance arising from the granting and enforcement of this Order,

1. **THIS COURT ORDERS** that the Applicant may proceed with this Application on an *ex parte* basis.

2. **THIS COURT ORDERS** the Respondent, The Toronto-Dominion Bank also known as TD Canada Trust ("TD"), to disclose and produce to the Applicant forthwith ^{copies of} all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to:

- a. TD bank account number 7303753, located at TD branch 1038 located at 15255 Yonge Street, Aurora, Ontario;
- b. TD bank account number 5233022, located at TD branch 1928 located at 2263 Yonge Street, Toronto, Ontario; and,
- c. TD bank account number 5270311, located at TD branch 1552 located at 2038 Kipling Avenue, Rexdale, Ontario.

3. **THIS COURT ORDERS** TD to disclose and produce to the Applicant forthwith ^{copies of} all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of expiry of this Order in relation to:

- a. any and all bank accounts that Virtucall Inc. ^{including} ~~and/or the owner of~~ TD bank account number 7303753, maintains or has an interest in at TD branch 1038 located at 15255 Yonge Street, Aurora, Ontario;

- b. any and all bank accounts that 2242216 Ontario Inc. ^{including} ~~and/or the owner of~~ TD bank account number 5233022, maintains or has an interest in at TD branch 1928 located at 2263 Yonge Street, Toronto, Ontario; and,
- c. any and all bank accounts that 2339989 Ontario Inc. ^{including} ~~and/or the owner of~~ TD bank account number 5270311, maintains or has an interest in at TD branch 1552 located at 2038 Kipling Avenue, Rexdale, Ontario.

4. **THIS COURT ORDERS** the Respondent, The Bank of Nova Scotia also known as Scotiabank ("Scotiabank"), to disclose and produce to the Applicant ^{Copies of} forthwith all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to:


- a. Scotiabank bank account number 0141216, located at Scotiabank branch number 10132 located at 14720 Yonge Street, Aurora, Ontario;
- b. Scotiabank bank account number 0151319, located at Scotiabank branch number 10132 located at 14720 Yonge Street, Aurora, Ontario; and,
- c. Scotiabank bank account number 0073911, located at Scotiabank branch number 10132 located at 14720 Yonge Street, Aurora, Ontario.

5. **THIS COURT ORDERS** Scotiabank to disclose and produce to the Applicant ^{Copies of} forthwith all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to:


- a. any and all bank accounts that LC Exchange ^{, including} ~~and/or the owner of~~ Scotiabank bank account number 0141216, maintains or has an interest in at Scotiabank branch number 10132 located at 14720 Yonge Street, Aurora, Ontario;
- b. any and all bank accounts that Greenlink Canada Inc. ^{, including} ~~and/or the owner of~~ Scotiabank bank account number 0151319, maintains or has an interest in at Scotiabank branch number 10132 located at 14720 Yonge Street, Aurora, Ontario;
- c. any and all bank accounts that Virtucall Inc. ^{, including} ~~and/or the owner of~~ Scotiabank bank account number 0073911, maintains or has an interest in at Scotiabank branch number 10132 located at 14720 Yonge Street, Aurora, Ontario; and,
- d. any and all bank accounts that Thomas Richard Barker maintains or has an interest in at Scotiabank branch number 10132 located at 14720 Yonge Street, Aurora, Ontario.


6. **THIS COURT ORDERS** the Respondent, Canadian Imperial Bank of Commerce also known as CIBC ("CIBC"), to disclose and produce to the Applicant ^{copies of} forthwith all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to:

- a. CIBC bank account number 9956611, located at CIBC branch number 05022 located at 136 Rexdale Boulevard, Etobicoke, Ontario; and,


- b. CIBC bank account number 4224213, located at CIBC branch number ~~12010~~ located at 1 St. Clair Avenue West, Toronto, Ontario.
00122
- 

7. **THIS COURT ORDERS** CIBC to disclose and produce to the Applicant forthwith all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to:

- a. any and all bank accounts that 2242116 Ontario Inc., ^{including} ~~and/or the owner of~~ CIBC bank account number 9956611, maintains or has an interest in at CIBC branch number 05022 located at 136 Rexdale Boulevard, Etobicoke, Ontario; and,
- 

- b. any and all bank accounts that Greenlink Canada Inc., ^{including} ~~and/or the owner of~~ CIBC bank account number 4224213, maintains or has an interest in at CIBC branch number 12010 located at 1 St. Clair Avenue West, Toronto, Ontario.
- 

8. **THIS COURT ORDERS** the Respondent, Royal Bank of Canada also known as RBC ("RBC"), to disclose and produce to the Applicant forthwith ^{copies of} all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to:




- a. RBC bank account number 1010289, located at RBC branch number 06492 located at 5125 Sheppard Avenue East, Scarborough, Ontario; and,
- b. RBC bank account number 1010024, located at RBC branch number 00292 located at 99 Mapleview West, Barrie, Ontario.

9. **THIS COURT ORDERS** RBC to disclose and produce to the Applicant forthwith all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to:


- a. any and all bank accounts that CJR Consulting, ^{including} ~~and/or the owner of~~ RBC bank account number 1010289, maintains or has an interest in at RBC branch number 06492 located at 5125 Sheppard Avenue East, Scarborough, Ontario;
- b. any and all bank accounts that Millwalk Enterprises Inc., ^{including} ~~and/or the owner of~~ RBC bank account number 1010024, maintains or has an interest in at RBC branch number 00292 located at 99 Mapleview West, Barrie, Ontario; and,
- c. any and all bank accounts that Jobec Trade Finance Inc. maintains or has an interest in at RBC branch number 3012 located at 7481 Woodbine Avenue, Markham, Ontario.

10. **THIS COURT ORDERS** the Respondent, Wells Fargo Bank, National Association ("Wells Fargo"), to disclose and produce to the Applicant forthwith ^{copies of} all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to Wells Fargo bank account number 6175160180, located at the Wells Fargo bank located at 420 Montgomery Street, San Francisco, California, USA.

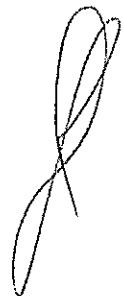
11. **THIS COURT ORDERS** Wells Fargo to disclose and produce to the Applicant forthwith all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to any and all bank accounts that Instinctive Edge LLC, ^{including} ~~and/or the owner of~~ Wells Fargo bank account number 6175160180, maintains or has an interest in at the Wells Fargo bank located at 420 Montgomery Street, San Francisco, California, USA.




12. **THIS COURT ORDERS** the Respondent, Bank of Montreal, to disclose and produce to the Applicant forthwith ^{copies of} all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to Bank of Montreal bank account number 1044570, located at Bank of Montreal branch number 03682 located at 3022 Bloor Street West, Etobicoke, Ontario.



13. **THIS COURT ORDERS** Bank of Montreal to disclose and produce to the Applicant forthwith ^{copies of} all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of this Order in relation to:



- a. any and all bank accounts that 2224754 Ontario Ltd. ^{including} ~~and/or the owner of~~ Bank of Montreal bank account number 1044570, maintains or has an interest in at Bank of Montreal branch number 03682 located at 3022 Bloor Street West, Etobicoke, Ontario; and,
- 

- b. any and all bank accounts that Peter William Cook maintains or has an interest in at Bank of Montreal branch number 3190 located at 3960 Brock Street North, Whitby, Ontario.

14. **THIS COURT ORDERS** that the disclosure referred to in paragraphs 2 to 13, inclusive, shall include but not be limited to:

- i. all files, records, papers, notes, correspondence, memoranda, computer data and other records and information in the Respondent's possession or control with respect to any transactions conducted by, or communications received in relation to the accounts described in paragraphs 2 to 13, inclusive;
- ii. the identity of any persons or entities who instructed the Respondent to conduct any business on behalf of any of the parties and accounts described in paragraphs 2 to 13, inclusive, including the making of any payments or transfers to third parties, the identity of the payees and particulars of the instructions and transactions; and,
- iii. the identity of any persons or entities to whom funds were transferred from the parties and accounts described in paragraphs 2 to 13, inclusive, and particulars of the instructions and the transactions.

15. **THIS COURT ORDERS** that the Applicant shall be allowed to and be provided with sufficient opportunity to inspect, review and copy any information, records, materials or documents produced pursuant to the Order;

~~16. **THIS COURT ORDERS** that the Respondents attend an examination by the Applicant to answer questions with respect any and all transfers or transactions whereby the assets in the accounts described in paragraphs 2 to 13, inclusive, were transferred from the accounts described in paragraphs 2 to 13, inclusive, to other entities.~~



17. **THIS COURT ORDERS** that any bank or other financial institution into which any funds received by any of the parties or the accounts identified in paragraphs 2 to 13, inclusive, have been transferred, sent or deposited to disclose and produce to the Applicant the information in respect of such transactions in accordance with paragraph 14 of this Order for the period of November 9, 2011, to the date of expiry of this Order.

18. **THIS COURT ORDERS** that the Respondents and any other party that has or obtains knowledge of the Application or any resulting Order are prohibited from disclosing the existence of this Application, order or any act or conduct undertaken in compliance with this Order to any other person or party, except for the limited purpose of complying with this Order or obtaining legal advice with respect to compliance with this Order.

R

Order
Page 10 of 10

for a period of 60 days or until such other date as may be set by this Court

19. THIS COURT ORDERS that the Court file be and is sealed ~~until~~ further Order of this Court to protect the confidentiality of the Application, any resulting Order, and the conduct taken in compliance with any Order.

20. THIS COURT ORDERS that service of this Order may be effected by photocopy of the Order delivered by fax without service of the supporting evidence and that counsel for the affected party may inspect the supporting evidence at the offices of Loopstra Nixon LLP in Toronto on reasonable notice.

21. THIS COURT ORDERS that any affected party is authorized to apply for directions in respect of the Order or to vary or set aside the Order on notice to counsel for the Applicant.

22. THIS COURT ORDERS that a failure to comply with this Order or a breach of the Order constitutes contempt of Court.

23. THIS COURT ORDERS that this Order shall remain in effect for a period of sixty (60) days.

24. THIS COURT ORDERS that this matter shall be brought back before this Court ~~at~~ within 60 days.

[Handwritten mark]

ENTERED
AT BRAMPTON
OCT 28 2013
BOOK No. 73-63
INITIALS *al*

Leonard Eccles

TRADE CAPITAL FINANCE CORP.
(Applicant)

vs

THE TORONTO-DOMINION BANK et al
(Respondents)

Court File No. *CV-13-4787-00*

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Brampton

ORDER

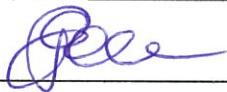
LOOPSTRA NIXON LLP
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Suite 600
Toronto, Ontario
M9W 6V7

Michael B. McWilliams
LSUC#47320R
Tel: (416) 746-4710
Fax: (416) 746-8319

Lawyers for the Applicant

TAB G

This is Exhibit "G" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

*Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.*

Court File No. CV-13-478700

ONTARIO
SUPERIOR COURT OF JUSTICE
 APPLICATION UNDER Rule 14.05(3)(g) of the *Rules of Civil Procedure*

THE HONOURABLE *RICCHETTI*) FRIDAY, THE 23RD DAY
)
) OF JANUARY, 2015

BETWEEN:



TRADE CAPITAL FINANCE CORP.

Applicant(s)

- and -

THE TORONTO-DOMINION BANK also known as TD CANADA TRUST, THE
 BANK OF NOVA SCOTIA also known as SCOTIABANK, CANADIAN IMPERIAL
 BANK OF COMMERCE also known as CIBC, ROYAL BANK OF CANADA also
 known as RBC, BANK OF MONTREAL also known as BMO
 and WELLS FARGO BANK, NATIONAL ASSOCIATION

Respondent(s)

ORDER

THIS MOTION, brought by the Applicant without notice for an Order amending the *Norwich Pharmacal* Order granted on October 28, 2013, was heard this day at the Brampton Courthouse, 7755 Hurontario Street, Brampton, Ontario.

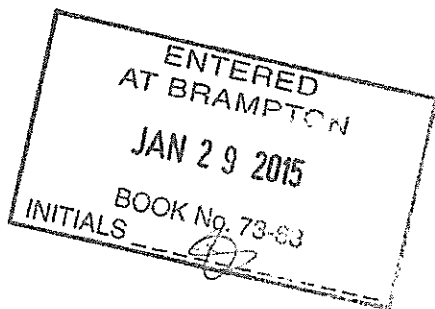
ON READING the Motion Record and the Affidavit of Darcy Thompson, filed, and the Records contained in the Court file, and on hearing the submissions of counsel for the Applicant,

1. **THIS COURT ORDERS** that the date on which the Order of Justice Ricchetti dated October 28, 2013 will expire is extended to May 22, 2015.

2. **THIS COURT ORDERS** that the Court file shall continue to be sealed until further Order of this Court to protect the confidentiality of the Application, any resulting Orders, and the conduct taken in compliance with any Order.

3. **THIS COURT ORDERS** that the Respondents, the Applicant and anyone that has or obtained knowledge of any of the Orders referred to herein or of this Order, are prohibited from disclosing the existence of any of such Orders or any act or conduct undertaken or any information or documents disclosed or produced in compliance with any of such Orders to any other person or party, except for the limited purposes of, complying with the Orders or obtaining legal advice with respect to compliance with the Orders. This provision does not apply to the Applicant and the Applicant's officers and directors for the purpose of,

- i. investigating, pursuing, furthering and/or prosecuting the Applicant's potential and/or actual claims;
- ii. negotiations or attempted negotiations of the resolution of the Applicant's potential and/or actual claims; and,
- iii. any investigation which may be carried out by the police.



A handwritten signature in cursive script, reading "Leonard Ruskott", written over a horizontal line.

TRADE CAPITAL FINANCE CORP.
(Applicant)

vs

THE TORONTO-DOMINION BANK et al
(Respondents)

Court File No. CV-13-4787-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brampton

ORDER

LOOPSTRA NIXON LLP

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135 Queens Plate Drive
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M9W 6V7

Michael B. McWilliams
LSUC#47320R

Tel: (416) 746-4710
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Lawyers for the Applicant

Court File No. CV-13-478700

ONTARIO
SUPERIOR COURT OF JUSTICE
APPLICATION UNDER Rule 14.05(3)(g) of the *Rules of Civil Procedure*

THE HONOURABLE

BETWEEN:

P. A. DALEY

Thursday
TUESDAY, THE 16TH DAY
OF SEPTEMBER, 2014

TRADE CAPITAL FINANCE CORP.

Applicant(s)

- and -

THE TORONTO-DOMINION BANK also known as TD CANADA TRUST, THE
BANK OF NOVA SCOTIA also known as SCOTIABANK, CANADIAN IMPERIAL
BANK OF COMMERCE also known as CIBC, ROYAL BANK OF CANADA also
known as RBC, BANK OF MONTREAL also known as BMO
and WELLS FARGO BANK, NATIONAL ASSOCIATION

Respondent(s)

ORDER

THIS MOTION, brought by the Applicant without notice for an Order amending the *Norwich Pharmacal* Order granted on October 28, 2013, was heard this day at the Brampton Courthouse, 7755 Hurontario Street, Brampton, Ontario.

ON READING the Motion Record and the Affidavits of Darcy Thompson and Amelia Cairra, filed, and the Records contained in the Court file, and on hearing the submissions of counsel for the Applicant,

- THIS COURT ORDERS** that the date on which the Order of Justice Ricchetti dated October 28, 2013 will expire is extended to January 23, 2015.

2. **THIS COURT ORDERS** that the Court file shall continue to be sealed until further Order of this Court to protect the confidentiality of the Application, any resulting Orders, and the conduct taken in compliance with any Order.

3. **THIS COURT ORDERS** that the Respondents, the Applicant and anyone that has or obtained knowledge of any of the Orders referred to herein or of this Order, are prohibited from disclosing the existence of any of such Orders or any act or conduct undertaken or any information or documents disclosed or produced in compliance with any of such Orders to any other person or party, except for the limited purposes of, complying with the Orders or obtaining legal advice with respect to compliance with the Orders. This provision does not apply to the Applicant and the Applicant's officers and directors for the purpose of,

- i. investigating, pursuing, furthering and/or prosecuting the Applicant's potential and/or actual claims;
- ii. negotiations or attempted negotiations of the resolution of the Applicant's potential and/or actual claims; and,
- iii. any investigation which may be carried out by the police.



TRADE CAPITAL FINANCE CORP.
(Applicant)

vs

THE TORONTO-DOMINION BANK et al
(Respondents)

Court File No. CV-13-4787-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brampton

ORDER

LOOPSTRA NIXON LLP
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Michael B. McWilliams
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Tel: (416) 746-4710
Fax: (416) 746-8319

Lawyers for the Applicant

Court File No. CV-13-478700

ONTARIO
SUPERIOR COURT OF JUSTICE
 APPLICATION UNDER Rule 14.05(3)(g) of the *Rules of Civil Procedure*

THE HONOURABLE

RICCHETTI

)
)
)FRIDAY 23RD
~~THURSDAY~~, THE 22ND DAY

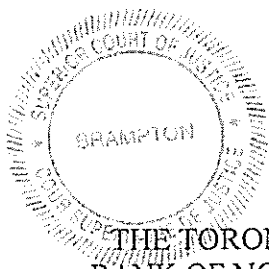
OF MAY, 2014

BETWEEN:

TRADE CAPITAL FINANCE CORP.

Applicant(s)

- and -



THE TORONTO-DOMINION BANK also known as TD CANADA TRUST, THE
 BANK OF NOVA SCOTIA also known as SCOTIABANK, CANADIAN IMPERIAL
 BANK OF COMMERCE also known as CIBC, ROYAL BANK OF CANADA also
 known as RBC, BANK OF MONTREAL also known as BMO
 and WELLS FARGO BANK, NATIONAL ASSOCIATION

Respondent(s)

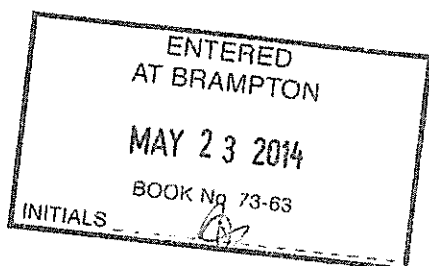
ORDER

THIS MOTION, brought by the Applicant without notice for an amending the *Norwich Pharmacal* Order granted on October 28, 2013, was heard this day at the Brampton Courthouse, 7755 Hurontario Street, Brampton, Ontario.

ON READING the Motion Record and the Affidavit of Susan Thompson and Amelia Cairra filed, and on hearing the submissions of counsel for the Applicant,

1. **THIS COURT ORDERS** that the date on which the Order of Justice Ricchetti dated October 28, 2013 will expire is extended to September 23, 2014.
2. **THIS COURT ORDERS** that the Court file shall continue to be sealed until further Order of this Court to protect the confidentiality of the Application, any resulting Orders, and the conduct taken in compliance with any Order.

3. **THIS COURT ORDERS** that the Respondents and any other party that has or obtains knowledge of the resulting Order, with the exception of the Applicant and its current officers and directors, are prohibited from disclosing the existence of the resulting Order or any act or conduct undertaken in compliance with the resulting Order to any other person or party, except for the limited purpose of complying with the Order or obtaining legal advice with respect to compliance with the Order or with respect to any investigation which may be carried out by the police.



TRADE CAPITAL FINANCE CORP.
(Applicant)

vs

THE TORONTO-DOMINION BANK et al
(Respondents)

Court File No. CV-13-4787-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **Brampton**

ORDER

LOOPSTRA NIXON LLP
Barristers and Solicitors
135 Queens Plate Drive
Suite 600
Toronto, Ontario
M9W 6V7

Michael B. McWilliams
LSUC#47320R
Tel: (416) 746-4710
Fax: (416) 746-8319

Lawyers for the Applicant

Court File No. CV-13-478700

ONTARIO
SUPERIOR COURT OF JUSTICE
 APPLICATION UNDER Rule 14.05(3)(g) of the *Rules of Civil Procedure*

THE HONOURABLE) THURS DAY, THE 6 DAY
 RICCHETTI)
) OF MARCH, 2014
 BETWEEN:

TRADE CAPITAL FINANCE CORP.

Applicant(s)

- and -

THE TORONTO-DOMINION BANK also known as TD CANADA TRUST, THE
 BANK OF NOVA SCOTIA also known as SCOTIABANK, CANADIAN IMPERIAL
 BANK OF COMMERCE also known as CIBC, ROYAL BANK OF CANADA also
 known as RBC, BANK OF MONTREAL also known as BMO
 and WELLS FARGO BANK, NATIONAL ASSOCIATION

Respondent(s)

ORDER

THIS MOTION, brought by the Applicant, for an Order amending the *Norwich Pharmacal* Order granted on October 28, 2013 and the Order of Justice Ricchetti dated December 19, 2013, was heard this day at the Brampton Courthouse, 7755 Hurontario Street, Brampton, Ontario.

ON READING the Motion Record and the Affidavit of Susan Thompson filed, and on hearing the submissions of counsel for the Applicant,

1. **THIS COURT ORDERS** that Buduchnist Credit Union Limited ("Buduchnist") disclose and produce to the Applicant, forthwith, copies of all correspondence, computer data, documents, records, transactions and activities from November 9, 2011 to the date of the expiry of the Order of Justice Ricchetti dated

October 28, 2013 in relation to any and all bank accounts that 1160378 Ontario Limited operating as The Cash House ("Cash House") maintains or has an interest in at Buduchnist.

2. **THIS COURT ORDERS** that the disclosure referred to in paragraph 1 shall include but not be limited to:

- i. all files, records, papers, notes, correspondence, memoranda, computer data and other records and information in Buduchnist's possession or control with respect to any transactions conducted by, or communications received in relation to, the accounts described in paragraph 1;
- ii. the identity of any persons or entities who instructed Buduchnist to conduct any business on behalf of any of the Cash House accounts described in paragraph 1, including the making of any payments or transfers to third parties, the identity of the payees, and particulars of the instructions and transactions; and,
- iii. the identity of any persons or entities to whom funds were transferred from the parties and accounts described in paragraph 1, and particulars of the instructions and the transactions.

3. **THIS COURT ORDERS** that Buduchnist disclose and produce to the Applicant, forthwith, copies of all correspondence, computer data, documents, records, transactions and activities with respect to the opening of the accounts and the signing

authority for the accounts that the Cash House maintains, or has an interest in, at Buduchnist.

4. **THIS COURT ORDERS** that paragraph 18 of the Order of Justice Ricchetti dated October 28, 2013 is amended to provide that it does not apply to the Applicant and the Applicant's officers and directors.

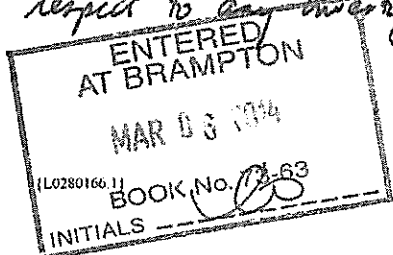
5. **THIS COURT ORDERS** that paragraph 3 of the Order of Justice Ricchetti dated December 19, 2013 is amended to provide that it does not apply to the Applicant and the Applicant's officers and directors.

6. **THIS COURT ORDERS** that the date on which the Order of Justice Ricchetti dated October 28, 2013 will expire is extended to May 26, 2014.

7. **THIS COURT ORDERS** that the Court file shall continue to be sealed until further Order of this Court to protect the confidentiality of the Application, any resulting Orders, and the conduct taken in compliance with any Order.

8. **THIS COURT ORDERS** that the Respondents, and any other party, that has or obtained knowledge of the resulting Orders, with the exception of the Applicant and its current officers and directors, are prohibited from disclosing the existence of the resulting Orders or any act or conduct undertaken in compliance with the resulting Orders to any other person or party, except for the limited purpose of complying with the Orders or obtaining legal advice with respect to compliance with the Orders. *or with*

respect to any investigation which may be carried out by the police.



Conrad Ricchetti

TRADE CAPITAL FINANCE CORP.
(Applicant)

vs

THE TORONTO-DOMINION BANK et al
(Respondents)

Court File No. CV-13-478700

**ONTARIO
SUPERIOR COURT OF JUSTICE**

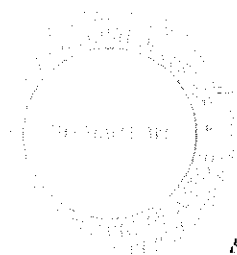
Proceeding commenced at **Brampton**

ORDER

LOOPSTRA NIXON LLP
Barristers and Solicitors
135 Queens Plate Drive
Suite 600
Toronto, Ontario
M9W 6V7

Michael B. McWilliams
LSUC#47320R
Tel: (416) 746-4710
Fax: (416) 746-8319

Lawyers for the Applicant



Court File No. CV-13-478700

ONTARIO
SUPERIOR COURT OF JUSTICE

APPLICATION UNDER Rule 14.05(3)(g) of the *Rules of Civil Procedure*

THE HONOURABLE
 JUSTICE RICCHETTI

)
)
)

THURSDAY, THE 19TH DAY

OF DECEMBER, 2013

B E T W E E N:

TRADE CAPITAL FINANCE CORP.

Applicant(s)

- and -


THE TORONTO-DOMINION BANK also known as TD CANADA TRUST, THE
 BANK OF NOVA SCOTIA also known as SCOTIABANK, CANADIAN IMPERIAL
 BANK OF COMMERCE also known as CIBC, ROYAL BANK OF CANADA also
 known as RBC, BANK OF MONTREAL also known as BMO
 and WELLS FARGO BANK, NATIONAL ASSOCIATION

Respondent(s)

O R D E R

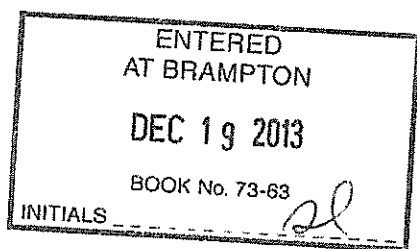
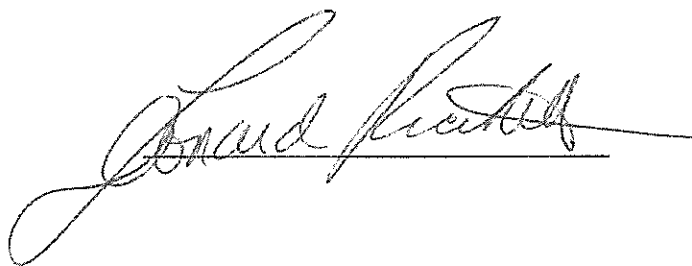
THIS MOTION, brought by the Applicant, for an extension of time for *Norwich Pharmacal* Order granted on October 28, 2013 was heard this day at the Brampton Courthouse, 7755 Hurontario Street, Brampton, Ontario.

ON READING the Motion Record and the Affidavit of Susan Thompson sworn on December 4, 2013, filed, and on hearing the submissions of counsel for the Applicant,,

1. **THIS COURT ORDERS** that the date on which the Order of Justice Ricchetti dated October 28, 2013 will expire is extended to March 27, 2014.
2. **THIS COURT ORDERS** that the Court file shall continue to be sealed until further Order of this Court to protect the confidentiality of the Application, any resulting Order, and the conduct taken in compliance with any Order.
3. **THIS COURT ORDERS** that the Respondents and any other party that has or obtained knowledge of the resulting Order are prohibited from disclosing the existence of the resulting Order or any act or conduct undertaken in compliance with the resulting Order to any other person or party, except for the limited purpose of complying with the Order or obtaining legal advice with respect to compliance with the Order.
4. **THIS COURT ORDERS** that the amount the Respondents are entitled to charge for a copy of particular bank draft, cheque, debit memo or wire transfer be limited to \$0.25 per item. 
5. **THIS COURT ORDERS** that paragraph 17 of the Order of Justice Ricchetti dated October 28, 2013 is amended to provide as follows:

“17. **THIS COURT ORDERS** that any bank or other financial institution to which any of the funds received by any of the parties or held in any of the accounts identified in paragraphs 2 to 13 inclusive have been subsequently transferred, sent or deposited, disclose and produce to the Applicant the same categories of information and documents in respect of those accounts into which the funds were transferred, sent or deposited and

the transactions pursuant to which the funds were transferred, sent or deposited into and out of those accounts as are required in paragraph 14 of this Order to be disclosed for the accounts described in paragraphs 2 to 13 inclusive, all for the period commencing November 9, 2011 to the date of the expiry of this Order.”



TRADE CAPITAL FINANCE CORP.
(Applicant)

VS

THE TORONTO-DOMINION BANK et al
(Respondents)

Court File No. CV-13-478700

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Brampton

ORDER

LOOPSTRA NIXON LLP

Barristers and Solicitors

135 Queens Plate Drive

Suite 600

Toronto, Ontario

M9W 6V7

Michael B. McWilliams

LSUC#47320R

Tel: (416) 746-4710

Fax: (416) 746-8319

Lawyers for the Applicant

TAB H

This is Exhibit "H" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.

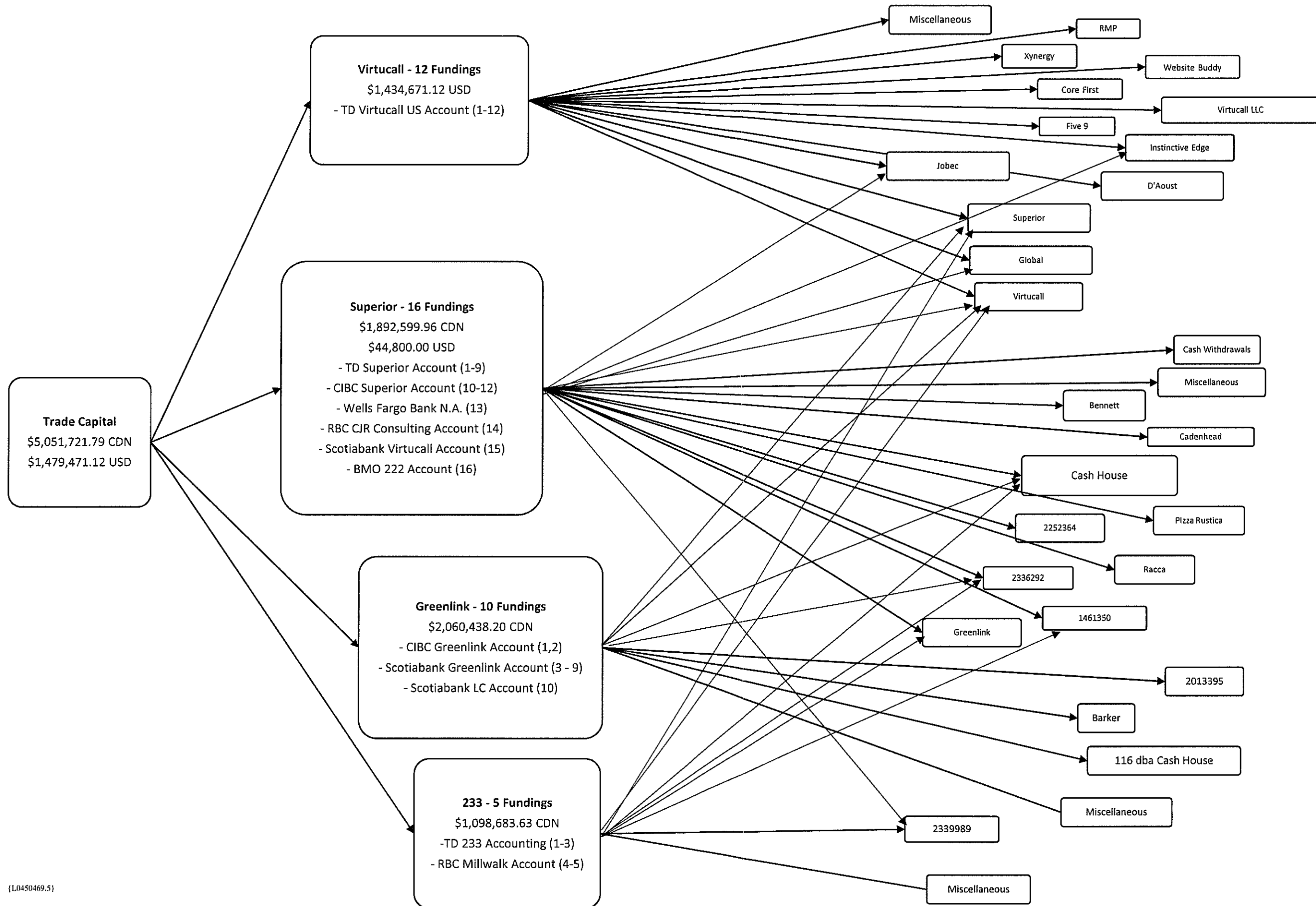


A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

Total transfers by Recipients

	Virtucall (USD)	Superior (USD)	Superior (CAD)	Greenlink	2339989	Total by Recipient (CAD)	Total by Recipient (USD)
Virtucall	\$460,048.20		\$695,670.67	\$593,385.00	\$442,000.00	\$1,731,055.67	\$460,048.20
Barker Global	\$524,750.00		\$67,000.00			\$67,000.00	\$524,750.00
Cash House			\$412,050.00	\$512,777.50	\$246,435.00	\$1,171,262.50	
1160376				\$347,000.00		\$347,000.00	
2336292			\$6,000.00			\$6,000.00	
Jobec	\$45,050.18		\$403,290.00			\$403,290.00	\$45,050.18
Greenlink Group			\$59,157.50		\$183,000.00	\$242,157.50	
2339989			\$32,007.50	\$35,000.00	\$77,246.05	\$144,253.55	
Rocky Racca			\$41,500.00			\$41,500.00	
2252364			\$103,200.00			\$103,200.00	
Pizza Rustica			\$5,000.00			\$5,000.00	
1461350			\$10,000.00	\$256,983.55	\$50,000.00	\$316,983.55	\$90,960.00
Instinctive Edge	\$46,160.00	\$44,800.00					
Cadenhead			\$1,000.00			\$1,000.00	
Chris Bennett			\$2,003.00			\$2,003.00	
Cash Withdrawals			\$6,350.00			\$6,350.00	
2013395				\$60,250.61		\$60,250.61	\$100,000.00
Superior	\$100,000.00			\$40,000.00	\$34,956.00	\$74,956.00	\$77,465.16
RMP Capital	\$77,465.16						\$37,259.95
Xynergy	\$37,259.95						\$38,751.00
Marc D'Aoust	\$38,751.00						\$89,276.00
Website Buddy	\$89,276.00						\$12,115.83
Five 9 Inc.	\$12,115.83						-\$9,790.00
Corefirst	-\$9,790.00						\$6,500.00
Virtucall LLC.	\$6,500.00					\$2,000.00	
Tom Barker	\$7,128.80	\$44,800.00	\$48,371.29	\$2,000.00	\$65,045.88	\$326,458.71	\$7,128.80
Miscellaneous		\$44,800.00	\$1,892,599.96	\$213,041.54	\$1,098,682.93	\$5,051,721.09	\$1,479,515.12
Total	\$1,434,715.12	\$44,800.00	\$1,892,599.96	\$2,060,438.20	\$1,098,682.93	\$5,051,721.09	\$1,479,515.12



TAB I

This is Exhibit "I" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

*Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires June 13, 2020.*

Request ID: 016235806
Transaction ID: 53602270
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2014/03/07 378
Time Report Produced: 12:08:43
Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
1160376	1160376 ONTARIO LIMITED	1995/12/12
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
		NOT APPLICABLE
1076 SWINBOURNE DRIVE		Amalgamation Ind.
		NOT APPLICABLE
MISSISSAUGA		New Amal. Number
ONTARIO		NOT APPLICABLE
CANADA L5V 1B9		Notice Date
		NOT APPLICABLE
Mailing Address		Letter Date
		NOT APPLICABLE
1076 SWINBOURNE DRIVE		Revival Date
		NOT APPLICABLE
MISSISSAUGA		Continuation Date
ONTARIO		NOT APPLICABLE
CANADA L5V 1B9		Transferred Out Date
		NOT APPLICABLE
		Cancel/Inactive Date
		NOT APPLICABLE
		EP Licence Eff.Date
		NOT APPLICABLE
		EP Licence Term.Date
		NOT APPLICABLE
		Date Commenced in Ontario
		NOT APPLICABLE
		Date Ceased in Ontario
		NOT APPLICABLE
Activity Classification	Number of Directors Minimum Maximum	
NOT AVAILABLE	00001 00010	

Request ID: 016235806
 Transaction ID: 53602270
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2014/03/10
 Time Report Produced: 12:08:43
 Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1160376	1160376 ONTARIO LIMITED

Corporate Name History	Effective Date
1160376 ONTARIO LIMITED	1995/12/12

Current Business Name(s) Exist:	NO
Expired Business Name(s) Exist:	NO

Administrator: Name (Individual / Corporation)	Address
JIM DE MARIA	296 ROGERS ROAD TORONTO ONTARIO CANADA M6E 1R3

Date Began	1995/12/12	First Director	YES
Designation	DIRECTOR	Officer Type	Resident Canadian
			Y

Request ID: 016235806
 Transaction ID: 53602270
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2014/03/10
 Time Report Produced: 12:08:43
 Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1160376	1160376 ONTARIO LIMITED

Administrator: Name (Individual / Corporation)	Address
JIM VINCE DE MARIA	296 ROGERS ROAD TORONTO ONTARIO CANADA M6E 1R3

Date Began	First Director	Resident Canadian
1995/12/12	NOT APPLICABLE	
Designation	Officer Type	
DIRECTOR		Y

Administrator: Name (Individual / Corporation)	Address
JIM VINCE DE MARIA	296 ROGERS ROAD TORONTO ONTARIO CANADA M6E 1R3

Date Began	First Director	Resident Canadian
1995/12/12	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	PRESIDENT	Y

Request ID: 016235806
 Transaction ID: 53602270
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2014/03/10
 Time Report Produced: 12:08:43
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CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1160376

1160376 ONTARIO LIMITED

Administrator:
 Name (Individual / Corporation)

Address

JIM
 VINCE
 DE MARIA

296 ROGERS ROAD

TORONTO
 ONTARIO
 CANADA M6E 1R3

Date Began

First Director

1995/12/12

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

TREASURER

Y

Administrator:
 Name (Individual / Corporation)

Address

CARLO
 VINCE
 DE MARIA

296 ROGERS ROAD

TORONTO
 ONTARIO
 CANADA M6E 1R3

Date Began

First Director

1995/12/12

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Request ID: 016235806
 Transaction ID: 53602270
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2014/03/10
 Time Report Produced: 12:08:43
 Page: 5

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1160376

1160376 ONTARIO LIMITED

Administrator:
 Name (Individual / Corporation)

Address

CARLO
 VINCE
 DE MARIA

296 ROGERS ROAD

TORONTO
 ONTARIO
 CANADA M6E 1R3

Date Began

First Director

1995/12/12

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

SECRETARY

Y

Administrator:
 Name (Individual / Corporation)

Address

JOE
 DE MARIA

296 ROGERS ROAD

TORONTO
 ONTARIO
 CANADA M6E 1R3

Date Began

First Director

1995/12/12

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Request ID: 016235806
Transaction ID: 53602270
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2014/03/10
Time Report Produced: 12:08:43
Page: 6

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1160376

1160376 ONTARIO LIMITED

Last Document Recorded

Act/Code Description

Form

Date

CIA ANNUAL RETURN 2012

1C

2013/11/09 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

Request ID: 016235807
Transaction ID: 53602278
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2014/03/10
Time Report Produced: 12:08:52
Page: 1

LIST OF CURRENT BUSINESS NAMES REGISTERED BY A CORPORATION

Ontario Corporation Number
1160376

CORPORATION NAME
1160376 ONTARIO LIMITED

REGISTRATION
DATE

BUSINESS
NAME

EXPIRY
DATE

BUSINESS
ID NUMBER

NO CURRENT BUSINESS NAMES ON FILE!

THE REPORT SETS OUT ALL BUSINESS NAMES REGISTERED OR RENEWED BY THE CORPORATION IN THE PAST 5 YEARS AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. IF MORE DETAILED INFORMATION IS REQUIRED, YOU MAY REQUEST A SEARCH AGAINST INDIVIDUAL NAMES SHOWN ON THIS REPORT.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

TAB J

This is Exhibit "J" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

Request ID: 015946283
 Transaction ID: 52777168
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2013/11/29
 Time Report Produced: 10:18:21
 Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
1488747	THE CASH HOUSE INC.	2001/08/10
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Ind.
325 ROGERS ROAD	NOT APPLICABLE	NOT APPLICABLE
TORONTO ONTARIO CANADA M6E 1R5	New Amal. Number	Notice Date
	NOT APPLICABLE	NOT APPLICABLE
Mailing Address		Letter Date
CARLO DE MARIA 325 ROGERS ROAD		NOT APPLICABLE
TORONTO ONTARIO CANADA M6E 1R5	Revival Date	Continuation Date
	NOT APPLICABLE	NOT APPLICABLE
	Transferred Out Date	Cancel/Inactive Date
	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Number of Directors Minimum Maximum	Date Commenced in Ontario
	00001 00010	NOT APPLICABLE
Activity Classification		Date Ceased in Ontario
NOT AVAILABLE		NOT APPLICABLE

Request ID: 015946283
 Transaction ID: 52777168
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2013/11/29
 Time Report Produced: 10:18:21
 Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1488747	THE CASH HOUSE INC.

Corporate Name History	Effective Date
THE CASH HOUSE INC.	2001/08/10

Current Business Name(s) Exist:	YES
Expired Business Name(s) Exist:	NO

Administrator: Name (Individual / Corporation)	Address
LIVIANNA DE MARIA	1074 SWINBOURNE DRIVE MISSISSAUGA ONTARIO CANADA L5V 1B9

Date Began	First Director	Resident Canadian
2010/01/01	NOT APPLICABLE	Y
Designation	Officer Type	
DIRECTOR		

Request ID: 015946283
 Transaction ID: 52777168
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2013/11/29
 Time Report Produced: 10:18:21
 Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number

1488747

Corporation Name

THE CASH HOUSE INC.

Administrator:
 Name (Individual / Corporation)

LIVIANNA
 DE MARIA

Address

1074 SWINBOURNE DRIVE

 MISSISSAUGA
 ONTARIO
 CANADA L5V 1B9

Date Began

2010/01/01

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

Administrator:
 Name (Individual / Corporation)

LIVIANNA
 DE MARIA

Address

1074 SWINBOURNE DRIVE

 MISSISSAUGA
 ONTARIO
 CANADA L5V 1B9

Date Began

2010/01/01

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Y

Request ID: 015946283
 Transaction ID: 52777168
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2013/11/29
 Time Report Produced: 10:18:21
 Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1488747	THE CASH HOUSE INC.

Administrator: Name (Individual / Corporation)	Address
CARLO DE MARIA	321 ROGERS ROAD TORONTO ONTARIO CANADA M6E 1R5

Date Began	First Director	Resident Canadian
2001/08/10	NOT APPLICABLE	
Designation	Officer Type	
DIRECTOR		Y

Administrator: Name (Individual / Corporation)	Address
CARLO DE MARIA	321 ROGERS ROAD TORONTO ONTARIO CANADA M6E 1R5

Date Began	First Director	Resident Canadian
2001/08/10	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	PRESIDENT	Y

Request ID: 015946283
Transaction ID: 52777168
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2013/11/29
Time Report Produced: 10:18:21
Page: 5

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1488747

THE CASH HOUSE INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2012	1C	2013/02/16 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

TAB K

This is Exhibit "K" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.



Son of suspected Ontario Mafia boss charged after police fraud investigation

nationalpost.com

2 mins read

A Toronto-area businessman who runs a payday loan and foreign exchange business — and is the son of a man named as a powerful Mafia boss in Ontario — has been arrested in what police call an ongoing fraud investigation.

Carlo DeMaria, 39, of Maple, Ont., north of Toronto, faces 10 charges, including fabricating evidence, identity theft, laundering the proceeds of crime and possession of property obtained by crime.

Mr. DeMaria is the owner of the Cash House and is the son of Vincenzo “Jimmy” DeMaria, who is currently imprisoned for an alleged breach of lifetime parole after a murder conviction in 1981.

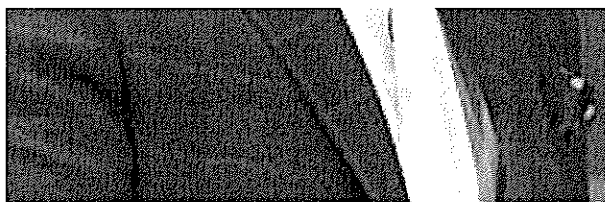
Mr. DeMaria and a co-accused, Frank Di Nardo, 32, of Brampton, the owner of SwiftX Foreign Exchange and Di Nardo Financial Inc., were asked in February about a number of cash transactions in excess of \$100,000, police said.

After business records were turned over to police through court order, police suspicion did not abate.

“Subsequent investigation led investigators to conclude that the provided materials were, in fact, altered, forged or otherwise fabricated records that had been created to divert suspicion away from the accused and other conspirators while falsely implicating certain other persons in criminal activity,” said Det.-Const. Sarath Thayalan, a Toronto police fraud investigator.

The transactions go back several years.





Facebook

Police are aware of Mr. DeMaria's relationship to Jimmy DeMaria but said he was not a part of the investigation.

"I am not aware of any role that Jimmy played in this," said Det.-Const. Thayalan. "This was not a probe into organized crime."

A message left for Mr. DeMaria at his business headquarters in Vaughan was not returned Friday.

Jimmy DeMaria's lawyer, John Hill, distanced his client from the business, saying, "Jim doesn't have an ownership position in the companies."

One of the Cash House locations named by police, however, on Rogers Road in Toronto, is the same location from which Jimmy DeMaria ran his former financial services business Invicta Financial.

It was at Invicta where Jimmy DeMaria was arrested in 2009 for an alleged parole violations.

The elder DeMaria remains in prison after a subsequent arrest for an alleged parole violation.

In 1981, Jimmy DeMaria confronted and shot dead a man at a Toronto fruit store over a \$2,000 debt. At his trial, he said he acted in self-defence, but evidence showed the victim was shot seven times in the back.

He was convicted of second-degree murder and released from prison on parole in 1992.

Authorities claim — but have not proven in court — that he progressed up the ranks of the 'Ndrangheta, the proper name of the Mafia that formed in Calabria, in southern Italy.

Jimmy DeMaria was named in court documents in Italy in 2010 as one of seven clan bosses controlling organized crime in the Greater Toronto Area, a contention he previously denied to the *National Post*.

The 'Ndrangheta is generally seen as the top of the food chain in Toronto's underworld.

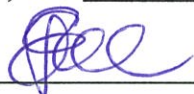
National Post

• *Email:* ahumphreys@nationalpost.com | *Twitter:*



TAB L

This is Exhibit "L" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

Court File No.: CV-15-2110-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE
RICCHETTI

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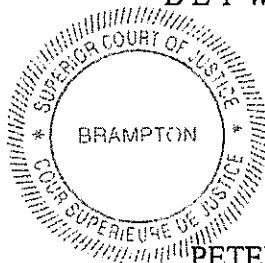
WEDNESDAY, THE 6TH
DAY OF MAY, 2015

BETWEEN:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -



PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

ORDER

- 2 -

NOTICE

If you, as a Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least five (5) days notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits any Defendant to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, brought without notice by the Plaintiff, TRADE CAPITAL FINANCE CORP., for an an interim Order in the form of a *Mareva* injunction restraining each of the Defendants, Peter Cook also known as Peter William Cook, Marc D'Aoust also known as Jean Marc D'Aoust, Thomas Barker also known as Thomas Richard Barker (personally and carrying on business as LC Exchange, Global Medical and Greenlink Canada Group), Rocky Racca, Bruno Didiomede also known as Bruno Diaiomedede, Alan Keery also known as Alan John Keery, Chris Bennett Jr. also known as Chris Bennett also known as Christopher Bennett (personally and carrying on business as CJR Consulting), Todd Cadenhead, Virtucall Inc., Debt Resolve-Mortgage Funding Solutions Inc. carrying on business as Debtresolve Inc., 2242116 Ontario Inc. carrying on business as Superior Medical Services Inc. and Superior Medical Services, The Cash House Inc., 1160376 Ontario Inc., Carlo De Maria also known as Carlo Vince De Maria also known as Carlo Vince De Maria also known as Carlo Vincenzo De Maria, Matteo Pennacchio, Frank Zito also known as Francesco Zito, Simone Sladkowski also known as Simona Sladkowski, Jobec Trade Finance Inc., 1461350 Ontario Inc., 2299430 Ontario Inc., WF Canada Limited, Jobec Investments RT Ltd., Green Link Canada Inc., 2339989 Ontario Inc., 2252364 Ontario Inc. and Millwalk Enterprises Inc. (collectively the "Mareva Defendants"), from dissipating their assets and other relief, was heard on May 4, 2015 at the Brampton Courthouse, 7755 Hurontario Street, Brampton Ontario.

ON READING the Affidavits of Darcy Thompson sworn April 30, 2015 and May 4, 2015, the Affidavit of Kevin D. Bousquet sworn April 27, 2015, and the Affidavit of Catherine Herring sworn April 27, 2015, and on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order as set out in the Guarantee of Parkview Capital TCFC Inc. dated April 29, 2015,

Mareva Injunction

1. **THIS COURT ORDERS** that each Mareva Defendant and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva Defendants, that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and,
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. **THIS COURT ORDERS** that paragraph 1 applies to all of the assets of each Mareva Defendant whether or not they are in such Defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Defendant. For the purpose of this order, a Defendant's assets include any asset which such Defendant has the power, directly or indirectly, to dispose of or deal with as if it were such Defendant's own. A Defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such Defendant's direct or indirect instructions.

Ordinary Living Expenses

3. **THIS COURT ORDERS** that any Defendant may apply for an order, on at least five (5) days notice to the Plaintiff, specifying the amount of funds which such Mareva Defendant seeks to have exempted from this Order as being needed and required by the Mareva Defendant for his/its ordinary living expenses and legal advice and representation.

Disclosure of Information

4. **THIS COURT ORDERS** that each Mareva Defendant prepare and provide to the Plaintiff's counsel of record within ten (10) days of the date of service of this Order, a sworn statement describing, in detail, the nature, value, and location of all assets worldwide, whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Defendant providing the sworn statement.

5. **THIS COURT ORDERS** that each Mareva Defendant submit to examinations under oath within thirty (30) days of the delivery by such Mareva Defendant of the aforementioned sworn statements or by such later date as may be confirmed by the Plaintiff's counsel of record. The Mareva Defendant shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Defendant.

6. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate a particular Mareva Defendant, such Mareva Defendant shall immediately seek an order within forty eight (48) hours permitting the Mareva Defendant not to answer the question or provide the information required to be provided herein or, alternatively, an order that any answer or information provided in accordance with this order shall not be admissible in any criminal proceedings in Canada, failing which, the Mareva Defendant shall answer any and all relevant questions regarding his/its financial affairs and assets.

Third Parties

7. **THIS COURT ORDERS** The Toronto-Dominion Bank also known as TD Canada Trust, The Bank of Nova Scotia also known as Scotiabank, Canadian Imperial Bank of Commerce also known as CIBC, Royal Bank of Canada also known as RBC, Bank of Montreal also known as BMO, City Savings and Credit Union Limited and the Buduchnist Credit Union Limited (the "Financial Institutions") to forthwith freeze and prevent any removal or transfer of monies or assets of the Mareva Defendants held in any account or on credit or on behalf of any Mareva Defendant with the Financial Institutions, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that the Financial Institutions forthwith disclose and deliver up to the Plaintiff any and all records held by the Financial Institutions, and not already delivered to the Plaintiff, in any way relating to the Mareva Defendants whether such documentation includes information relating to assets and accounts other than those listed in Schedule "A" hereto or disclose the existence, nature, value and location of any other monies or assets or credit, wherever situate, held by or on behalf of the Mareva Defendants.

Alternative Payment of Security into Court

9. **THIS COURT ORDERS** that this Order will cease to have effect as against the Mareva Defendants if the Mareva Defendants, or any of them, deposit with the Accountant of the Superior Court of Justice to the credit of this action in total the sum of \$10,000,000.00 (CDN).

Variation, Discharge or Extension of Order

10. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply, to the Court, to vary or discharge this order, on five (5) days' notice to the Plaintiff and all other parties.

11. **THIS COURT ORDERS** that this Order will be brought back before the Judge who issued this Order on **May 19, 2015 at 9:00 a.m.** All motions or applications to vary or discharge this Order, or arising out of the issuance or enforcement of this Order, shall be heard by the Judge who issued this Order with the exception of:

- 6 -

- (a) urgent matters for which the Judge is not available; or
- (b) as otherwise directed by the Judge.

Expiry of Norwich Order

12. **THIS COURT ORDERS** that upon this Order being issued and entered, the Order of Justice Ricchetti dated October 28, 2013 (as extended and amended) shall immediately expire.

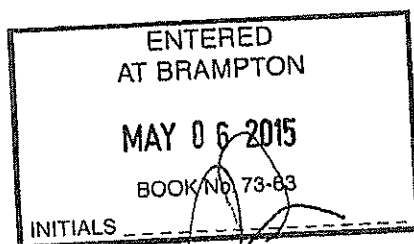
Service of Materials

13. **THIS COURT ORDERS** that the Plaintiff may serve the materials filed in relation to this Order, but not the order itself, on any person by attachments in PDF file format on a USB stick.

14. **THIS COURT ORDERS** that the Plaintiff shall, with this court within five (5) days of the issuance of this order, deposit the original guarantee of Parkview Capital TCFC Inc. dated April 29, 2015 as the Plaintiff's undertaking as to damages in this proceeding.

Sean Murphy

Ricchetti, J.



SCHEDULE "A"

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Virtucall TD US Virtucall Account	1038-7303753
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Global Medical Tom Barker Barker Global Account	1038-7303850
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Virtucall TD Virtucall Canadian Account	1038-5214772
TD Canada Trust	2453 Yonge Street Toronto, Ontario M4P 2H6	2242116 Ontario Inc. Superior TD Superior Account	1928-5233022
Canadian Imperial Bank of Commerce	136 Rexdale Boulevard Etobicoke, Ontario M9W 1P6	2242116 Ontario Inc. Superior CIBC Superior Account	05022-9956611
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc. TD 233 Account	1552-5270311
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc.	1552-7327733
Royal Bank of Canada	5125 Sheppard Avenue E Scarborough, Ontario M1S 4N8	CJR Consulting o/b Christopher Jr. Bennett RBC CJR Consulting Account	06492-1010289
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Virtucall Scotiabank Virtucall Account	10132-0073911
Canadian Imperial Bank of Canada	1 St. Clair Avenue West Toronto, Ontario M4V 1K7	Green Link Canada Inc. CIBC Greenlink Account	00112-4224213
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Greenlink Canada Group Tom Barker Scotiabank Greenlink Account	10132-0151319

- 8 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	LC Exchange Tom Barker Scotiabank LC Account	10132-0141216
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1067356
Royal Bank of Canada	99 Mapleview Drive W Barrie, Ontario L4N 9H7	Millwalk RBC Millwalk Account	00292-1010024
Canadian Imperial Bank of Commerce	291 Rexdale Boulevard Etobicoke, Ontario M9W 1R8	2252364 Ontario Inc. (Rocky Racca)	05922-9991514
Canadian Imperial Bank of Commerce	15 Westney Road N Unit 22 Ajax, Ontario L1T 1P4	Rocky Racca	02542-6194338
Royal Bank of Canada	2 Harwood Avenue South Ajax, Ontario L1S 7L8	Rocky Racca	00042-5169057
Buduchnist Credit Union	2280 Bloor Street West Toronto, Ontario M6S 1N9	1160376 Ontario Limited (o/a The Cash House)	37922
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1072075
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didiomede	0006-4615388
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didiomede	0006-8986451
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didiomede	0006-10081205986 (TFSA)
Bank of Montreal	999 Upper Wentworth Street Hamilton, Ontario L9A 4X5	Bruno Didiomede	2919-8019047

- 9 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Meridian Credit Union Limited	Jackson Square 2 King Street West Hamilton, Ontario L8P 1A1	Bruno Didiomede	00842-037-7454903
TD Mutual Funds TD Investment Services Inc. Toronto-Dominion Bank	55 King Street West Toronto, Ontario M5K 1A2	Bruno Didiomede	0004-10202- 06905235875 91 479 5510439
Manulife Bank of Canada Royal Bank of Canada	8 Prince Andrew Place Don Mills, Ontario M3C 2B4	Bruno Didiomede	0003-02234- 000009930769
TD Canada Trust	981 Taunton Road East Oshawa, Ontario L1H 7K5	Peter Cook	3202-n/a
Bank of Nova Scotia	544 Bayfield Street Barrie, Ontario L4M 5A2	Alan Keery	85092
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	3012-0003-1029909
Canadian Imperial Bank of Commerce	1700 Wilson Avenue North York, Ontario M3L 1B2	Rocky Racca	00922
Buduchnist Credit Union Limited	1891 Rathburn Road East Mississauga, Ontario L4W 3Z3	The Cash House Inc.	1163457311
Bank of Nova Scotia	8565 Highway 27 Vaughan, Ontario L4L 1A7	Francesco Zito	42952-0045624
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Tom Barker	10132
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	03012-4002010
Canadian Imperial Bank of Commerce	7220 Kennedy Road Markham, Ontario L3R 7P2	Matteo Pennacchio	03232

- 10 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	n/a	Todd Cadenhead	01238400
Wells Fargo Bank, N.A.	n/a	Marc D'Aoust	1221-0527-84 1221-0537-84

TRADE CAPITAL FINANCE CORP.
(Plaintiff)

vs

PETER COOK et al
(Defendants)

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **Brampton**

ORDER

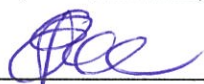
LOOPSTRA NIXON LLP
Barristers and Solicitors
135 Queens Plate Drive
Suite 600
Toronto, Ontario
M9W 6V7

Michael B. McWilliams
LSUC#47320R
Tel: (416) 746-4710
Fax: (416) 746-8319

Lawyers for the Plaintiff

TAB M

This is Exhibit "M" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

(1)

ENDORSEMENT

Short Style of Cause: TRADE CAPITAL v. Cook et al File No. CV - 15 - 2110 - 00

Date	Counsel	
May 11/2015	CHAMBERS	<p>Trade Capital seeks a Mareva injunction. I advised Trade Capital's counsel on May 5, 2015 that the order would issue. A form of order was approved on May 6, 2015. I advised written reasons for issuance of the Mareva injunction. These are those reasons.</p> <p>This motion was heard ex parte. The materials were voluminous.</p> <p>Trade Capital purchases accounts receivables at a discount from face value. Mr. Cook was the president of Trade Capital. Unbeknownst to Trade Capital, Mr. Cook arranged for payment of approximately \$7 million in receivables which it turns out were entirely fraudulent. Mr. Cook, with the some of the other defendants, produced and fraudulently verified the receivables to Trade Capital. Trade Capital made payments totaling almost 7 million dollars. Mr. Cook was confronted to regarding the fraud. He admitted to the fraudulent scheme. The Defendants are those persons/entities which participated in the fraudulent</p>

ENDORSEMENT

Short Style of Cause:

File No. CV-15-2110-00

Date	Counsel	
		<p>Scheme or who were the recipient of the monies obtained from or through the fraudulent scheme.</p> <p>Trade Capital obtained from the Court a Norwich Order which order was extended on several occasions, to permit Trade Capital to obtain documentation regarding the fraudulent scheme and the trail of monies generated by this fraudulent scheme.</p> <p>Should an ex parte Mareva Injunction issue?</p> <p>① Strong Prima Facie Case.</p> <p>Trade Capital has satisfied this court that a strong prima facie claim of fraud has been made out. The evidence, which includes Mr. Cook's confession, is overwhelming that a fraud was carried out against Trade Capital.</p> <p>The evidence also establishes that each of the defendants perpetrated, facilitated or received the proceeds of a fraudulent scheme against Trade Capital.</p>

ENDORSEMENT

Short Style of Cause:

File No. CV-15-2110-00

Date	Counsel	
		<u>Full Disclosure.</u>
		The materials are voluminous. There are, based on the materials filed, no obvious shortcomings in the materials showing the details of the documented fraudulent scheme.
		<u>Defendants</u>
		Each of the Defendants is incorporated or resides in Ontario. Many have bank accounts which are involved in the transfer or receipt of the proceeds from the fraudulent scheme.
		I am satisfied that the Defendants have assets in Ontario.
		<u>Risk of Disposal.</u>
		This was a very complex fraud. The Defendants went to great lengths to perpetrate this fraud. The monies were traced into numerous accounts. Clearly, unless a Mareva injunction is granted, I am satisfied that there is a

January 25/02

Page No. _____

ENDORSEMENT

Short Style of Cause:

File No. CV-15-2110-00

Date	Counsel	
		<p>very real risk that the proceeds from the fraud would be disposed of or transferred beyond the jurisdiction of this court.</p>
		<p><u>Undertaking:</u> In my view an undertaking as to damages must be provided. A guarantee has been proffered by Parkview Capital as Trade Capital's undertaking would have little financial strength. As a result, I am satisfied that Parkview's guarantee is sufficient at this stage of the proceeding.</p>
		<p>The order shall issue.</p>
		<p style="text-align: right;"><i>Paul Rockett</i></p>

TAB N

This is Exhibit "N" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

O'Leary, Dylan

From: Caira, Amy
Sent: May 6, 2015 2:11 PM
To: 'OProciukCiz@buduchnist.com'; 'President&CEO@buduchnist.com'
Cc: McWilliams, Michael
Subject: Trade Capital Finance v. Cook et al
Attachments: Letter to Buduchnist Credit Union Limited - May 6, 2015 (L0456832xC2C1F).pdf

Importance: High

Dear Ms. Prociuk,

Attached please find correspondence from Mr. McWilliams.

Yours truly,

Amy Caira

Law Clerk to Michael B. McWilliams
and Alison R. Carr

Direct Line: (416) 746-4718 Ext 265
Email:acaira@loonix.com

Loopstra Nixon LLP

Barristers & Solicitors
135 Queens Plate Drive, Suite 600
Toronto, Ontario Canada M9W 6V7
Telephone: (416) 746-4710
Facsimile: (416) 746-8319
Website: www.loopstranixon.com

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WARNING: Email communications cannot be guaranteed to be timely, secure, error free or virus free.



LOOPSTRA NIXON LLP

BARRISTERS AND SOLICITORS

Michael B. McWilliams*
 *Michael B. McWilliams Professional Corporation
 Direct Line: 416-748-4766
 E-mail: mmcwilliams@loonix.com

May 6, 2015

Buduchnist Credit Union Limited
 2280 Bloor Street West
 Toronto, Ontario
 M6S 1N9

Attention: Oksana Prociuk *Hand Delivered, sent by E-Mail and Facsimile*

Buduchnist Credit Union Limited
 1891 Rathburn Road East
 Mississauga, Ontario
 L4W 3Z3

Attention: Branch Manager *Hand Delivered*

Dear Sirs and Mesdames:

Re: Trade Capital Finance Corp. and Peter Cook et al
Re: The Cash House Inc. and 1160376 Ontario Limited
Our File No. TCFC010

Enclosed please find the Mareva Order of Justice Ricchetti dated May 6, 2015 ("Mareva Order"), which is served upon you pursuant to the *Rules of Civil Procedure*.

Please read the Mareva Order carefully and in its entirety. **The Mareva Order requires that you forthwith freeze and prevent any removal or transfer of monies or assets of the individuals and corporations referred to in the Mareva Order held in any account or on credit for or on behalf of them.** You may continue to accept deposits into the frozen accounts.

Any person who knows of this Order and does anything which helps or permits anyone to breach the terms of this Mareva Order may be held to be in contempt of Court and may be imprisoned, fined or have their assets seized. You are advised to consult your lawyers as soon as possible.



Please feel free to contact the undersigned with any questions or concerns.

Yours truly,

LOOPSTRA NIXON LLP

Per:

A handwritten signature in black ink, appearing to read "Michael B. McWilliams".

Michael B. McWilliams

MBM/ac
Enclosure

cc *Trade Capital Finance Corp.*

Court File No.: CV-15-2110-03

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE
 RICCHETTI

)
)
)

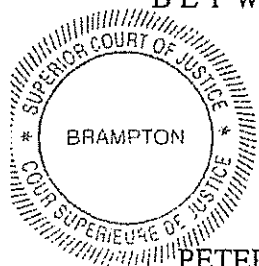
WEDNESDAY, THE 6TH
 DAY OF MAY, 2015

BETWEEN:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -



PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 22421 16 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

ORDER

- 2 -

NOTICE

If you, as a Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least five (5) days notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits any Defendant to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, brought without notice by the Plaintiff, TRADE CAPITAL FINANCE CORP., for an an interim Order in the form of a *Mareva* injunction restraining each of the Defendants, Peter Cook also known as Peter William Cook, Marc D'Aoust also known as Jean Marc D'Aoust, Thomas Barker also known as Thomas Richard Barker (personally and carrying on business as LC Exchange, Global Medical and Greenlink Canada Group), Rocky Racca, Bruno Didiomede also known as Bruno Diaiomede, Alan Keery also known as Alan John Keery, Chris Bennett Jr. also known as Chris Bennett also known as Christopher Bennett (personally and carrying on business as CJR Consulting), Todd Cadenhead, Virtucall Inc., Debt Resolve-Mortgage Funding Solutions Inc. carrying on business as Debtresolve Inc., 2242116 Ontario Inc. carrying on business as Superior Medical Services Inc. and Superior Medical Services, The Cash House Inc., 1160376 Ontario Inc., Carlo De Maria also known as Carlo Vince De Maria also known as Carlo Vince De Maria also known as Carlo Vincenzo De Maria, Matteo Pennacchio, Frank Zito also known as Francesco Zito, Simone Sladkowski also known as Simona Sladkowski, Jobec Trade Finance Inc., 1461350 Ontario Inc., 2299430 Ontario Inc., WF Canada Limited, Jobec Investments RT Ltd., Green Link Canada Inc., 2339989 Ontario Inc., 2252364 Ontario Inc. and Millwalk Enterprises Inc. (collectively the "Mareva Defendants"), from dissipating their assets and other relief, was heard on May 4, 2015 at the Brampton Courthouse, 7755 Hurontario Street, Brampton Ontario.

- 3 -

ON READING the Affidavits of Darcy Thompson sworn April 30, 2015 and May 4, 2015, the Affidavit of Kevin D. Bousquet sworn April 27, 2015, and the Affidavit of Catherine Herring sworn April 27, 2015, and on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order as set out in the Guarantee of Parkview Capital TCFC Inc. dated April 29, 2015,

Mareva Injunction

1. **THIS COURT ORDERS** that each Mareva Defendant and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva Defendants, that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and,
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. **THIS COURT ORDERS** that paragraph 1 applies to all of the assets of each Mareva Defendant whether or not they are in such Defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Defendant. For the purpose of this order, a Defendant's assets include any asset which such Defendant has the power, directly or indirectly, to dispose of or deal with as if it were such Defendant's own. A Defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such Defendant's direct or indirect instructions.

Ordinary Living Expenses

3. **THIS COURT ORDERS** that any Defendant may apply for an order, on at least five (5) days notice to the Plaintiff, specifying the amount of funds which such Mareva Defendant seeks to have exempted from this Order as being needed and required by the Mareva Defendant for his/its ordinary living expenses and legal advice and representation.

Disclosure of Information

4. **THIS COURT ORDERS** that each Mareva Defendant prepare and provide to the Plaintiff's counsel of record within ten (10) days of the date of service of this Order, a sworn statement describing, in detail, the nature, value, and location of all assets worldwide, whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Defendant providing the sworn statement.

5. **THIS COURT ORDERS** that each Mareva Defendant submit to examinations under oath within thirty (30) days of the delivery by such Mareva Defendant of the aforementioned sworn statements or by such later date as may be confirmed by the Plaintiff's counsel of record. The Mareva Defendant shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Defendant.

6. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate a particular Mareva Defendant, such Mareva Defendant shall immediately seek an order within forty eight (48) hours permitting the Mareva Defendant not to answer the question or provide the information required to be provided herein or, alternatively, an order that any answer or information provided in accordance with this order shall not be admissible in any criminal proceedings in Canada, failing which, the Mareva Defendant shall answer any and all relevant questions regarding his/its financial affairs and assets.

Third Parties

7. **THIS COURT ORDERS** The Toronto-Dominion Bank also known as TD Canada Trust, The Bank of Nova Scotia also known as Scotiabank, Canadian Imperial Bank of Commerce also known as CIBC, Royal Bank of Canada also known as RBC, Bank of Montreal also known as BMO, City Savings and Credit Union Limited and the Buduchnist Credit Union Limited (the "Financial Institutions") to forthwith freeze and prevent any removal or transfer of monies or assets of the Mareva Defendants held in any account or on credit or on behalf of any Mareva Defendant with the Financial Institutions, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that the Financial Institutions forthwith disclose and deliver up to the Plaintiff any and all records held by the Financial Institutions, and not already delivered to the Plaintiff, in any way relating to the Mareva Defendants whether such documentation includes information relating to assets and accounts other than those listed in Schedule "A" hereto or disclose the existence, nature, value and location of any other monies or assets or credit, wherever situate, held by or on behalf of the Mareva Defendants.

Alternative Payment of Security into Court

9. **THIS COURT ORDERS** that this Order will cease to have effect as against the Mareva Defendants if the Mareva Defendants, or any of them, deposit with the Accountant of the Superior Court of Justice to the credit of this action in total the sum of \$10,000,000.00 (CDN).

Variation, Discharge or Extension of Order

10. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply, to the Court, to vary or discharge this order, on five (5) days' notice to the Plaintiff and all other parties.

11. **THIS COURT ORDERS** that this Order will be brought back before the Judge who issued this Order on **May 19, 2015 at 9:00 a.m.** All motions or applications to vary or discharge this Order, or arising out of the issuance or enforcement of this Order, shall be heard by the Judge who issued this Order with the exception of:

- 6 -

- (a) urgent matters for which the Judge is not available; or
- (b) as otherwise directed by the Judge.

Expiry of Norwich Order

12. **THIS COURT ORDERS** that upon this Order being issued and entered, the Order of Justice Ricchetti dated October 28, 2013 (as extended and amended) shall immediately expire.

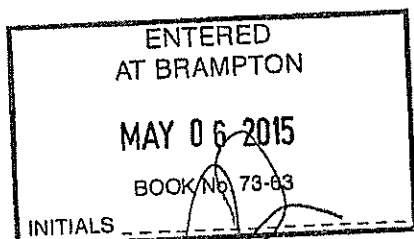
Service of Materials

13. **THIS COURT ORDERS** that the Plaintiff may serve the materials filed in relation to this Order, but not the order itself, on any person by attachments in PDF file format on a USB stick.

14. **THIS COURT ORDERS** that the Plaintiff shall, with this court within five (5) days of the issuance of this order, deposit the original guarantee of Parkview Capital TCFC Inc. dated April 29, 2015 as the Plaintiff's undertaking as to damages in this proceeding.

Sean Murphy

Ricchetti, J.



SCHEDULE "A"

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
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TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Global Medical Tom Barker Barker Global Account	1038-7303850
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TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc.	1552-7327733
Royal Bank of Canada	5125 Sheppard Avenue E Scarborough, Ontario M1S 4N8	CJR Consulting o/b Christopher Jr. Bennett RBC CJR Consulting Account	06492-1010289
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Virtucall Scotiabank Virtucall Account	10132-0073911
Canadian Imperial Bank of Canada	1 St. Clair Avenue West Toronto, Ontario M4V 1K7	Green Link Canada Inc. CIBC Greenlink Account	00112-4224213
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Greenlink Canada Group Tom Barker Scotiabank Greenlink Account	10132-0151319

- 8 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
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Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1067356
Royal Bank of Canada	99 Mapleview Drive W Barrie, Ontario L4N 9H7	Millwalk RBC Millwalk Account	00292-1010024
Canadian Imperial Bank of Commerce	291 Rexdale Boulevard Etobicoke, Ontario M9W 1R8	2252364 Ontario Inc. (Rocky Racca)	05922-9991514
Canadian Imperial Bank of Commerce	15 Westney Road N Unit 22 Ajax, Ontario L1T 1P4	Rocky Racca	02542-6194338
Royal Bank of Canada	2 Harwood Avenue South Ajax, Ontario L1S 7L8	Rocky Racca	00042-5169057
Buduchnist Credit Union	2280 Bloor Street West Toronto, Ontario M6S 1N9	1160376 Ontario Limited (o/a The Cash House)	37922
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1072075
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didimedede	0006-4615388
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didimedede	0006-8986451
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didimedede	0006-10081205986 (TFSA)
Bank of Montreal	999 Upper Wentworth Street Hamilton, Ontario L9A 4X5	Bruno Didimedede	2919-8019047

- 9 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Meridian Credit Union Limited	Jackson Square 2 King Street West Hamilton, Ontario L8P 1A1	Bruno Didionede	00842-037-7454903
TD Mutual Funds TD Investment Services Inc. Toronto-Dominion Bank	55 King Street West Toronto, Ontario M5K 1A2	Bruno Didionede	0004-10202- 06905235875 91 479 5510439
Manulife Bank of Canada Royal Bank of Canada	8 Prince Andrew Place Don Mills, Ontario M3C 2B4	Bruno Didionede	0003-02234- 000009930769
TD Canada Trust	981 Taunton Road East Oshawa, Ontario L1H 7K5	Peter Cook	3202-n/a
Bank of Nova Scotia	544 Bayfield Street Barrie, Ontario L4M 5A2	Alan Keery	85092
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	3012-0003-1029909
Canadian Imperial Bank of Commerce	1700 Wilson Avenue North York, Ontario M3L 1B2	Rocky Racca	00922
Buduchnist Credit Union Limited	1891 Rathburn Road East Mississauga, Ontario L4W 3Z3	The Cash House Inc.	1163457311
Bank of Nova Scotia	8565 Highway 27 Vaughan, Ontario L4L 1A7	Francesco Zito	42952-0045624
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Tom Barker	10132
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	03012-4002010
Canadian Imperial Bank of Commerce	7220 Kennedy Road Markham, Ontario L3R 7P2	Matteo Pennacchio	03232

- 10 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	n/a	Todd Cadenhead	01238400
Wells Fargo Bank, N.A.	n/a	Marc D'Aoust	1221-0527-84 1221-0537-84

TRADE CAPITAL FINANCE CORP.
(Plaintiff)

vs

PETER COOK et al
(Defendants)

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brampton

ORDER

LOOPSTRA NIXON LLP
Barristers and Solicitors
135 Queens Plate Drive
Suite 600
Toronto, Ontario
M9W 6V7

Michael B. McWilliams
LSUC#47320R
Tel: (416) 746-4710
Fax: (416) 746-8319
Lawyers for the Plaintiff

TAB O

This is Exhibit "O" referred to in the
Affidavit of Darcy Thompson sworn before
me, this ____ 12th ____ day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.



LOOPSTRA NIXON LLP

BARRISTERS AND SOLICITORS

Michael B. McWilliams*

*Michael B. McWilliams Professional Corporation

Direct Line: 416-748-4766

E-mail: mmcwilliams@loonix.com

May 6, 2015

Buduchnist Credit Union Limited
2280 Bloor Street West
Toronto, Ontario
M6S 1N9

Attention: Oksana Prociuk *Hand Delivered, sent by E-Mail and Facsimile*

Buduchnist Credit Union Limited
1891 Rathburn Road East
Mississauga, Ontario
L4W 3Z3

Attention: Branch Manager *Hand Delivered*

Dear Sirs and Mesdames:

Re: Trade Capital Finance Corp. and Peter Cook et al
Re: The Cash House Inc. and 1160376 Ontario Limited
Our File No. TCFC010

Enclosed please find the Mareva Order of Justice Ricchetti dated May 6, 2015 ("Mareva Order"), which is served upon you pursuant to the *Rules of Civil Procedure*.

Please read the Mareva Order carefully and in its entirety. **The Mareva Order requires that you forthwith freeze and prevent any removal or transfer of monies or assets of the individuals and corporations referred to in the Mareva Order held in any account or on credit for or on behalf of them. You may continue to accept deposits into the frozen accounts.**

Any person who knows of this Order and does anything which helps or permits anyone to breach the terms of this Mareva Order may be held to be in contempt of Court and may be imprisoned, fined or have their assets seized. You are advised to consult your lawyers as soon as possible.



Please feel free to contact the undersigned with any questions or concerns.

Yours truly,

LOOPSTRA NIXON LLP

Per:

A handwritten signature in black ink, appearing to read "Michael B. McWilliams". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael B. McWilliams

MBM/ac

Enclosure

cc *Trade Capital Finance Corp.*

HP LaserJet Pro MFP M521dn

Fax Confirmation

May-6-2015 2:17PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
8977	5/ 6/2015	2:12:30PM	Send	4167634512	5:06	14	OK

LOOPSTRA NIXON LLP

BARRISTERS AND SOLICITORS

WOODBINE PLACE, 135 QUEENS PLATE DRIVE, SUITE 600
TORONTO, ONTARIO, CANADA M9W 6V7
www.loopstranixon.com

FACSIMILE TRANSMISSION PAGE

Date: May 6, 2015

TO:	FACSIMILE NO.:	VOICE NO.:
Okeana Procluk Buduchniat Credit Union	(416) 763-4512	
FROM:	FACSIMILE NO.:	DIRECT DIAL:
Michael B. McWilliams mmcwilliams@loopnix.com	(416) 746-8319	(416) 748-4766

TOTAL NUMBER OF PAGES INCLUDING COVER PAGE: 14

ORIGINAL SENT VIA: Courier Mail Retained in file

X

OUR FILE NO.: TCFC010

FURTHER INSTRUCTIONS:

CONFIDENTIAL

Please contact Amy Cairns at (416) 746-4710 if you did not receive all the pages.

CONFIDENTIALITY NOTE

This facsimile transmission, including all attachments, is directed in confidence solely to the person(s) named above, or an authorized recipient, and may not otherwise be distributed, copied or disclosed. The contents of this transmission may also be subject to solicitor-client privilege and all rights to that privilege are expressly claimed and are not waived. If you have received this transmission in error, please notify the sender immediately by telephone and then immediately destroy this transmission, including all attachments, without copying, distributing or disclosing same.

Court File No.: CV-15-2110-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE
RICCHETTI

)
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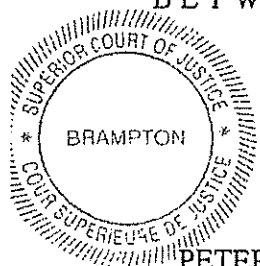
WEDNESDAY, THE 6TH
DAY OF MAY, 2015

BETWEEN:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -



PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

ORDER

- 2 -

NOTICE

If you, as a Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least five (5) days notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits any Defendant to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, brought without notice by the Plaintiff, TRADE CAPITAL FINANCE CORP., for an an interim Order in the form of a *Mareva* injunction restraining each of the Defendants, Peter Cook also known as Peter William Cook, Marc D'Aoust also known as Jean Marc D'Aoust, Thomas Barker also known as Thomas Richard Barker (personally and carrying on business as LC Exchange, Global Medical and Greenlink Canada Group), Rocky Racca, Bruno Didiomede also known as Bruno Diaiomede, Alan Keery also known as Alan John Keery, Chris Bennett Jr. also known as Chris Bennett also known as Christopher Bennett (personally and carrying on business as CJR Consulting), Todd Cadenhead, Virtucall Inc., Debt Resolve-Mortgage Funding Solutions Inc. carrying on business as Debtresolve Inc., 2242116 Ontario Inc. carrying on business as Superior Medical Services Inc. and Superior Medical Services, The Cash House Inc., 1160376 Ontario Inc., Carlo De Maria also known as Carlo Vince De Maria also known as Carlo Vince De Maria also known as Carlo Vincenzo De Maria, Matteo Pennacchio, Frank Zito also known as Francesco Zito, Simone Sladkowski also known as Simona Sladkowski, Jobec Trade Finance Inc., 1461350 Ontario Inc., 2299430 Ontario Inc., WF Canada Limited, Jobec Investments RT Ltd., Green Link Canada Inc., 2339989 Ontario Inc., 2252364 Ontario Inc. and Millwalk Enterprises Inc. (collectively the "Mareva Defendants"), from dissipating their assets and other relief, was heard on May 4, 2015 at the Brampton Courthouse, 7755 Hurontario Street, Brampton Ontario.

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1. **THIS COURT ORDERS** that each Mareva Defendant and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

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2. **THIS COURT ORDERS** that paragraph 1 applies to all of the assets of each Mareva Defendant whether or not they are in such Defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Defendant. For the purpose of this order, a Defendant's assets include any asset which such Defendant has the power, directly or indirectly, to dispose of or deal with as if it were such Defendant's own. A Defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such Defendant's direct or indirect instructions.

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- (a) urgent matters for which the Judge is not available; or
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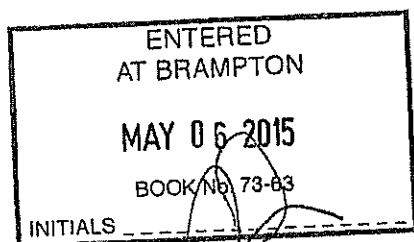
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Sean Murphy

Ricchetti, J.



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Royal Bank of Canada	99 Mapleview Drive W Barrie, Ontario L4N 9H7	Millwalk RBC Millwalk Account	00292-1010024
Canadian Imperial Bank of Commerce	291 Rexdale Boulevard Etobicoke, Ontario M9W 1R8	2252364 Ontario Inc. (Rocky Racca)	05922-9991514
Canadian Imperial Bank of Commerce	15 Westney Road N Unit 22 Ajax, Ontario L1T 1P4	Rocky Racca	02542-6194338
Royal Bank of Canada	2 Harwood Avenue South Ajax, Ontario L1S 7L8	Rocky Racca	00042-5169057
Buduchnist Credit Union	2280 Bloor Street West Toronto, Ontario M6S 1N9	1160376 Ontario Limited (o/a The Cash House)	37922
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1072075
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didimede	0006-4615388
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didimede	0006-8986451
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didimede	0006-10081205986 (TFSA)
Bank of Montreal	999 Upper Wentworth Street Hamilton, Ontario L9A 4X5	Bruno Didimede	2919-8019047

- 9 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Meridian Credit Union Limited	Jackson Square 2 King Street West Hamilton, Ontario L8P 1A1	Bruno Didiomede	00842-037-7454903
TD Mutual Funds TD Investment Services Inc. Toronto-Dominion Bank	55 King Street West Toronto, Ontario M5K 1A2	Bruno Didiomede	0004-10202- 06905235875 91 479 5510439
Manulife Bank of Canada Royal Bank of Canada	8 Prince Andrew Place Don Mills, Ontario M3C 2B4	Bruno Didiomede	0003-02234- 000009930769
TD Canada Trust	981 Taunton Road East Oshawa, Ontario L1H 7K5	Peter Cook	3202-n/a
Bank of Nova Scotia	544 Bayfield Street Barrie, Ontario L4M 5A2	Alan Keery	85092
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	3012-0003-1029909
Canadian Imperial Bank of Commerce	1700 Wilson Avenue North York, Ontario M3L 1B2	Rocky Racca	00922
Buduchnist Credit Union Limited	1891 Rathburn Road East Mississauga, Ontario L4W 3Z3	The Cash House Inc.	1163457311
Bank of Nova Scotia	8565 Highway 27 Vaughan, Ontario L4L 1A7	Francesco Zito	42952-0045624
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Tom Barker	10132
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	03012-4002010
Canadian Imperial Bank of Commerce	7220 Kennedy Road Markham, Ontario L3R 7P2	Matteo Pennacchio	03232

- 10 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	n/a	Todd Cadenhead	01238400
Wells Fargo Bank, N.A.	n/a	Marc D'Aoust	1221-0527-84 1221-0537-84

TRADE CAPITAL FINANCE CORP.
(Plaintiff)

VS

PETER COOK et al
(Defendants)

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brampton

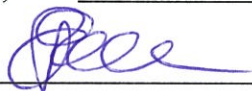
ORDER

LOOPSTRA NIXON LLP
Barristers and Solicitors
135 Queens Plate Drive
Suite 600
Toronto, Ontario
M9W 6V7

Michael B. McWilliams
LSUC#47320R
Tel: (416) 746-4710
Fax: (416) 746-8319
Lawyers for the Plaintiff

TAB P

This is Exhibit "P" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

O'Leary, Dylan

From: Caira, Amy
Sent: May 6, 2015 2:16 PM
To: 'Grossman, Barbara'
Cc: McWilliams, Michael
Subject: *URGENT* Trade Capital Finance Corp. v. Peter Cook et al (Buduchnist Credit Union)
Attachments: Letter to Barbara Grossman - May 6, 2015 (L0456892xC2C1F).pdf

Importance: High

Dear Ms. Grossman,

Attached please find correspondence from Mr. McWilliams.

Yours truly,

Amy Caira

Law Clerk to Michael B. McWilliams
and Alison R. Carr

Direct Line: (416) 746-4718 Ext 265

Email: acaira@loonix.com

Loopstra Nixon LLP

Barristers & Solicitors
135 Queens Plate Drive, Suite 600
Toronto, Ontario Canada M9W 6V7

Telephone: (416) 746-4710

Facsimile: (416) 746-8319

Website: www.loopstranixon.com

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LOOPSTRA NIXON LLP

BARRISTERS AND SOLICITORS

Michael B. McWilliams*

*Michael B. McWilliams Professional Corporation

Direct Line: 416-748-4766

E-mail: mmcwilliams@loonix.com

May 6, 2015

SENT BY E-MAIL

Dentons LLP
77 King Street West, Suite 400
Toronto, Ontario
M5K 0A1

Attention: Barbara Grossman

Dear Ms. Grossman

Re: Trade Capital Finance Corp. and Peter Cook et al
Re: Buduchnist Credit Union Limited
Our File No. TCFC010

Enclosed please find the Mareva Order of Justice Ricchetti dated May 6, 2015 ("Mareva Order"), which is served upon you pursuant to the *Rules of Civil Procedure*. A copy of this Mareva Order has been served personally on your client, Buduchnist Credit Union Limited.

Please read the Mareva Order carefully and in its entirety. **The Mareva Order requires that your client forthwith freeze and prevent any removal or transfer of monies or assets of the individuals and corporations referred to in the Mareva Order held in any account or on credit for or on behalf of them.** Your client may continue to accept deposits into the frozen accounts.

Any person who knows of this Order and does anything which helps or permits anyone to breach the terms of this Mareva Order may be held to be in contempt of Court and may be imprisoned, fined or have their assets seized.

Please feel free to contact the undersigned with any questions or concerns.



Yours truly,

LOOPSTRA NIXON LLP

Per:

A handwritten signature in black ink, appearing to read 'Michael B. McWilliams'. The signature is written in a cursive style with a long horizontal stroke at the end.

Michael B. McWilliams

MBM/ac
Enclosure
cc Trade Capital Finance Corp.

Court File No.: CV-15-2110-03

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE
RICCHETTI

)
)
)

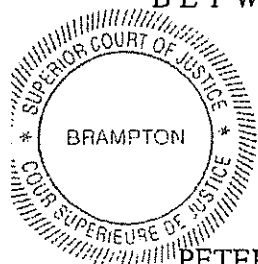
WEDNESDAY, THE 6TH
DAY OF MAY, 2015

BETWEEN:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -



PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

ORDER

- 2 -

NOTICE

If you, as a Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least five (5) days notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits any Defendant to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, brought without notice by the Plaintiff, TRADE CAPITAL FINANCE CORP., for an an interim Order in the form of a *Mareva* injunction restraining each of the Defendants, Peter Cook also known as Peter William Cook, Marc D'Aoust also known as Jean Marc D'Aoust, Thomas Barker also known as Thomas Richard Barker (personally and carrying on business as LC Exchange, Global Medical and Greenlink Canada Group), Rocky Racca, Bruno Didiomede also known as Bruno Diaiomede, Alan Keery also known as Alan John Keery, Chris Bennett Jr. also known as Chris Bennett also known as Christopher Bennett (personally and carrying on business as CJR Consulting), Todd Cadenhead, Virtucall Inc., Debt Resolve-Mortgage Funding Solutions Inc. carrying on business as Debtresolve Inc., 2242116 Ontario Inc. carrying on business as Superior Medical Services Inc. and Superior Medical Services, The Cash House Inc., 1160376 Ontario Inc., Carlo De Maria also known as Carlo Vince De Maria also known as Carlo Vince De Maria also known as Carlo Vincenzo De Maria, Matteo Pennacchio, Frank Zito also known as Francesco Zito, Simone Sladkowski also known as Simona Sladkowski, Jobec Trade Finance Inc., 1461350 Ontario Inc., 2299430 Ontario Inc., WF Canada Limited, Jobec Investments RT Ltd., Green Link Canada Inc., 2339989 Ontario Inc., 2252364 Ontario Inc. and Millwalk Enterprises Inc. (collectively the "Mareva Defendants"), from dissipating their assets and other relief, was heard on May 4, 2015 at the Brampton Courthouse, 7755 Hurontario Street, Brampton Ontario.

- 3 -

ON READING the Affidavits of Darcy Thompson sworn April 30, 2015 and May 4, 2015, the Affidavit of Kevin D. Bousquet sworn April 27, 2015, and the Affidavit of Catherine Herring sworn April 27, 2015, and on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order as set out in the Guarantee of Parkview Capital TCFC Inc. dated April 29, 2015,

Mareva Injunction

1. **THIS COURT ORDERS** that each Mareva Defendant and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva Defendants, that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and,
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. **THIS COURT ORDERS** that paragraph 1 applies to all of the assets of each Mareva Defendant whether or not they are in such Defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Defendant. For the purpose of this order, a Defendant's assets include any asset which such Defendant has the power, directly or indirectly, to dispose of or deal with as if it were such Defendant's own. A Defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such Defendant's direct or indirect instructions.

Ordinary Living Expenses

3. **THIS COURT ORDERS** that any Defendant may apply for an order, on at least five (5) days notice to the Plaintiff, specifying the amount of funds which such Mareva Defendant seeks to have exempted from this Order as being needed and required by the Mareva Defendant for his/its ordinary living expenses and legal advice and representation.

Disclosure of Information

4. **THIS COURT ORDERS** that each Mareva Defendant prepare and provide to the Plaintiff's counsel of record within ten (10) days of the date of service of this Order, a sworn statement describing, in detail, the nature, value, and location of all assets worldwide, whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Defendant providing the sworn statement.

5. **THIS COURT ORDERS** that each Mareva Defendant submit to examinations under oath within thirty (30) days of the delivery by such Mareva Defendant of the aforementioned sworn statements or by such later date as may be confirmed by the Plaintiff's counsel of record. The Mareva Defendant shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Defendant.

6. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate a particular Mareva Defendant, such Mareva Defendant shall immediately seek an order within forty eight (48) hours permitting the Mareva Defendant not to answer the question or provide the information required to be provided herein or, alternatively, an order that any answer or information provided in accordance with this order shall not be admissible in any criminal proceedings in Canada, failing which, the Mareva Defendant shall answer any and all relevant questions regarding his/its financial affairs and assets.

Third Parties

7. **THIS COURT ORDERS** The Toronto-Dominion Bank also known as TD Canada Trust, The Bank of Nova Scotia also known as Scotiabank, Canadian Imperial Bank of Commerce also known as CIBC, Royal Bank of Canada also known as RBC, Bank of Montreal also known as BMO, City Savings and Credit Union Limited and the Buduchnist Credit Union Limited (the "Financial Institutions") to forthwith freeze and prevent any removal or transfer of monies or assets of the Mareva Defendants held in any account or on credit or on behalf of any Mareva Defendant with the Financial Institutions, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that the Financial Institutions forthwith disclose and deliver up to the Plaintiff any and all records held by the Financial Institutions, and not already delivered to the Plaintiff, in any way relating to the Mareva Defendants whether such documentation includes information relating to assets and accounts other than those listed in Schedule "A" hereto or disclose the existence, nature, value and location of any other monies or assets or credit, wherever situate, held by or on behalf of the Mareva Defendants.

Alternative Payment of Security into Court

9. **THIS COURT ORDERS** that this Order will cease to have effect as against the Mareva Defendants if the Mareva Defendants, or any of them, deposit with the Accountant of the Superior Court of Justice to the credit of this action in total the sum of \$10,000,000.00 (CDN).

Variation, Discharge or Extension of Order

10. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply, to the Court, to vary or discharge this order, on five (5) days' notice to the Plaintiff and all other parties.

11. **THIS COURT ORDERS** that this Order will be brought back before the Judge who issued this Order on **May 19, 2015 at 9:00 a.m.** All motions or applications to vary or discharge this Order, or arising out of the issuance or enforcement of this Order, shall be heard by the Judge who issued this Order with the exception of:

- 6 -

- (a) urgent matters for which the Judge is not available; or
- (b) as otherwise directed by the Judge.

Expiry of Norwich Order

12. **THIS COURT ORDERS** that upon this Order being issued and entered, the Order of Justice Ricchetti dated October 28, 2013 (as extended and amended) shall immediately expire.

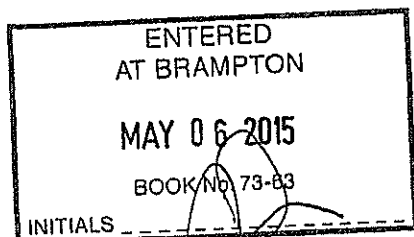
Service of Materials

13. **THIS COURT ORDERS** that the Plaintiff may serve the materials filed in relation to this Order, but not the order itself, on any person by attachments in PDF file format on a USB stick.

14. **THIS COURT ORDERS** that the Plaintiff shall, with this court within five (5) days of the issuance of this order, deposit the original guarantee of Parkview Capital TCFC Inc. dated April 29, 2015 as the Plaintiff's undertaking as to damages in this proceeding.

Sean Murphy

Ricchetti, J.



SCHEDULE "A"

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Virtucall TD US Virtucall Account	1038-7303753
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Global Medical Tom Barker Barker Global Account	1038-7303850
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Virtucall TD Virtucall Canadian Account	1038-5214772
TD Canada Trust	2453 Yonge Street Toronto, Ontario M4P 2H6	2242116 Ontario Inc. Superior TD Superior Account	1928-5233022
Canadian Imperial Bank of Commerce	136 Rexdale Boulevard Etobicoke, Ontario M9W 1P6	2242116 Ontario Inc. Superior CIBC Superior Account	05022-9956611
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc. TD 233 Account	1552-5270311
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc.	1552-7327733
Royal Bank of Canada	5125 Sheppard Avenue E Scarborough, Ontario M1S 4N8	CJR Consulting o/b Christopher Jr. Bennett RBC CJR Consulting Account	06492-1010289
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Virtucall Scotiabank Virtucall Account	10132-0073911
Canadian Imperial Bank of Canada	1 St. Clair Avenue West Toronto, Ontario M4V 1K7	Green Link Canada Inc. CIBC Greenlink Account	00112-4224213
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Greenlink Canada Group Tom Barker Scotiabank Greenlink Account	10132-0151319

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BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	LC Exchange Tom Barker Scotiabank LC Account	10132-0141216
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1067356
Royal Bank of Canada	99 Mapleview Drive W Barrie, Ontario L4N 9H7	Millwalk RBC Millwalk Account	00292-1010024
Canadian Imperial Bank of Commerce	291 Rexdale Boulevard Etobicoke, Ontario M9W 1R8	2252364 Ontario Inc. (Rocky Racca)	05922-9991514
Canadian Imperial Bank of Commerce	15 Westney Road N Unit 22 Ajax, Ontario L1T 1P4	Rocky Racca	02542-6194338
Royal Bank of Canada	2 Harwood Avenue South Ajax, Ontario L1S 7L8	Rocky Racca	00042-5169057
Buduchnist Credit Union	2280 Bloor Street West Toronto, Ontario M6S 1N9	1160376 Ontario Limited (o/a The Cash House)	37922
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1072075
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didiomede	0006-4615388
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didiomede	0006-8986451
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didiomede	0006-10081205986 (TFSA)
Bank of Montreal	999 Upper Wentworth Street Hamilton, Ontario L9A 4X5	Bruno Didiomede	2919-8019047

- 9 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Meridian Credit Union Limited	Jackson Square 2 King Street West Hamilton, Ontario L8P 1A1	Bruno Didiomede	00842-037-7454903
TD Mutual Funds TD Investment Services Inc. Toronto-Dominion Bank	55 King Street West Toronto, Ontario M5K 1A2	Bruno Didiomede	0004-10202- 06905235875 91 479 5510439
Manulife Bank of Canada Royal Bank of Canada	8 Prince Andrew Place Don Mills, Ontario M3C 2B4	Bruno Didiomede	0003-02234- 000009930769
TD Canada Trust	981 Taunton Road East Oshawa, Ontario L1H 7K5	Peter Cook	3202-n/a
Bank of Nova Scotia	544 Bayfield Street Barrie, Ontario L4M 5A2	Alan Keery	85092
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	3012-0003-1029909
Canadian Imperial Bank of Commerce	1700 Wilson Avenue North York, Ontario M3L 1B2	Rocky Racca	00922
Buduchnist Credit Union Limited	1891 Rathburn Road East Mississauga, Ontario L4W 3Z3	The Cash House Inc.	1163457311
Bank of Nova Scotia	8565 Highway 27 Vaughan, Ontario L4L 1A7	Francesco Zito	42952-0045624
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Tom Barker	10132
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	03012-4002010
Canadian Imperial Bank of Commerce	7220 Kennedy Road Markham, Ontario L3R 7P2	Matteo Pennacchio	03232

- 10 -

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	n/a	Todd Cadenhead	01238400
Wells Fargo Bank, N.A.	n/a	Marc D'Aoust	1221-0527-84 1221-0537-84

TRADE CAPITAL FINANCE CORP.
(Plaintiff)

vs

PETER COOK et al
(Defendants)

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **Brampton**

ORDER

LOOPSTRA NIXON LLP
Barristers and Solicitors
135 Queens Plate Drive
Suite 600
Toronto, Ontario
M9W 6V7

Michael B. McWilliams
LSUC#47320R
Tel: (416) 746-4710
Fax: (416) 746-8319
Lawyers for the Plaintiff

TAB Q

This is Exhibit "Q" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

May 15th, 2015

Loopstra Nixon LLP
Barristers and Solicitors
135 Queens Plate Drive
Suite 600
Toronto, Ontario
M9W 6V7
Attention: Michael B. McWilliams

Re: Trade Capital Finance Corp and Peter Cook et al
Re: The Cash House

Dear Sir:

Please find enclosed information pursuant to The Mareva Order dated May 6, 2015 for the following accounts:

# 35926	Carlo De Maria
# 35928	Jimmy De Maria (father, Carlo De Maria joint)
# 37922	1160376 Ontario Limited O/A The Cash House
# 63457	Cash House Armoured Transport & Service ✓
# 66701	The Cash House Inc

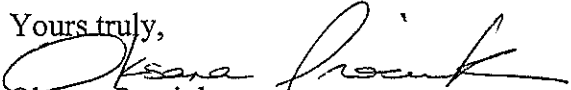
For each of these accounts, you will find enclosed the following information:

- 1) 'Snap shot' of the account at May 6, 2015 (all balances – deposits and loans);
- 2) Account opening documents
(FYI - member opening documents, as a credit union, it is financial co-operative);
- 3) Signature cards for each account with specimen signatures;
- 4) Bank statements for each account commencing November 1, 2011 to the present.

Please note that the business related to account # 63457 Cash House Armoured Transport and Service was sold to Mr. Osman Khan and the account was transferred to a separate corporation owned by him on January 15, 2015.

If you require any further details, please do not hesitate to contact the undersigned directly at 416-763-7020.

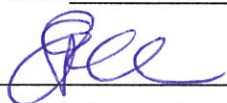
Yours truly,


Oksana Prociuk
Chief Executive Officer

*ENCLOSED: 2 ENVELOPES
AND 3 BOXES*

TAB R

This is Exhibit "R" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

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Court File No.: CV-15-2110-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC., carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

AFFIDAVIT OF CARLO DE MARIA

I, **CARLO DE MARIA**, of the City of Vaughan, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a defendant in this action. I am also a director and part-owner of the defendant company, 1160376 Ontario Limited ("116"). I was also the former owner of

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the defendant The Cash House Inc. ("Cash House"). As such, I have personal knowledge of the matters herein. Where my evidence is based on information and belief, I state the source of the information and belief and believe it to be true.

2. I make this affidavit in response to the affidavit of Darcy Thompson, sworn April 30, 2015, the affidavit of Catherine Herring, sworn April 27, 2015, and the affidavit of Kevin Bousquet, sworn April 27, 2015, and in support of my motion to set aside the *mareva* injunction ordered against me and 116 on May 6, 2015 (the "Order").

3. In particular, in this affidavit, I attempt to correct the inaccurate information contained in, and to provide material information that was omitted from, the affidavits of Mr. Thompson, Ms. Herring, and Mr. Bousquet.

A. Background

4. I am 39 years old. I live with my wife, Sandra, and three daughters aged 9, 6, and 4, in Vaughan, Ontario.

5. Prior to opening Cash House, I worked as a junior stock broker and financial and insurance advisor at Yorkton Securities. In order to act in this capacity, I attended Humber College and took accounting and business classes. I also obtained other necessary licenses and accreditations to carry out this work.

6. I left Yorkton Securities in 2002 to focus exclusively on Cash House. As described further below, I sold Cash House in February 2015.

7. I also own a construction company, Vicar Homes Ltd. ("Vicar"), which purchases residential homes, renovates them, and sells them for profit. I started Vicar in the fall of

2009. As of February 2015, Vicar's head office is located at 80 Bass Pro Mills Drive, Unit #8.

B. Cash House

8. In 2001, I started Cash House. Cash House is a money services business which provides a variety of services including, but not limited to, cheque cashing facilities, payday loans, and foreign exchange services.

9. It is Cash House's cash chequing service that is relevant to matters at issue in this case.

10. Cash House's customers are either individuals or corporations. In either case, customers must open an account with Cash House. The purpose of an account is to enable Cash House to maintain a history for each customer's transactions with Cash House.

11. At times, a corporation may retain an agent to act on its behalf to facilitate all business dealings between the corporation and Cash House. These agents often represent a number of different corporations at the same time. The agent is responsible for, among other things, collecting any of the corporation's cheques, bringing them to a Cash House location, collecting the cash payment from Cash House, and delivering the cash back to the corporation.

12. Cash House earns a small fee for each transaction processed. For example, for the cash chequing service, a customer presents Cash House with a cheque from a third-party, and Cash House immediately provides the customer with the cash amount

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of the cheque minus a 3% service fee. Cash House negotiates the cheque through its own bank accounts and retains the full amount of the cheque, thus profiting approximately 3% on each processed cheque.

13. As a result of the small margin on each transaction, Cash House's business model is based on volume. During the relevant period, from 2011 to 2013, Cash House processed approximately \$30,000,000 per month in respect of its cash chequing line of business.

14. The provision of the cash chequing service has inherent risks. Cash House is providing cash immediately to its customers on the expectation that their cheques will be negotiated and cleared without issue. At times, cheques are returned for insufficient funds. This is a risk the business assumes.

15. Liquidity is critical to the success of any money services business, Cash House included. When customers attend at a Cash House location, they typically, regardless of the specific service, are intending to leave with cash in hand. This requires a significant amount of cash to be available at any time at each Cash House location. In the ordinary course of business, money is constantly moving in and out of Cash House's bank accounts.

16. Over the years, Cash House grew, ultimately expanding to 13 locations by 2006. For a period of time, approximately half of the Cash House locations operated as franchises. Franchisees operated under the Cash House name, offered all the same services at the same price, and looked exactly like a corporate Cash House location. Cash House corporate was responsible for the provision of all of the franchisees' back

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office services. For example, Cash House corporate would cash the franchisee's cheques through its own bank accounts and provide cash to the franchisee.

17. By the end of 2011, all franchise locations were closed or acquired by Cash House directly. Cash House continues to operate today with 8 locations owned and operated exclusively by Cash House.

18. On February 3, 2015, I executed a share purchase agreement which effectively sold Cash House to Osman Khan. The deal officially closed on March 27, 2015. As such, I have had no involvement with the operation of Cash House since the closing of the transaction.

C. 1160376 Ontario Limited

19. 116 is a corporation owned by father, Jim De Marla, and me on a 50/50 basis.

20. As described in further detail below, 116 is the owner of rental properties that my father and I manage.

D. Cash House's Banking Arrangements

21. Cash House's main bank of business is the Buduchnist Credit Union ("BCU"), a completely arms-length financial institution. When Cash House decided to include cash chequing in its offered services, BCU required collateral given the inherent risks associated with the service. 116 acted as a guarantor for Cash House's business.

22. As Cash House grew in size, the volume of transactions became too burdensome for BCU. As a result, Cash House opened accounts with the Bank of Nova Scotia ("Scotia"), Toronto Dominion Bank ("TD") and the Royal Bank of Canada

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("RBC"). By mid-2011, the majority of cheques received by Cash House from customers were run through Cash House's bank account at Scotia.

23. Because Cash House's relationship with Scotia was relatively new, Scotia would place holds on the money coming into Cash House's account. Conversely, BCU afforded more privileges to Cash House due to the long-term relationship. In order to ensure sufficient cash was being delivered to each Cash House location, Cash House would commonly write cheques from its Scotia account to 116's account at BCU and then immediately distribute cash from 116's account to Cash House locations for daily operational use. As a result, a review of Cash House's banking information will demonstrate daily transfers from Cash House's account at Scotia to 116's account at BCU.

24. In effect, for a period of time, 116's bank account was being used to operate Cash House's business. 116 was never "operating as The Cash House" as per the style of cause in this action. BCU may have referred to 116's bank account in this manner as 116 was instrumental in the operations of Cash House's business for a period of time, and acted as guarantor for Cash House.

25. 116, and its corresponding bank accounts, did not form any part of the sale of Cash House described above.

E. Relationship with the Parties to this Action

26. I have no relationship with, or knowledge of, the majority of the parties to this action.

27. I do not know, nor have I ever heard of, the plaintiff, Trade Capital Finance Corp. ("Trade Capital").

28. The only defendants of whom I have any knowledge are Rocky Racca ("Racca"), Bruno Didiomede ("Didiomede"), and Virtucall Inc. and Virtucall International LLC (collectively referred to as "Virtucall").

1. Bruno Didiomede

29. Didiomede was the former owner of a Cash House franchise location in Scarborough. In 2011, Didiomede's franchise agreement was not renewed and his relationship with Cash House ceased at that time.

30. Virtucall, via an agent, was a main customer at Didiomede's Cash House location. I was not aware of any concerns or issues with Virtucall or its agents while it was a customer of Didiomede's Cash House location. Because of the nature of the relationship between Cash House and its franchisees, my employees and I had a passing familiarity with our franchisee's main customers, including Virtucall.

2. Rocky Racca

31. In February 2012, agents of Virtucall set up an account at Cash House's location on Bathurst Street. Racca was the primary agent for Virtucall. Racca also acted as an agent for other companies.

32. During the course of Cash House's relationship with Racca, which lasted from February 2012 to July 2013, I would estimate that several hundred cheques were

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received from Racca and negotiated by Cash House. On a typical day, Racca would cash anywhere from 5-10 cheques with Cash House.

33. Cash House did not benefit, receive or retain any of the monies received by Racca or any of the corporations for whom he was acting as agent, other than the amounts retained in the ordinary course of business for the administration and service fees, as described above. All cheques received from Racca were processed in the ordinary course of business.

34. The fact that cheques were negotiated by Cash House is, in and of itself, of no significance, as that is exactly the nature of Cash House's business. The cashing of cheques at Cash House is the same as cashing cheques at a bank. The mere fact that cheques were negotiated at Cash House is not indicative of any fraud, and certainly not evidence of fraud.

35. Moreover, while Racca conducted a significant amount of business at Cash House, his transactions represented a small fraction of the number and volume of transactions processed by Cash House. By way of example, during the relevant time period, Cash House processed hundreds of individual cheques per day, 5 to 10 of those cheques related to Racca.

F. Specific allegations

36. I note that the statement of claim and the affidavits contain no allegations against me personally. This does not surprise me, as I have no knowledge at all of the alleged fraudulent activity at the heart of this action.

37. There are a small number of paragraphs with respect to 116 with which I am familiar and can address.

38. Paragraphs 134 to 136 of the statement of claim and paragraphs 534 to 536 of Mr. Thompson's affidavit note that certain payments were made from 116 to a company described as "225" directly in response to a cash chequing request from Racca. The context for those transactions was as follows: On both March 5 and 16, 2013, Racca attended at the Bathurst Street Cash House location to cash cheques. The location did not have sufficient funds to satisfy Racca's request. As a result, I authorized 116 to transfer the necessary funds directly to 225 as per Racca's request. The cheques were then negotiated by Cash House in the normal business course.

39. It is also worth repeating, in connection with the allegations in the statement of claim and affidavits as to the amounts of money "received" by Cash House and 116, that to the extent those amounts represent cheques submitted to Cash House, in the normal course Cash House or 116 immediately paid out 97% of those amounts in cash, retaining only 3% of the amount of each cheque.

G. Disclosure of assets

40. In accordance with paragraph 4 of the Order, below is a summary of my personal assets, whether in my name or not, solely or jointly owned, directly or indirectly owned, and including any assets held in trust:

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Asset	Ownership Structure	Estimated Market Value	Estimated Encumbrances
211 Woodland Acres Crescent (marital home)	Jointly owned with my wife (50% interest)	\$3,000,000	\$1,071,88.50 mortgage with BCU
62116 5 th Line, Egbert, Ontario (family cottage)	Jointly owned with my wife (50% interest)	\$350,000	\$214,505.62 mortgage with BCU
319 and 321 Rogers Road (rental properties)	Jointly owned with my father (50% interest)	\$650,000 - \$700,000	\$13,800 mortgage with BCU
Bank account #35926 at BCU	100% owned	\$68,392.69 in chequing account	
RSP account #5J7EJX with QTRADE	100% owned	\$153,025.27	
Bank account #1471 6253586 at TD	100% owned	\$74,812.32 in chequing account	
2012 Fiat 500	100% owned	\$12,000 - \$15,000	
1463549 Ontario Inc. which owns 325 Rogers Road	100% owned	\$350,000 - \$400,000	\$74,369 mortgage with BCU
2321197 Ontario Inc. which owns 46 Puccini Drive (Vicar construction project, in final phase of development)	100% owned	\$2,000,000 (under construction to be completed in the next few months)	\$1,050,000 mortgage with BCU
2321198 Ontario Inc. which owns 87 Elmgrove Drive (Vicar construction project, in preliminary planning phases)	100% owned	\$780,000	Nil.
2321198 Ontario Inc.	100% owned	\$500,000	Nil.

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Asset	Ownership Structure	Estimated Market Value	Estimated Encumbrances
which owns 80 Bass Pro Mills Drive, Unit #8 (Vicar head office)			
Vicar Corporate Holdings bank account #61525 at BCU	100%	\$471,634.19 in cash	

41. In accordance with paragraph 4 of the Order, below is a summary of 116's assets, whether in its name or not, solely or jointly owned, directly or indirectly owned, and including any assets held in trust:

Asset	Ownership Structure	Estimated Market Value	Estimated Encumbrances
323 Rogers Road (rental property)	100% owned by 116, and thus 50% owned by me	\$400,000	\$84,234 mortgage with BCU
267 Caledonia Road (rental property)	100% owned by 116, and thus 50% owned by me	\$750,000	\$121,383 mortgage with BCU
282 Caledonia Road (rental property)	100% owned by 116, and thus 50% owned by me	\$600,000	\$68,372.17 mortgage with BCU
Bank account #37922 with BCU	100% owned by 116, and thus 50% owned by me	Nil.	\$550,000 drawn on line of credit

H. No intention to dispose of or remove assets from the jurisdiction

42. I have lived in Ontario all of my life. My family is located in Ontario. In addition to my wife and 3 children, I am also financially responsible for my mother, who lives in Mississauga, Ontario.

43. My business, Vicar, is located in Ontario and has ongoing projects.

44. A significant portion of 116's assets and my assets are real property located in Ontario. Neither 116 nor I have any plan or intention of selling any of these properties. I have no intention of removing any of my assets or the assets of 116 from the jurisdiction, disposing of the assets, or otherwise dealing with the assets so that Trade Capital will be unable to satisfy a judgment should one be awarded.

I. Impact of Mareva Order

45. The Order has caused, and will continue to cause, significant and irreparable harm to me and 116.

46. My personal accounts have been frozen. My wife and I rely on these funds to pay for our family's daily living expenses, including our life insurance, mortgage, bill, and RESP payments. All of these payments are currently in jeopardy. From what I understand, if I fail to make a life insurance payment, the policy will be cancelled immediately.

47. In addition, my wife and I owe approximately \$70,000 to the Canada Revenue Agency for our 2014 tax returns. We are currently unable to make this payment as a result of the Order.

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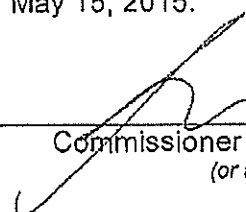
48. In order to pay for my family's daily living expenses, legal fees, and tax obligations, I require access to \$250,000 should the Order remain in effect for 3 months time.

49. Vicar requires \$500,000 to cover operational expenses, such as payroll, overhead, and construction should the Order remain in effect for 3 months time.

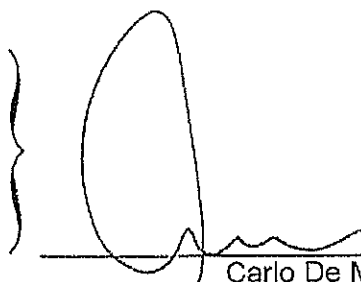
50. 116 also has a number of monthly mortgage payments which it is currently unable to make as its accounts have been frozen. Those properties are rented and failure to make timely mortgage payments may have a ripple effect on the tenants. 116 requires approximately \$30,000 of cash for mortgage payments should the Order remain in effect for 3 months time.

51. I make this affidavit in response to Trade Capital's mareva motion, the Order and in support of my motion to set aside the Order and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on May 15, 2015.



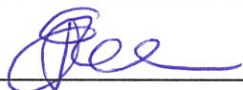
Commissioner for Taking Affidavits
(or as may be)



Carlo De Maria

TAB S

This is Exhibit "S" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

Court File No.: CV-15-2110-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC., carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

AFFIDAVIT OF CARLO DE MARIA

I, **CARLO DE MARIA**, of the City of Vaughan, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a defendant in this action. I am also a director and part-owner of the defendant company, 1160376 Ontario Limited ("116"). I was also the former owner of

the defendant The Cash House Inc. ("Cash House"). As such, I have personal knowledge of the matters herein. Where my evidence is based on information and belief, I state the source of the information and belief and believe it to be true.

2. I previously swore an affidavit on May 15, 2015.

3. I make this affidavit to respond to the factum of the plaintiff, Trade Capital, dated May 18, 2015 as well as to respond to the affidavit of Darcy Thompson, sworn April 30, 2015, the affidavit of Catherine Herring, sworn April 27, 2015, and the affidavit of Kevin Bousquet, sworn April 27, 2015, and in support of my motion to set aside the *mareva* injunction ordered against me and 116 on May 6, 2015 (the "Order").

A. *No knowledge of fraud until accounts were frozen*

4. I had no knowledge whatsoever of the alleged fraud perpetrated against Trade Capital.

5. The first time I heard about the events in question and the Order was when the current owner of Cash House called me on or around May 8, 2015 to advise that Cash House's accounts had been frozen.

6. I was not personally served with the Order. I did not appreciate the nature or extent of the Order. Over the weekend, I went to Canadian Tire to buy bikes for my daughters and my debit card was declined.

7. I subsequently received copies of Trade Capital's materials from Cash House's lawyer. That was the first time I heard anything about the alleged fraud, despite it apparently being uncovered some 18 months ago.

B. Sale of Cash House

8. In its factum, Trade Capital asserts that the Cash House was "sold under suspicious circumstances."¹

9. I dispute this allegation.

10. In July 2014, I was charged with certain criminal offences. I am defending myself vigorously against those criminal charges, and will continue to do so. To be clear, those criminal charges have nothing whatsoever to do with the matters alleged in this case.

11. Unfortunately, the mere existence of criminal charges against me significantly impacted Cash House's ability to operate. For example, within days of a newspaper article about the charges being published, Western Union suspended and then cancelled Cash House's contract purely on the basis of the article and charges. This had a significant negative effect on the business.

12. As a direct result of the criminal charges and associated media articles, issues also started to arise with our principal bank, BCU. For years, Cash House had provided a cash chequing service for third-party cheques in USD without issue. Out of the blue, in February 2015, BCU provided us with 2 days' notice that it was no longer willing to continue with that line of business.

13. For years, Cash House also wired money for foreign exchange trades or wired money to customers upon request, without incident. BCU prevented Cash House from

¹ Supplementary Factum of Trade Capital, para. 76.

continuing with this business due to compliance issues arising from my criminal charges.

14. Put simply, after the criminal charges, the nature of Cash House's relationship with BCU changed dramatically and began to deteriorate.

15. Moreover, as a money services business, Cash House is governed by various governmental agencies and annual licencing requirements.

16. Specifically:

(a) Cash House must be registered with the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"), a Federal review agency whose mandate is to facilitate the detection, prevention, and deterrence of money laundering and the financing of terrorist activities. Cash House's registration with FINTRAC is reviewed on a bi-annual basis; and

(b) In order to provide its payday loan services, the *Payday Loans Act* requires Cash House to be registered and licenced. This licence is reviewed and renewed on an annual basis.

17. Cash House's payday loan licence was due for review and renewal on April 27, 2015. Given the nature of my criminal charges, I honestly, and with good reason, believed that Cash House's licence would not be renewed. Without the necessary licences to operate, there is no value in Cash House other than the leasehold improvements made to its various locations.

18. I spent 14 years building Cash House. Over the years, Cash House and its employees received numerous awards from its partners, including Western Union, for fraud detection, customer service, and high performance. I did not want to see the business fail as a result of my personal matters.

19. The only option to salvage the business and extract any value was to sell Cash House in advance of the expiry of its licence. The purchaser would undoubtedly be taking on a significant risk as it was unknown at the time of purchase whether the purchaser would be approved for the necessary licences and registrations.

20. As a result, I sold Cash House for as much as I could in the circumstances. The sale price is not what I would have hoped for, but it was the best I could do. The sale at least provided me with \$1 million in payments over a period of 4 years, rather than letting the licence expire and the business ceasing to operate.

21. The sale of Cash House was entirely unrelated to the allegations made by Trade Capital and any fraud that was perpetrated against it. In conducting the sale, I in no way intended to dissipate any of my assets, and have no intention of doing so. In fact, the sale provided me with assets that I would not have otherwise had available. Ironically, the sale payments are now in jeopardy as a result of the Order.

C. Rocky Racca's business with Cash House

22. I have now had an opportunity to review Trade Capital's materials in more detail and understand the nature of its concerns with respect to the funds made payable by the various defendants to Cash House directly.

23. As a result of the sale of Cash House, I no longer have personal access to Cash House's documents and records. In order to respond to Trade Capital's specific allegations, I requested certain documents from Cash House and was provided with them. I have attached the relevant documents to my affidavit as exhibits.

24. I have now reviewed the details of Racca's transactions with Cash House and can provide more information about the specific transactions referred to in Mr. Thompson's affidavit.

25. As stated in my previous affidavit, Racca used Cash House's cash chequing service, which is premised on the same principles as its payday loan service: the customer provides a cheque and Cash House advances them cash based on the representation in the cheque.

26. Individuals and corporations use cash chequing or payday loan services for two main reasons:

- (a) traditional banks place holds on deposited cheques; and
- (b) traditional banks do not keep significant amounts of cash on location at branches. If a large amount of cash is needed, the order must be placed in advance, and it often takes a number of business days for the cash to arrive at the bank.

Thus, if an individual or corporation requires cash immediately, they often cannot obtain it quickly enough from a bank.

27. Conversely, Cash House (and all other money service businesses) will provide cash immediately. As a result, any individuals or corporations requiring cash immediately and unable or unwilling wait for their traditional bank to obtain the cash or release the hold on the funds could either cash a third-party cheque via Cash House or write a cheque payable to Cash House, thus obtaining the cash immediately from one of the Cash House locations (less Cash House's service fees).

28. Cash House's own banks typically do not take issue with Cash House cashing cheques made out to third-parties, assuming the cheques are for relatively small amounts. The majority of Cash House's customers require small cheques to be cashed, in the range of hundreds to a few thousand dollars.

29. In contrast to the typical Cash House customer, Racca sometimes required cash advances in large dollar amounts. Cash House was not willing to accept third-party cheques in the large amounts Racca required. Cash House had experienced difficulties with its own banks that were typically reluctant to honour third-party cheques in large amounts. We always understood that if any large third-party cheques were returned due to insufficient funds, Cash House could have lost its banking privileges. As a result we were unwilling to take that risk.

30. In response, Racca would say that his clients had money in their bank accounts that would be released on a certain day in the very near term. He would ask for a cash advance and in exchange provide Cash House with a cheque payable to Cash House post-dated for the day the funds would clear from the client's account. Put simply, we were providing Racca with an advance, similar to a payday loan, but for a corporation.

From my experience, this type of service is provided by most of the major money service businesses.

31. Cash House operated with Racca on this basis for a period of time with respect to his requests for large cash advances. Racca would provide cheques from his clients that were made payable to Cash House directly. Cash House would then cash the cheques in the normal course and provide the cash minus the service fee.

32. The following transactions that are listed in Mr. Thompson's affidavit were processed in the above manner:

	Amount	Date of Cheque	Type	Funding	Thompson Affidavit Reference	Exhibit #
1.	\$21,000	Sept. 27, 2012	Cheque	Superior Funding #9	325(b)	199
2.	\$21,000	Oct. 1, 2012	Cheque	Superior Funding #9	325(e)	202
3.	\$21,000	Nov. 9, 2012	Cheque	Greenlink Funding #6	439(b)(I)	321
4.	\$26,250	Nov. 9, 2012	Cheque	Greenlink Funding #6	439(b)(II)	321
5.	\$26,250	Nov. 9, 2012	Cheque	Greenlink Funding #6	439(b)(III)	321

33. Cash House reviewed its systems for the above cheques to determine when the cash for the above cheques was provided to Racca and how much Cash House retained for service fees on each of the above cheques.

34. Attached at **Exhibit "A"** to my affidavit are print outs of the daily tills of Cash House for the dates the above cheques were negotiated at Cash House. I have redacted any unrelated transactions. The current balance of the store's available cash is listed under the column entitled "Float". As cheques are brought in for cash, the float decreases by the amount of the cheque as listed in the "Decrease" column. As funds are received for services rendered, the float increases as listed in the "Increase" column.

35. The print outs at Exhibit "A" demonstrate that each of the above cheques was provided to Cash House and the cash was provided to Racca, minus the service fee. No funds, other than the ordinary service fee, were retained by Cash House.

36. As explained above, Racca often provided Cash House with post-dated cheques. As a result, the day the cash was provided by Cash House to Racca does not necessarily correlate to the date on the cheque. Below is a comparison table to demonstrate where the above cheques can be found in Exhibit "A":

	Amount	Date of Cheque	Date Funds Provided to Racca	Amount of Funds Provided to Racca	Service Fee	Exhibit "A" reference
1.	\$21,000	Sept. 27, 2012	Sept. 19, 2012	\$20,475.61	\$524.39	Page 1 of 5
2.	\$21,000	Sept. 28, 2012	Sept. 19, 2012	\$20,475.61	\$524.39	Page 1 of 5
3.	\$21,000	Nov. 9, 2012	Oct. 31, 2012	\$20,475.61	\$524.39	Page 4 of 5
4.	\$26,250	Nov. 9, 2012	Oct. 25, 2012	\$25,463.13	\$786.87	Page 2 of 5
5.	\$26,250	Nov. 9, 2012	Oct. 25, 2012	\$25,463.13	\$786.87	Page 3 of 5

37. On Exhibit "A" under the "Reference" column, there is a notation "okd as per Carlo" for each of these 5 cheques. Staff at each location were required to obtain my approval before accepting cheques of this size. This was done to ensure that the cash flow at each location was being managed appropriately.

38. During the course of Racca's business relationship with Cash House, certain of the cheques he provided were returned due to insufficient funds, thus putting his account in a negative balance. This, unfortunately, is not uncommon in the money services business.

39. Racca's account started to have a negative balance in November 2012. Given the volume and size of cheques Racca cashed at Cash House in the ordinary course, his negative balance accumulated very quickly. In order to rectify the amounts owing, Racca provided cheques or bank drafts to Cash House from his clients to pay down the amounts owing (the "Replacement Cheques").

40. The Replacement Cheques relate to the 13 remaining transactions listed in Mr. Thompson's affidavit, as follows:

	Amount	Date	Type	Funding	Affidavit Reference	Exhibit #
1.	\$91,850	Dec. 3, 2012	Bank draft	Superior #11	340(c)	219
2.	\$278,200	Jan. 4, 2013	Bank draft	Superior #12	346(b)	224
3.	\$47,250	Oct. 22, 2012	Cheque	Greenlink Funding #5	430(d)(I)	309
4.	\$47,250	Oct. 21, 2012	Cheque	Greenlink Funding #5	430(d)(II)	309

	Amount	Date	Type	Funding	Affidavit Reference	Exhibit #
5.	\$47,250	Oct. 20, 2012	Cheque	Greenlink Funding #5	430(d)(III)	309
6.	\$42,000	Oct. 19, 2012	Cheque	Greenlink Funding #5	430(d)(IV)	309
7.	\$185,032.50	Dec. 24, 2012	Bank draft	Greenlink #7	445(b)	329
8.	\$70,495	Dec. 31, 2012	Bank draft	Greenlink Funding #8	451(b)	334
9.	\$222,000	March 11, 2013	Bank draft	Greenlink Funding #9	457(b)	341
10.	\$125,000	March 11, 2013	Bank draft	Greenlink Funding #9	457(c)	341
11.	\$147,200	Nov. 15, 2012	Certified cheque	233 #2	488(b)	372
12.	\$29,900	Nov. 16, 2012	Certified cheque	233 #2	488(d)	374
13.	\$69,335	Dec. 12, 2012	Certified cheque	233 #3	494(b)	380

True copies of the Replacement Cheques that Cash House was able to locate are attached to my affidavit at **Exhibit "B"**. There is a notation on each of the Replacement Cheques at Exhibit "B" indicating that it is a replacement. These notations were made by the Cash House employee who was on duty at the Bathurst Street location when Racca provided the cheques or bank drafts to Cash House, and copies were placed in his file.

41. Also, by way of example, if you refer to Exhibit "309" of Mr. Thompson's affidavit, the "re" line on the cheques specifically states "replace" and then provides a cheque number. All the remaining Replacement Cheques were provided by way of a bank draft

or certified cheque. This differs from the 5 cheques described above which were all provided by a regular cheque with no notation in the "re" line.

42. The Replacement Cheques were provided solely to rectify the negative account balance. No administrative or service fees were charged on these cheques as they were direct payments to Cash House for amounts owing. Cash House was simply receiving payment for funds previously advanced to Racca for cheques that were ultimately returned due to insufficient funds.

43. I was not, and am not, aware of any connection between any of the Replacement Cheques and any fraudulent activities.

44. From November 2012 to January 2013, Racca provided the Replacement Cheques to Cash House, thus paying down significant portions of his outstanding balance.

D. Specific allegations

45. I can address the few allegations in Trade Capital's materials that relate expressly to Cash House.

46. The emails between Racca and Grace (a Cash House employee) on January 17, 2013 (referred to in paragraphs 137 to 139 of the statement of claim and paragraphs 537 to 538 of Mr. Thompson's affidavit) relate to the debt owing to Cash House as a result of the cheques Racca submitted which were returned due to insufficient funds. As I read the emails, Grace, in her capacity as an employee of Cash House, advised Racca that he needed to address the balance on his account. Racca advised Grace that

he had communicated this to his clients (presumably Peter and Marc) and they were aware of Cash House's position.

47. I do not know Peter or Marc. I believe Racca's use of their names and my name in his email to Grace is simply an explanation that the message was delivered to the individuals who are responsible for the debt, and that my demand (as the principal of Cash House at the time) was communicated to them.

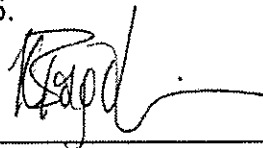
48. There is no nefarious or fraudulent meaning behind these emails. They are simply emails between a Cash House employee and a customer regarding the customer's debt. These types of emails are part of the ordinary course of business of Cash House.

E. Corrections

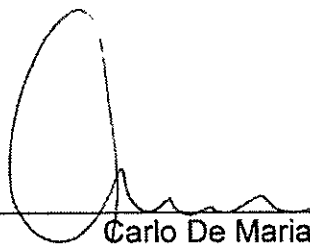
49. I forgot to include one of my personal bank accounts in the disclosure of my personal assets in my previous affidavit. I have a TD account under the name "Do You Know Inc." The account number is 1471 5224589 and the current balance is \$49,513.32.

50. At paragraph 24 of Mr. Bousquet's affidavit he states that I own property at 298 Rogers Road in Toronto. This is incorrect. My grandfather, who has the same name as me, owns that property.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on May 22, 2015.



Commissioner for Taking Affidavits
(or as may be)



Carlo De Maria

Doc 1449470 v1

TRADE CAPITAL FINANCE CORP.
Plaintiff

-and- **COOK et al**
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT BRAMPTON

AFFIDAVIT OF CARLOS DE MARIA
SWORN MAY 22, 2015

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Chris G. Paliare (LSUC# 13367P)
Tel: 416.646.4318
chris.paliare@paliareroland.com


Kristian Borg-Olivier (LSUC# 53041R)
Tel: 416.646.7490
kris.borg-olivier@paliareroland.com

Alysha Shore (LSUC# 60281Q)
Tel: 416.646.7437
alysha.shore@paliareroland.com

Lawyers for the Defendant,
Carlo De Maria and 1160376 Ontario Limited

TAB A

This is Exhibit "A" to the
Affidavit of Carlo De Maria
sworn May 22, 2015

A handwritten signature in black ink, appearing to be "K. De Maria", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

5/12/2015

Review Till

Home | Contact | Logout

The Cash House Inc.
Toronto ON



minding your money \$

Account Change	Transfers & Money Orders	New Note	Note Payment	Other Transactions	Review Till	Admin Maintenance	Admin Reports	Bill Payment	Cash Cheques	Cash Adjustment	RFT	Gift Cards	Prepaid Cards
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Review Till

Select Date:

Opening Till: \$119113.49

Name	Reference	Trans. Type	Description	Increase	Decrease	Float	User ID	Time
House House	virtuall okd as per carlo	CC	Cheque Cashing	0.00	21000.00	98113.49	Kim	9:49:08 AM
House House	virtuall okd as per carlo	CCF	Cheque Cashing Fees	524.39	0.00	98637.88	Kim	9:40:08 AM
[REDACTED]								
House House	2242116 ontario inc ok as per carlo	CC	Cheque Cashing	0.00	21000.00	180559.26	Kim	10:37:40 AM
House House	2242116 ontario inc ok as per carlo	CCF	Cheque Cashing Fees	524.39	0.00	181083.65	Kim	10:37:40 AM
[REDACTED]								

Closing Till: \$136272.03

The Cash House Inc.
Toronto ON



LOAN SOFTWARE

minding your money ^{\$}

Add/Change Client	Transfers & Money Orders	New Note	Note Payment	Other Transactions	Review Till	Admin Maintenance	Admin Reports	Bill Payment	Cash Cheque	Cash Adjustment	MTT	Gift Cards	Prepaid Cards
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Review Till

Select Date:

Opening Till: \$66054.34

Name	Reference	Trans. Type	Description	Increase	Decrease	Float	User ID	Time
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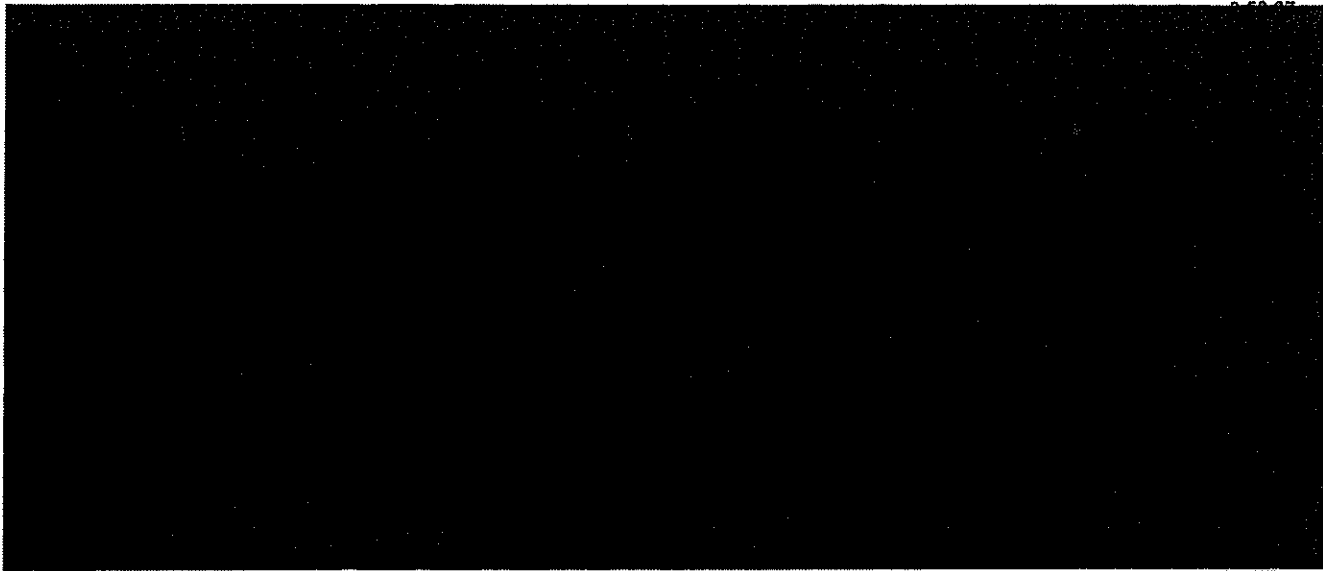
--	--	--	--	--	--	--	--	--

House House	greenlink canada okd as per carlo	CC	Cheque Cashing	0.00	26250.00	234608.11	Kim	3:55:15 PM
House House	greenlink canada okd as per	CCF	Cheque Cashing	786.87	0.00	235394.98	Kim	3:55:15

5/20/2015

Review Till

	carlo		Fees					PM
House House	greenlink canada okd as per carlo	CC	Cheque Cashing	0.00	28250.00	209144.98	Kim	3:55:45 PM
House House	greenlink canada okd as per carlo	CCF	Cheque Cashing Fees	786.87	0.00	209931.85	Kim	3:55:45 PM



Closing Till: \$154378.66

5/20/2015

Review Till

Home | Contact | Logout

The Cash House Inc.
Toronto ON



Loan Software

minding your money.

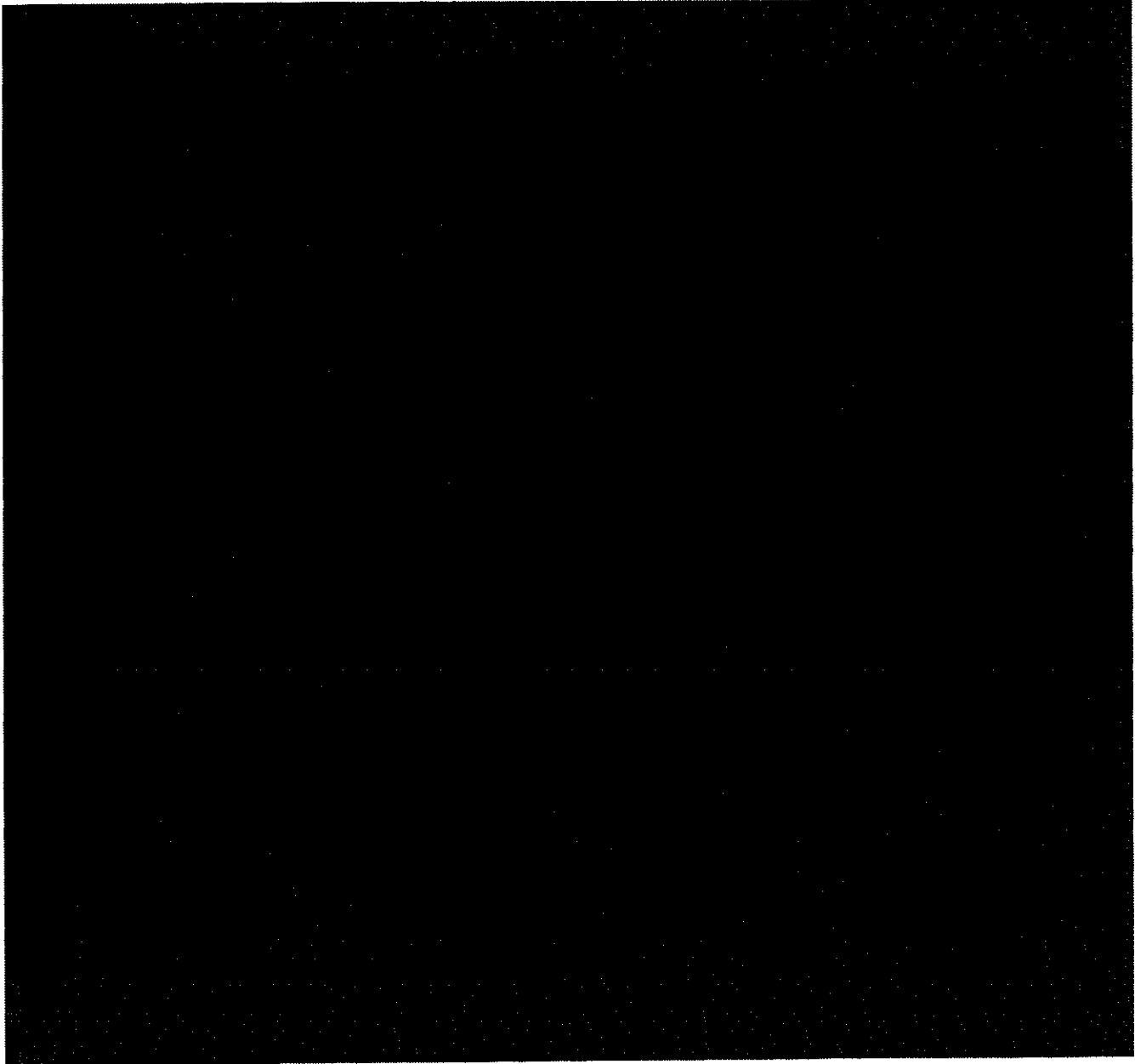
Add/Change Client	Transfers & Money Orders	New Note	Note Payment	Other Transactions	Review Till	Admin Maintenance	Admin Reports	Bill Payment	Cash Cheque	Cash Adjustment	MFT	Gift Cards	Prepaid Cards
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Review Till

Select Date:

Opening Till: \$125770.50

Name	Reference	Trans. Type	Description	Increase	Decrease	Float	User ID	Time
House House	greenlink (virtucal)- ok as per carlo	CC	Cheque Cashing	0.00	21000.00	104770.50	Grace	9:57:35 AM
House House	greenlink (virtucal)- ok as per carlo	CCF	Cheque Cashing Fees	629.89	0.00	105400.39	Grace	9:57:35 AM

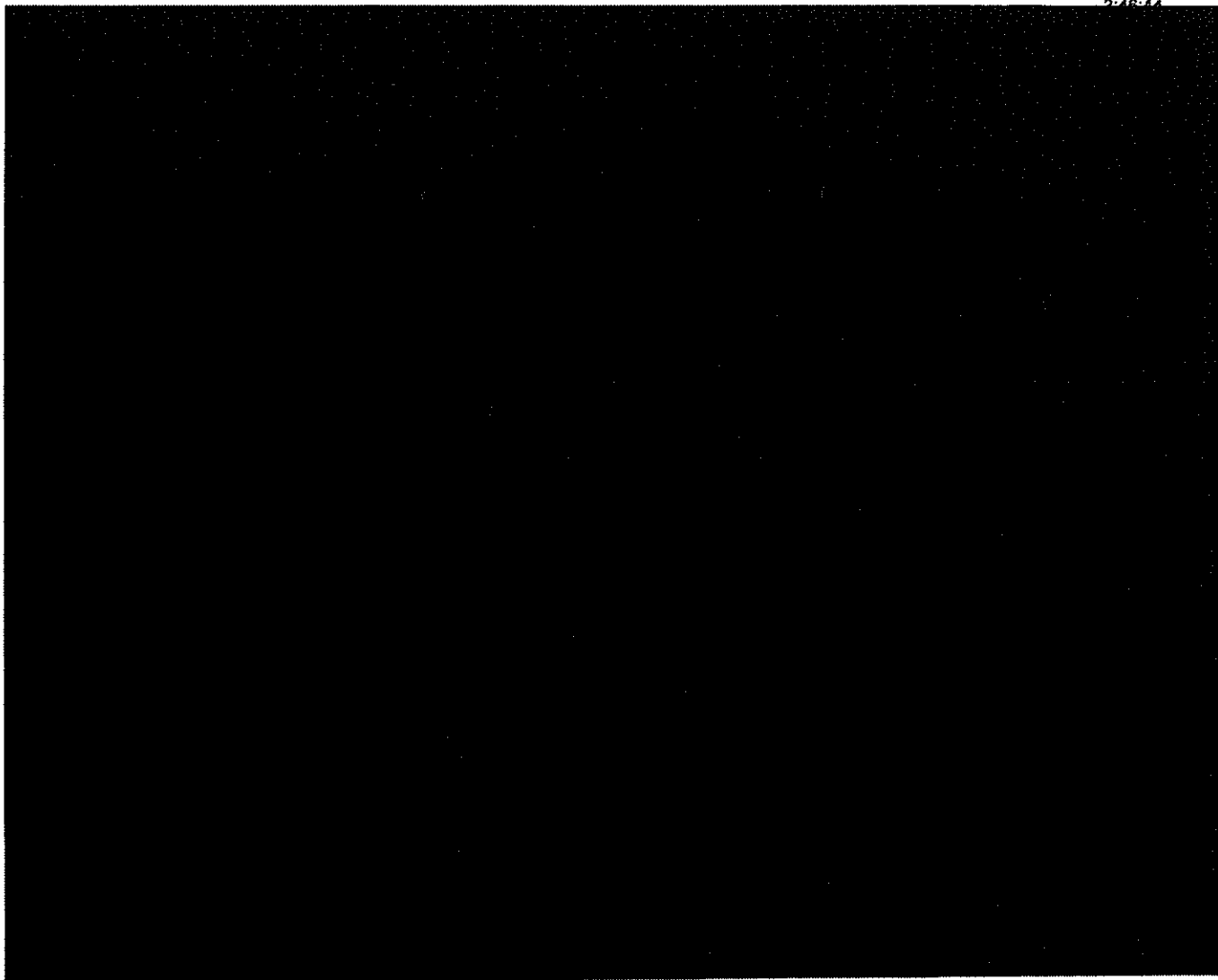


5/20/2015

Review Till

Fees

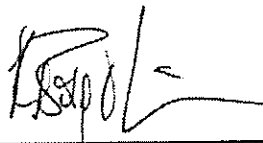
PM
2:48:44



Closing \$309004.41
Till:

TAB B

This is Exhibit "B" to the
Affidavit of Carlo De Maria
sworn May 22, 2015



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

CIBC 27-43345
ROYAL BANK OF CANADA

BANK DRAFT / TRAITE DE BANQUE 2249 0959 8
 05022 - REXDALE AND KIPLING
 ETOBICOKE, ON 2013-01-04

NAME OF REMITTER / DONNEUR D'ORDRE TRANSIT NO. BRANCH
THE CASP HOUSE ***** CENTRE BANCAIRE

PAY TO THE ORDER OF / PAYEZ A L'ORDRE DE
THE CASP HOUSE *****

THE SUM OF / LA SOMME DE
*******TWO HUNDRED SEVENTY EIGHT THOUSAND TWO HUNDRED**

TO / TIRE:
CANADIAN IMPERIAL BANK OF COMMERCE
TORONTO
CANADA

129 BR. 2008 12
 240829
 CFT INSTRUMENT CONTROL BY SECURITY

DATE Y/A M/M D/J
 \$448,837.28, 200.00
 CANADIAN DOLLARS / DOLLARS CANADIENS CAD
 FOR CANADIAN IMPERIAL BANK OF COMMERCE / POUR LA BANQUE CANADIENNE IMPERIALE DE COMMERCE
 AUTHORIZED SIGNATURE / SIGNATURE AUTORISEE
 COUNTERSIGNED / CONTRESIGNEE

⑆ 224909598⑆ 1:09502⑈010⑆ 05022⑈2743345⑈

*WIKIWIKI
 Replacement cheque*

replacements



2742116 ENTERLO INC.

BANK DRAFT / TRAITE DE BANQUE
06022 - BEXDALE AND KIPLING
ETOBICOKE, ON

27-43345
2249 0905 1
2012-12-03

DATE VIA M/M D/I

NAME OF REMITTER / DONNEUR D'ORDRE
ORDER OF

BRANCH
CENTRE BANCAIRE

PAYEZ A
L'ORDRE DE

THE SUM OF
LA SOMME DE

THE CASH HOUSE*****

*****NINETY ONE THOUSAND EIGHT HUNDRED FIFTY

*****91,850.00

CANADIAN DOLLARS
DOLLARS CANADIENS

CAD

FOR CANADIAN IMPERIAL BANK OF COMMERCE
POUR LA BANQUE CANADIENNE IMPERIALE DE COMMERCE

TO
TIRE

CANADIAN IMPERIAL BANK OF COMMERCE
TORONTO
CANADA



AUTHORIZED SIGNATURE / SIGNATURE AUTORISEE
CONTRASIGNE / CONTRASIGNEE

⑆ 2 24 90 90 5 1 ⑆ ⑆ 0 9 5 0 2 ⑆ ⑆ 0 1 0 ⑆ ⑆ 0 5 0 2 2 ⑆ ⑆ 2 7 4 3 3 4 5 ⑆

THIS INSTRUMENT CONTAINS CERTAIN SECURITY FEATURES
CET INSTRUMENT COMPREND DES ELEMENTS DE SECURITE

000006

GREENLINK CANADA GROUP
40 GRAIHWK DRIVE
BARRIE, ONT
L4N6G4

DATE 2012-10-22
Y Y Y M M D D

\$ 4750.00

PAY TO THE CASH HOUSE

the order of *Jenny Green* *Amount to be added for tax*



100 DOLLARS
GREENLINK CANADA GROUP

10132

THE BANK OF NOVA SCOTIA
www.bnos.com 1-800-4-SCOTIA
14720 YONGE STREET
AURORA, ONTARIO L4G 7H8



PER *JG*

RE *Reflex #108*

⑈000006⑈ ⑆10132⑈002⑆ 01513⑈19⑈

Replacement

1500414 09/10 Registered trademark of The Bank of Nova Scotia

Scotiabank
 2251 ISLINGTON AVENUE N
 TORONTO, ON M9W 3M6

SOLD TO: 41582-002
 ADDRESS: SCOTIABANK
 ISLINGTON & SPYDALE
 ETOBICOKE, ON

DATE: FEB 4 2012

PAY TO ORDER OF: THE CASHIER

SUM OF: EXACTLY \$ 185,032.50

TO: ANY BRANCH OF THE BANK OF NOVA SCOTIA

AUTH. NO. A0139
 AUTH. NO. A0007

THE BANK OF NOVA SCOTIA
 AUTHORIZED OFFICER

41582-002

307529

Q U Y 2 Y M M D B 4
 CANADIAN DOLLARS

COMMISSION
 TOTAL

CUSTOMER RECEIPT

Replacement cheque

000243

TD CANADA TRUST
REXDALE COMMERCIAL BANKING CENTRE
2038 KIRLING AVE. AT REXDALE BLVD.
TORONTO, ONTARIO M9W 4K1

DATE 11 15 2012
M M D D Y Y Y Y

\$ **147,200.00

15322-004
233989 ONTARIO INC.
233989 ONTARIO INC.
2038 KIRLING AVE.
REXDALE, ON M9W 4K1

NOV 15 2012

2038 KIRLING AVE.
REXDALE, ON M9W 4K1

One Hundred Forty-Seven Thousand Two Hundred and Ninety
CANADA TRUST 147,200.00

TO THE ORDER

The Cash House

VOIDED CHEQUE
DO NOT DESTROY



233989 ONTARIO INC.

PER

[Signature]

5270311

⑆000243⑆ ⑆15522004⑆

90115001⑆

REPRODUCTION OF THIS DOCUMENT IS PROHIBITED - SEE REVERSE
REPRODUCTION DE CE DOCUMENT EST PROHIBITEE - VUE LE VERSO

0000 0010 0020 0030 0040 0050 0060 0070 0080 0090 0100 0110 0120 0130 0140 0150 0160 0170 0180 0190 0200 0210 0220 0230 0240 0250 0260 0270 0280 0290 0300 0310 0320 0330 0340 0350 0360 0370 0380 0390 0400 0410 0420 0430 0440 0450 0460 0470 0480 0490 0500 0510 0520 0530 0540 0550 0560 0570 0580 0590 0600 0610 0620 0630 0640 0650 0660 0670 0680 0690 0700 0710 0720 0730 0740 0750 0760 0770 0780 0790 0800 0810 0820 0830 0840 0850 0860 0870 0880 0890 0900 0910 0920 0930 0940 0950 0960 0970 0980 0990 1000

2339989 ONTARIO INC.
NOV 16 2002

TD CANADA TRUST
REXDALE COMMERCIAL BANKING CENTRE
2038 KIPLING AVE. AT REXDALE BLVD.
TORONTO, ONTARIO M8W 4K1

PAY *twenty nine thousand ^{no} nine* ~~29,900.00~~ *no* ~~29,900.00~~
TO THE ORDER OF *The Cash House.*

Nov 16, 2002

000244

CERTIFIED CHEQUE
DO NOT DESTROY



2339989 ONTARIO INC.

PER *[Signature]*

⑆000244⑆ ⑆15522⑆004⑆

9011500⑈

SECURITY FEATURES INCLUDE MICROPRINT SECURITY PAPER AND SECURITY INK

TD CANADA TRUST COMMERCIAL BANKING CENTRE
2038 KIPLING AVE. AT REXDALE BLVD.
TORONTO, ONTARIO M3W 4K1

000436

TD CANADA TRUST
REXDALE COMMERCIAL BANKING CENTRE
2038 KIPLING AVE. AT REXDALE BLVD.
TORONTO, ONTARIO M3W 4K1

12/11/2012

\$69,335.00

Amount the total this fee

TO CANADA TRUST 69,335.00

2338988 ONTARIO, INC.



PER *[Signature]*
S 270311

901150011

2338988 ONTARIO INC.
REXDALE COMMERCIAL BANKING CENTRE
2038 KIPLING AVE. AT REXDALE BLVD.
TORONTO, ONTARIO M3W 4K1

DEC 11 2012

REXDALE COMMERCIAL BANKING CENTRE
2038 KIPLING AVE. AT REXDALE BLVD.
TORONTO, ONTARIO M3W 4K1

[Signature]

TO THE ORDER OF

THE CASH HOUSE

RECEIVED BY PHONE

DO NOT DESTROY 1:15522004:0568

TAB T

This is Exhibit "T" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

_____, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

Request ID: 017663044
 Transaction ID: 57720020
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2015/05/26
 Time Report Produced: 16:00:42
 Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2454904	2454904 ONTARIO INC.	2015/02/23
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
		NOT APPLICABLE
80 BASS PRO MILLS DRIVE UNIT 11		New Amal. Number
VAUGHAN ONTARIO CANADA L4K 5W9		NOT APPLICABLE
		Notice Date
		NOT APPLICABLE
		Letter Date
		NOT APPLICABLE
Mailing Address		Revival Date
		NOT APPLICABLE
80 BASS PRO MILLS DRIVE UNIT 11		Continuation Date
VAUGHAN ONTARIO CANADA L4K 5W9		NOT APPLICABLE
		Transferred Out Date
		NOT APPLICABLE
		Cancel/Inactive Date
		NOT APPLICABLE
		EP Licence Eff.Date
		NOT APPLICABLE
		EP Licence Term.Date
		NOT APPLICABLE
	Number of Directors	Date Commenced
	Minimum Maximum	in Ontario
	00001 00010	NOT APPLICABLE
Activity Classification		Date Ceased
NOT AVAILABLE		in Ontario
		NOT APPLICABLE

Request ID: 017663044
Transaction ID: 57720020
Category ID: UNE

Province of Ontario
Ministry of Government Services

Date Report Produced: 2015/05/26
Time Report Produced: 16:00:42
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number

2454904

Corporation Name

2454904 ONTARIO INC.

Corporate Name History

2454904 ONTARIO INC.

Effective Date

2015/02/23

Current Business Name(s) Exist:

YES

Expired Business Name(s) Exist:

NO

Administrator:
Name (Individual / Corporation)

OSMAN
KHAN

Address

80 BASS PRO MILLS DRIVE
UNIT 11
VAUGHAN
ONTARIO
CANADA L4K 5W9

Date Began

2015/02/23

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 017663044
 Transaction ID: 57720020
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2015/05/26
 Time Report Produced: 16:00:42
 Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number

2454904

Corporation Name

2454904 ONTARIO INC.

Administrator:

Name (Individual / Corporation)

OSMAN
 KHAN

Address

80 BASS PRO MILLS DRIVE
 UNIT 11
 VAUGHAN
 ONTARIO
 CANADA L4K 5W9

Date Began

2015/02/23

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:

Name (Individual / Corporation)

OSMAN
 KHAN

Address

80 BASS PRO MILLS DRIVE
 UNIT 11
 VAUGHAN
 ONTARIO
 CANADA L4K 5W9

Date Began

2015/02/23

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

Request ID: 017663044
Transaction ID: 57720020
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2015/05/26
Time Report Produced: 16:00:42
Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2454904

2454904 ONTARIO INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	INITIAL RETURN	1	2015/02/23 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

TAB U

This is Exhibit "U" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

Court file No. CV-15-2110-00

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

TRADE CAPITAL FINANCE CORP.,

Plaintiff
(Respondent)

And

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNET JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.,

Defendants
(Applicants)

AFFIDAVIT

I, OSMAN KHAN, of the Town of Markham, in the Regional Municipality of York, and

Province of Ontario, MAKE OATH AND STATE AS FOLLOWS:

1. That I presently the owner of The Cash House Inc., and as such have knowledge of the matters hereinafter deposed to.

2. In furtherance of a Share Purchase Agreement I became the sole owner of The Cash House Inc. effective February 3rd, 2015. Attached hereto and marked as Exhibit "A" to this my Affidavit is a copy of the Share Purchase Agreement pursuant to which I purchased from Red Quest Holdings Inc. all of the shares it held in The Cash House Inc., representing 100% of the shares of The Cash House Inc. I purchased those shares, at that time, in trust for a company to be incorporated, which company was in fact incorporated and for which company I am the sole officer, director and shareholder.

3. The Cash House Inc., is in the business of providing the public with financial services including cheque cashing facilities, pay day loans and foreign exchange services. The company, The Cash House Inc. has been incorporated since 2001, and presently operates out of eight locations. Attached hereto and marked as Exhibit "B" to this my Affidavit is a list of the current addresses and phone numbers of The Cash House outlets in the GTA.

4. As I was not an officer, director or shareholder of The Cash House Inc. at the point in time that the circumstances giving rise to the Mareva Injunction took place, I cannot comment on the circumstances described in the materials of the Plaintiff/Applicant. What I do submit from my review of the materials, is that it is clear that there is no evidence whatsoever to attribute any of the fraudulent acts either directly or indirectly, to The Cash House Inc. The materials make clear that Peter Cook and Mark D'Aoust were the perpetrators of the fraud, and as a result have been charged criminally by the Peel Regional Police. The materials of the Plaintiff/Applicant also make it clear that the fraud was perpetrated by either Mr. Cook, Mr. Barker, Mr. D'Aoust, Mr. Cadenhead or Mr. Keery, creating a fictitious invoice from an original invoice owner to a debtor. Throughout its description of the fraud,

and its perpetration, at no point in time does the Plaintiff/Applicant suggest that The Cash House Inc. had any involvement.

5. I understand that there were a series of cheques that were negotiated at The Cash House, which, in of itself is of no significance, as that is the business of The Cash House Inc. The cashing of cheques at The Cash House is no different than the cashing of cheques at a Bank, and as a result the mere fact that cheques were negotiated, is not indicative of any fraud, and certainly not evidence of fraud. The Mareva Injunction issued to the Plaintiff/Applicant has caused considerable and irreparable harm to both the day to day business of The Cash House Inc., as well as its reputation. Last month (which is a slow period for our industry) The Cash House Inc. did \$9 million dollars in volume of cheque cashing, \$500,000.00 in pay day loans and \$6.5 million dollars approximately in foreign exchange. The gross revenue from those activities to The Cash House Inc., would be approximately \$370,000.00. It is clear that the continuing of this Mareva Injunction as against The Cash House Inc., which The Cash House Inc. believes is totally improper, would exhaust the \$1 million dollar guarantee lodged in support of the Mareva Injunction, in approximately three months.

ASSETS OF THE CASH HOUSE INC.

6. As part of the Mareva Injunction obtained the Order sets out an obligation on The Cash House Inc. to provide counsel for the Plaintiff a statement describing in detail the nature, value and location of all of The Cash House Inc.'s worldwide assets. In satisfaction of that obligation, the following is a list of the assets of The Cash House Inc., which are:

A. Canadian Bank Accounts held at the Buduchnist Credit Union, the particulars of which are as follows:

i) account No. 61667010H;

- ii) account No. 62667019H;
- iii) account No. 6366701811;
- iv) account No. 6466701711;
- v) account No. 605006670142;

The total amount of funds that have been frozen in those accounts as of the date of the Order amount to \$138,150.00 Canadian.

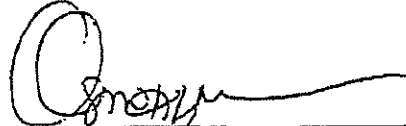
B. The Cash House Inc. also holds a singular US currency account at the Buduchnist Credit Union that at the time of the freezing of the account in furtherance of the Mareva Injunction granted, held \$7,318.43 US.

C. The Cash House Inc. also has eight physical locations which it leases and to which locations it has made and provided leasehold improvements to a value of approximately \$25,000.00 to \$30,000.00 per store. The Cash House Inc. has no intention to dissipate and/or move its assets out of the jurisdiction of Ontario, and further is not seeking to sell any of its assets, and as a result one of the necessary elements in the Plaintiff/Applicant obtaining a Mareva Injunction has not been satisfied.

7. The operation of The Cash House Inc. is also governed by various Governmental agencies and licensing requirements including the overseeing of the activities of The Cash House Inc. by Fintrac, as well as the Ministry of Consumer Services under the Payday Loans Act, which requires The Cash House Inc. to be registered with the Ministry, so as to be able to provide its services. Each of the registrations under both Fintrac which is a Federal review agency that oversees companies such as ours to guard against money laundering, as well as the registration with the Ministry of Consumer Services, is reviewed on an annual basis and at the time of delivering this Affidavit both registrations are in full force and effect and up to date.

8. I make this Affidavit in response to the Mareja Injunction obtained by the Plaintiff/Applicant, and not for the purposes of delay or any other improper purpose.

SWORN BEFORE ME at the City)
Of Vaughan, in the Regional)
Municipality of York, this 15th)
Day of May, 2015.)


Osman Khan

A Commissioner, etc.)
MAURO MARCOTON

This is Exhibit *A* to the Affidavit
of *Osman Khan*
Sworn before me this *15* day
of *May*, 2015.


A Commissioner, etc.

SHARE PURCHASE AGREEMENT

THIS AGREEMENT made the 3rd day of February, 2015

BETWEEN:

RED QUEST HOLDINGS INC,
a corporation incorporated under the laws of the Province of Ontario,
(hereinafter called the "Vendor")

OF THE FIRST PART

and

OSMAN KHAN IN TRUST FOR A COMPANY TO BE
INCORPORATED,
a person resident in the Province of Ontario,
(hereinafter called the "Purchaser")

OF THE SECOND PART

and

THE CASH HOUSE INC.,
a company duly incorporated pursuant to the laws of
the Province of Ontario.
(hereinafter called the "Corporation")

OF THE THIRD PART

WHEREAS the Vendor is the beneficial owner of four thousand (4000) Common Shares in the capital stock of the Corporation (hereinafter referred to as the "Shares");

AND WHEREAS the Purchaser has agreed to purchase and the Vendor has agreed to sell and assign the Shares and any shareholder advances to the Purchaser free and clear of any and all liens, charges and encumbrances, save and except such encumbrances as the Purchaser is aware of, in accordance with the terms and conditions hereinafter set forth;

AND WHEREAS after Closing the Purchaser will own the Shares of the Corporation and will become an Officer and Director of the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises hereto and the covenants hereinafter contained and other good and valuable consideration (the sufficiency and receipt of which is hereby acknowledged by all parties), the parties hereto agree as follows;

ARTICLE I - RECITALS

1.01 The recitals hereto are true and correct.

ARTICLE II - PURCHASE OF THE SHARES

2.01 The Vendor shall sell and the Purchaser shall purchase, upon and subject to the terms and conditions herein, the Shares and any shareholder advances for the aggregate purchase price of One Million (\$ 1,000,000.00) DOLLARS of lawful money of Canada (the "Purchase Price").

2.02 The Purchase Price shall be payable as follows:

- a) The delivery by the Purchaser to the Vendor of the sum of Twenty Thousand (\$ 20,000.00)

Dollars by way of deposit, the receipt of which the Vendor acknowledges; and

- b) The delivery by the Purchaser to the Vendor of the sum of Twenty Thousand (\$ 20,000.00) by way of cash or certified cheque on Closing.
- c) The balance of the purchase price will be paid by annual instalments of at least \$40,000.00 for the next 4 years with the balance of the Purchase Price payable on the fifth anniversary of the closing date. The Purchaser is able to pay any further amount in respect of the outstanding Purchase Price at any time during the aforesaid 4 year period.
- d) The unpaid balance of the purchase price will accrue interest at the rate of 3 percent per annum and the interest will be payable on each anniversary date.

ARTICLE III - REPRESENTATIONS, WARRANTIES AND COVENANTS

3.01 The Vendor represents and warrants to the Purchaser and acknowledges that the Purchaser is relying on such representations and warranties as follows;

- (a) that the Shares are fully paid and non-assessable shares and are outstanding as fully paid and non-assessable shares;
- (b) that the Vendor has good and valid title to the Shares free and clear of any liens, charges, claims or encumbrances of any nature and kind whatsoever;
- (c) that the Corporation has been duly incorporated and organized and is validly subsisting and in good standing under the laws of the Province of Ontario and Canada with the corporate power and authority to own its property and carry on the business now being conducted by it;
- (d) that no person or legal entity other than the Purchaser has any agreement or option, right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement for the purchase of the Shares or for the purchase, subscription, allotment or issuance of any shares, warrants or any securities of the Corporation;
- (e) that the entering into of this Agreement by the Vendor and the transactions contemplated hereby will not result in the violation of any of the terms and provisions of the constating documents or by-laws of the Corporation or of any indenture or other contract or agreement, written or oral, to which the Corporation or the Vendor may be a party;
- (f) that the Vendor has not, incurred any debt, liability or obligation for or on behalf on the Corporation or caused the Corporation to incur any debt, liability or obligation contractual or otherwise, whether existing, accrued or contingent, which is outside the ordinary course of business of the Corporation or without the consent of the directors or shareholders of the Corporation, as the case may be;
- (g) that the Corporation has been, up to and including the date hereof, and will until the time of Closing, be operated in the ordinary course of business and no management bonuses, commissions, extra ordinary remuneration, dividends, or other payments or benefits of any nature or kind have been declared or paid to the Vendor or any person related to the Vendor without the Purchaser's knowledge;
- (h) that the Corporation has maintained all books and records required by any statute purporting to regulate the affairs of the Corporation, and said books and records fairly and accurately, in accordance with generally accepted

accounting principles represent the financial position and operating results of the Corporation;

- (i) that as of Closing, the corporate records and minute books of the Corporation will contain complete resolutions or minutes of all meetings of the directors and shareholders of the Corporation held or required to be held by any applicable statute and all shares and securities registers will be accurate, complete, and up to date; and
- (j) the Vendor is and will at the Closing Date be a resident of Canada within the meaning of the *Income Tax Act* (Canada).

3.02 The Vendor represents and warrants to the Purchaser and acknowledges that the Purchaser is relying on such representations, warranties and covenants, in order to enter into this Agreement and that said representations, warranties, and covenants are true and accurate.

ARTICLE IV - SURVIVAL OF REPRESENTATIONS AND WARRANTIES

4.01 Unless waived in accordance with the provisions of this Agreement, the parties hereto agree that notwithstanding the Closing of the transaction of purchase and sale of Shares contemplated herein, the representations and warranties contained in this Agreement shall survive Closing for a period of One (1) Year.

ARTICLE V - CLOSING

5.01 The sale and purchase of the Shares provided for in this Agreement shall be formally closed at the offices of March Law 9100 Jane Street, Building A, Suite 300, Vaughan, Ontario, at the hour of 10 am on Friday, the 27th day of March, 2015 or such other time as the parties hereto may agree upon (the "Closing Date" or "Closing").

ARTICLE VI - CONDITIONS OF CLOSING

6.01 The Purchaser shall not be obliged to complete the transaction herein provided for unless, at the time of Closing, each of the following conditions shall have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser and may be waived in writing, in whole or in part, by the Purchaser at any time; and the Vendor shall use its best efforts to ensure that such conditions are fulfilled on or before Closing:

- (a) the representations and warranties set forth in paragraph 3.01 shall be true and correct in all material respects on Closing as if such representations and warranties were made on Closing; and a certificate, duly executed by the Vendor, evidencing same shall have been delivered to the Purchaser on Closing;
- (b) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Vendor on or before Closing shall have been complied with or performed by the Vendor on or before Closing;
- (c) the Vendor shall cause meetings of directors and shareholders of the Corporation to be held at which:
 - i. all share transfers herein provided for shall be given such approval and authorization as may be necessary;
 - ii. such other corporate actions as may be required to give effect to provisions of this Agreement and as the Purchaser may reasonably require, shall be taken;

provided any authorizations or approvals contemplated herein may be evidenced by

signed resolutions of the directors and/or shareholders;

- (d) the Vendor shall deliver to the Purchaser, the share certificate representing the Shares duly endorsed in transferable form;
- (e) the Shares shall be duly transferred into the name of the Purchaser;
- (f) the Vendor shall execute and deliver an Indemnity in favour of the Purchaser in the form as set forth in Schedule "A" annexed hereto;
- (g) the Vendor shall deliver to the Purchaser such other documents, materials, or assurances as the Purchaser reasonably requests in order to give effect to the transactions contemplated by the terms of this Agreement; and
- (h) the Purchaser shall become an Officer and Director of the Corporation on Closing.

In case any of the foregoing conditions shall not have been fulfilled on or before Closing, the Purchaser may terminate this Agreement by notice in writing to the Vendor in which event the Purchaser and the Vendor shall be released from all obligations under this Agreement, but the Purchaser shall be entitled to waive compliance with any such conditions in whole or in part if he shall see fit to do so, without prejudice to his rights of termination in the event of non-fulfilment of any other condition in whole or in part.

6.02 Conditions for Vendor's Benefit

The Vendor shall not be obligated to complete the transaction herein provided for unless, at the time of Closing each of the following conditions shall have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Vendor and may be waived in writing in whole or in part by the Vendor at any time, and the Purchaser shall use his best efforts to ensure that such conditions are fulfilled on or before the Closing:

- (a) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Purchaser on or before the Closing shall have been complied with or performed by the Purchaser on or before the Closing;
- (b) the Purchaser shall deliver cash or a certified cheque in favour of the Vendor representing the further advance of funds in respect of Purchase Price set out in subparagraph 2.02(b) hereof; and
- (c) the Purchaser shall deliver to the Vendor such other documents, materials, or assurances as the Vendor reasonably requests in order to give effect to the transaction contemplated by the terms of this Agreement including a security agreement pursuant to which the Purchaser shall pledge as security for the payment of the balance of the purchase price, the shares transferred to him, or whomever he may direct, on closing.

ARTICLE VII - NOTICE

7.01 Any notice to be given under or pursuant to the provisions of this agreement or in any way concerning the same shall be sufficiently given if received in writing and personally delivered or mailed by prepaid registered mail addressed to:

To the Purchaser: 80 Bass Pro Mills Drive
Unit 11
Vaughan, Ontario
L4K 5W9

5

To the Vendor: 1076 Swinbourne Drive
Mississauga, Ontario
L5V 1B9

or at such other address as any of the parties hereto may hereafter designate by notice given in the manner herein provided, and such notice shall be deemed to have been received when delivered; if faxed, when confirmation of successful transmission is received by the sender; or if mailed, three (3) days after mailing (excluding Saturdays, Sundays, and legal holidays); provided that in the event of postal disruption of any nature or kind whatsoever, any notice required to be given under this Agreement shall be personally delivered to either party hereto at the address specified above.

ARTICLE VIII - ENTIRE AGREEMENT

8.01 This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior contracts, agreements and undertakings of the parties in connection herewith. No waiver of any provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall a waiver constitute a continuing waiver unless expressly stated to be so. The section headings are not intended to be full or accurate descriptions of the content of any such clauses or paragraphs.

ARTICLE IX - TIME

9.01 Time shall be of the essence in this Agreement and every part hereof.

ARTICLE X - SUCCESSORS AND ASSIGNS

10.01 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as the case may be.

ARTICLE XI - APPLICABLE LAW

11.01 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURES TO FOLLOW].

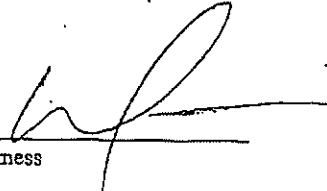
ARTICLE XII - INDEPENDENT LEGAL ADVICE

12.01 The parties hereto, and each of them, hereby acknowledge that they have requested March Law (the "Firm") to act for all of them in this Agreement. The parties hereto each further acknowledge that the Firm has advised them that, because it is acting for all the parties to this Agreement, it cannot treat any information received from or on behalf of any of the parties hereto as confidential insofar as any of the other parties hereto are concerned, and that if a dispute arises between or among any of the parties hereto, the Firm cannot (except for efforts to resolve such dispute by consent) act for all the parties in that matter. The parties hereto each hereby consent to the Firm acting for all of them, subject to the foregoing. The parties hereto each hereby further acknowledge that the Firm has hereby recommended to each of them that they obtain legal advice concerning the advisability of entering into this Agreement before executing it.

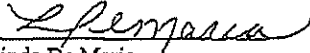
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first above written.

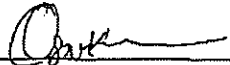
SIGNED, SEALED AND DELIVERED)

in the presence of)

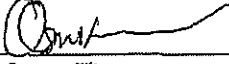

Witness

Red Quest Holdings Inc.)

Per: 
Name: Linda De Maria)
Title President)
I have authority to bind the Corporation)

Per: 
Name: Osman Khan in Trust for a company to)
be incorporated)
Title: President)
I have authority to bind the Corporation)

The Cash House Inc.)

Per: 
Name: Osman Khan)
Title President)
I have authority to bind the Corporation)

1. The Cash House

366 Bloor St E, Toronto, ON M4W 1H4 Get directions

416-927-1960

2. The Cash House

3852 Bathurst St, North York, ON M3H 3N3 Get directions

647-350-0300

3. The Cash House

325 Rogers Rd, York, ON M6E 1R5 Get directions

647-558-3072

4. The Cash House

2101 Weston Rd, York, ON M9N 1X7 Get directions

416-241-5246

5. The Cash House

2348 Dufferin St, York, ON M6E 3S4 Get directions

416-780-0105

This is Exhibit "B" to the Affidavit
of Osman Khan
Sworn before me this 15 day
of May, 2015


A Commissioner, etc.

6. The Cash House

561 Yonge St, Toronto, ON M4Y 1Z2 [Get directions](#)

647-348-0800

7. The Cash House

321 Rogers Rd, York, ON M6E 1R5 [Get directions](#)

416-652-6100

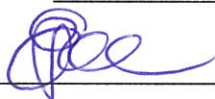
8. Cash House

3342 Keele St, North York, ON M3J 1L5 [Get directions](#)

416-630-2760

TAB V

This is Exhibit "V" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

Court file No. CV-15-2110-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TRADE CAPITAL FINANCE CORP.,

**Plaintiff
(Respondent)**

And

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNET JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.,

**Defendants
(Applicants)**

A F F I D A V I T

I, **OSMAN KHAN**, of the Town of Markham, in the Regional Municipality of York, and Province of Ontario, MAKE OATH AND STATE AS FOLLOWS:

1. I submit this Supplementary Affidavit to the one sworn by me on May 15th, 2015, in order to respond to the allegations made in paragraphs 76 and 77 of the Applicant's Supplementary Factum which I am advised by my lawyer Mauro Marchioni, and verily believe, was delivered to him on May 18th, 2015, at the original return of this Application.
2. Paragraph 76 of the Supplementary Factum suggests that The Cash House Inc. (CH) was recently sold under suspicious circumstances. This suggestion was never made in the Applicant's original materials and is not supported by any evidence to suggest what circumstances may be suspicious and in fact relies upon my Affidavit. The Applicant did not raise any such issue in its original Factum.
3. The circumstances of my company's purchase of the shares of CH will make it clear that the price paid was in fact excessive in the circumstances, and I took a great risk in paying the money I did. CH, as I have already sworn, is in the financial services business. A very substantial part of its business is generated through pay day loans and cheque cashing. Both of these activities are controlled by Government agencies and it is a requirement, in order to carry on these activities, that CH is registered with the appropriate agencies and proper authorities with licences issued.
4. The first agency we are required to be registered with is the Financial Transactions & Report Analysis Centre of Canada. This agency is what is commonly referred to as FINTRAC. The other registration requirement is under the Pay Day Loans Act of Ontario and the licence issued by the Ministry of Small Business & Consumer Services, in furtherance of the requirements under that Act. These two registrations are renewed on an annual basis and the renewal in respect of CH was coming due in April of 2015. Attached hereto and marked as Exhibit "A" to this my Affidavit is a copy of the

registration of CH with FINTRAC. As is clear from the date on the bottom right hand corner of Exhibit "A", this application was submitted on April 6th, 2015. Further attached hereto and marked as Exhibit "B" to this my Affidavit are copies of the web page from the FINTRAC site as of May 21st, 2015 showing both the registration of CH and all of its locations.

5. CH is also under contract with RIA Telecommunications of Canada Inc. (RIA), who is a publicly traded multi-million dollar corporation that performs the same service as Western Union. CH provides services to the public in respect of money transfers to Europe, Africa, South America, as well as a number of other locations in the world. In order to be able to provide this service, CH has to have an agreement with RIA. Attached hereto and marked as Exhibit "C" to this my Affidavit is a copy of the agreement entered into between RIA and CH dated April 23, 2015.

6. CH also deals with pay day loans for which it has to be registered under the Pay Day Loans Act, as overseen by the Ministry of Small Business & Consumer Services. Attached hereto and marked as Exhibit "D" to this my Affidavit is a copy of the Application submitted by me (dated April 2nd, 2015) as officer, director and sole shareholder of 2454904 Ontario Inc. (this is the company that was incorporated to take the benefit of the Share Purchase Agreement I entered into with CH) for a licence. Also attached hereto and marked as Exhibit "E" to this my Affidavit are copies of all of the licences issued on April 27th, 2015 in furtherance of the aforesaid application.

7. As is clear from all of the licences they were issued at a point in time subsequent to my having entered into the Agreement of Purchase and Sale for the shares of CH in February of 2015. At that time Carlo had been advised and indicated to me, and I verily believed, that as a result of a number of charges that had been laid as against him, the licences issued to the CH with him as officer, director and shareholder, would not be renewed. Without these licences the only assets that CH had were leasehold improvements carried out at the various locations, which I am advised by Carlo cost


approximately \$25,000.00 per location. This amount represents \$200,000.00 of assets which would be of no value if the operation of CH could not continue.

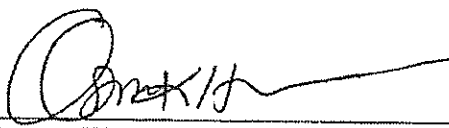
8. The transaction is for the amount set out and payable as set out in the agreement because it reflects the risk I was taking in purchasing the shares of CH. If the licences were not renewed, the value of CH would have been zero as at April, 2015. I took the risk that the licences would be renewed and endured the process required in order to obtain the licences. The assets of CH and its licences now are the property of my company 2454904 Ontario Inc. and not Carlo De Maria. Clearly the various agencies would not have approved the licences if they believed the owner, either directly or indirectly, was still Carlo De Maria.

9. The Applicant speaks of the transaction as suspicious and indicative of Carlo De Maria dissipating his assets. The assets are not Carlo's and but for the conjecture reflected in the Supplementary Factum, Applicant, there is absolutely no evidence that CH is dissipating any assets. All of its locations are for the moment still open, however, if the Mareva Injunction is continued then the operation of CH will cease, and it will have no value whatsoever. There is no amount that I can suggest be excluded from the Mareva, while still leaving it in place, as the business of CH requires the daily movement of money in and out of the accounts disclosed in my previous Affidavit, which accounts are presently frozen. I have tried to maintain the activity of CH since the Mareva was put in place, but will not last much longer and certainly the 29th of May is a critical date.

10. I re-iterate that I have no knowledge of any of the allegations set out in the Applicant's materials as they relate to monies negotiated by CH, as I was not an owner or officer or director of CH at that time.

11. I make this Supplementary Affidavit in response to the allegations made by the Applicant in its Supplementary Factum, and not for the purposes of delay or any other improper purpose.

SWORN BEFORE ME at the City)
Of Vaughan, in the Regional)
Municipality of York, this 22nd)
Day of May, 2015.)
)
A Commissioner, etc.)

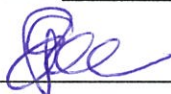


Osman Khan

**Dulce Lucca, a Commissioner, ect.,
Province of Ontario, for Mauro Marchioni,
Barrister and Solicitor. Expires March 22, 2016.**

TAB W

This is Exhibit "W" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

CITATION: Trade Capital Finance Corp. v. Peter Cook et al, 2015 ONSC 3745
COURT FILE NO.: CV-15-2110-00
DATE: 20150610

SUPERIOR COURT OF JUSTICE – ONTARIO

B E T W E E N:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

BEFORE: Ricchetti, J.

COUNSEL: P. Carey, M. McWilliams and C. Lee for Trade Capital Finance Corp.

K. Borg-Olivier and A. Shore for Carlo De. Maria and 1160376 Ontario Ltd.

M. Marchioni for The Cash House Inc.

HEARD: June 1, 2015

**ENDORSEMENT ON MOTION TO SET ASIDE THE MAREVA
ORDER BY CARLO DE. MARIA, 1160376 ONTARIO LTD. AND
THE CASH HOUSE INC.**

THE MOTION

[1] This is a motion by Carlo De Maria ("De Maria"), 1160376 Ontario Ltd. ("116") and The Cash House Inc. ("Cash House") to set aside the Mareva Order of May 6, 2015 ("Mareva Order") as against them.

THE POSITION OF THE PARTIES

[2] De Maria and 116 submit that Trade Capital Finance Corp. ("Trade Capital") has failed to establish a prima facie case of fraud as against them and that there is no evidence of an intention to dissipate assets.

[3] Cash House adds to these submissions and states that this corporation is now owned by an innocent purchaser who had no involvement in the fraud and should be permitted to carry on its business unfettered by the Mareva Order.

[4] Trade Capital opposes the relief sought on the basis:

- a) There continues to be a strong prima facie case of fraud by these moving defendants;
and
- b) there continues to be a serious risk and evidence of actual dissipation of assets by these moving defendants.

WAS FRAUD PLEADED AGAINST THESE DEFENDANTS?

[5] The moving defendants submit that Trade Capital has not pleaded fraud against them.

[6] I disagree. Any reading of paragraphs 1 (c) (iii) and 155 of the Statement of Claim quickly disposes of this submission. Besides, a reading of the entire Statement of Claim makes it abundantly clear that Trade Capital alleges that these moving Defendants were involved in a conspiracy to commit and, did commit, a fraud on Trade Capital.

THE EVIDENCE ON THE ORIGINAL MOTION THAT THESE DEFENDANTS WERE INVOLVED IN THE FRAUD

BACKGROUND

[7] Trade Capital is in the business of factoring. At the core of Trade Capital's action is that a fraud was perpetrated on it to finance fraudulent receivables, represented as valid third party payables, in the amount of approximately \$6,500,000 (\$5,051,721 CDN and \$1,479,471 USD).

[8] The primary individuals and companies who have, so far, been identified as perpetrating this fraud included:

- a) Mr. Cook, who was the then president of Trade Capital;
- b) Mr. Barker, a principal of Virtucall;
- c) Mr. D'Aoust, a principal of Superior;
- d) Mr. Cadenhead, a principal of Greenlink; and
- e) Mr. Kerry a principal of 2339989 Ont.

[9] Mr. Cook eventually confessed to the fraudulent scheme. Mr. Cook confessed that the receivables assigned to Trade Capital were false and that Trade Capital's money had been funded out into various accounts to the "bad people".

[10] Trade Capital's funding of this fraudulent scheme was primarily paid to a specific number of companies in whose name bore the fraudulent receivables:

- a) Virtucall;
- b) Superior;
- c) Greelink; and
- d) 2339989.

[11] The details of the fraud are extensive and set out in the lengthy affidavits filed on the original Mareva Injunction motion. There is no doubt that this was a complex fraud involving numerous persons and companies and the extensive flow of funds through many persons and companies.

[12] Trade Capital in late 2013 obtained a Norwich Order to permit it to trace the fraudulent funds through various financial institutions.

THE CASE AGAINST THE MOVING DEFENDANTS

[13] Trade Capital established, from its funding of the fraudulent receivables:

- a) That monies paid out for the fraudulent Superior receivables, upon receipt by Superior, were shortly thereafter paid out to Cash House (see Sept. 28, 2012, Jan. 10, 2012, March 12, 2012, April 1, 2013) - total \$412,050);
- b) that monies paid out for the fraudulent Greenlink receivables, upon receipt by Greenlink, were shortly thereafter paid out to Cash House (See Oct. 22, 2012, Sept. 11, 2012, Dec. 24, 2012, Dec. 31, 2012) - total \$512,777.50; and

- c) that monies paid out for the fraudulent 2339989 receivables, upon receipt by 2339989, were shortly thereafter paid out to Cash House (see Nov. 15, 2012, Nov. 16, 2012, Nov. 12, 2012) - total \$246,956.00).

[14] In addition to the above monies, Trade Capital's advances on the fraudulent receivables were transferred through several entities (including US accounts) to Virtucall and eventually paid to Cash House. In this manner alone, Cash House received \$2,722,222.50 of these monies advanced made to others, then to Virtucall and eventually to Cash House.

[15] Clearly, Cash House was the recipient of substantial amounts of the fraudulently obtained monies from Trade Capital. Equally important, the monies received by Cash House were from most of the major fraudulent entities used to commit the fraud on Trade Capital. This fact defies coincidence.

[16] It was established that De Maria's companies, the Cash House and 116 were the largest recipients of Trade Capital's monies.

[17] However, receipt of the fraudulently obtained monies is not the only evidence that Cash House was involved in the fraudulent scheme:

Moving Monies from Cash House to De Maria's other Companies

[18] In February 2013, Cash House closed its Scotiabank account and the Cash House cheques were deposited into 116, another of De Maria's company. A significant amount of the fraudulent monies that went to Cash House was eventually traced to Mr. De Maria's company, 116. Where these monies eventually ended up is not known. What is known is that these were not monies for Cash House's operations or its profits but rather monies that De Maria treated as his and moved around to his own other companies. This creates difficulty with any tracing claim

but also makes it easier for these defendants to have and continue to dissipate any fraudulent monies received by them.

The January 2013 emails

[19] Not many emails were uncovered by Trade Capital as Mr. Cook deleted his emails on a daily basis. However, there is an email from the Director of Operations at Cash House to Mr. Racca at Debt Resolve (a previous endorsement dealt with Mr. Racca's significant involvement in the fraudulent scheme) where the Director of Operations demanded \$298,000 by the next day from Mr. Racca. Mr. Racca confirmed he would do so to Cash House's Director of Operations, which email was copied to Mr. D'Aoust and Mr. Cook – two of the main principals of the fraudulent scheme. This creates a connection, not just between an “employee” of Cash House but the Director of Operations with the individuals who were the main proponents of the fraudulent scheme.

Payments by De Maria's 116 company to a person involved in the fraudulent scheme

[20] On two occasions in March 2013, while dealing with Mr. Racca at one of the Cash House locations, 116 made payments directly to 2252364 Ontario Inc., a Racca company. These third party cheques were paid directly to the company, Mr. Racca's company. The first payment was for \$242,520. The payment on March 16, 2013 was for \$310,000. These are substantial amounts of money being paid through De Maria's company to a person who was moving and depositing fraudulently obtained cash regularly, sometimes many times at different banks on the same day.

Conclusion

[21] De Maria submits that there is no direct evidence he was involved or had knowledge of the fraud. However, there is no dispute that De Maria was the principal owner and operator of Cash House and 116. More importantly, De Maria admits he approved all of Mr. Racca's dealings with the Cash House which is one of the strongest ties to the fraudulent scheme and receipt of the fraudulent monies.

[22] All of the above facts were set out in Trade Capital's affidavits with supporting documentation. I was satisfied based on this evidence that a strong prima facie case of fraud had been established against the moving defendants. As a result, I was satisfied that Trade Capital had established the pre-requisite requirements for a Mareva Injunction to issue.

[23] A return date of May 19, 2015 had been reserved to deal with any motions to set aside the Mareva Order. Such a motion was brought by the moving defendants.

THE MAY 15, 2015 AFFIDAVIT OF MR. DE MARIA

[24] On the original return of the motion, De Maria filed a 13 page affidavit with no supporting documents or exhibits.

[25] De Maria advised that he "executed a share purchase agreement which effectively "sold" the Cash House on February 3, 2015 to Osman Khan. As will be seen below, this is either false or deceptive in that the agreement was executed by Linda De Maria and by a corporation not disclosed by De Maria.

[26] De Maria described Cash House's business as a "money services business" and that Cash House's cheque cashing service was at issue in the case. He stated that each individual or corporation had an account which allowed him "to maintain a history of each customer's transaction." He described how a corporation might retain an "agent" to facilitate the corporation's dealings with the Cash House. Cash House would receive a third party cheque (i.e. the payee of the cheque had a cheque from a third party which he wanted to negotiate with the Cash House for cash), pay the party 97 per cent of the face value of the cheque to the payee, and the 3 per cent was the Cash House's fee. This business was lucrative, stating that the Cash House processed approximately \$30,000,000 each month for its cheque cashing business. Using De Maria's own calculations, this would amount to approximately \$900,000 of fees generated each month just for this line of its business at Cash House's eight locations between 2011 and 2013.

[27] De Maria denied knowing many of the other persons involved in the fraud. However, he admitted that he knew Mr. Racca as "the primary agent" for Virtucall and agent for other companies. De Maria stated that the fact Cash House cashed cheques for Mr. Racca (five to ten cheques per day) is of no importance since that is the business they were in.

[28] De Maria disclosed his worldwide assets. His assets are listed and said to be worth a substantial amount of money mostly because of his other line of business real estate construction/development. It is interesting to note that he does not even show Cash House as an asset, not even the potential balance to be paid by Mr. Khan.

[29] What is missing from De Maria's affidavit is any documentation responding to what happened to the monies Cash House received through or from the fraud. There is no detailed response to the allegations in Trade Capital's materials. Not a single document was produced to

show that 97 per cent had been paid out or to whom it had been paid out to. No business records. No customer accounts existed as De Maria explained. No explanation for the monies flowing from Virtucall. Nothing. His affidavit was nothing more than a bald denial that he was involved in the fraudulent scheme.

THE MAY 15, 2015 AFFIDAVIT OF MR. OSMAN KHAN

[30] Mr. Khan swore an eight paragraph affidavit. Essentially, he stated he bought the Cash House on February 3, 2015.

[31] The first issue with this affidavit was that De Maria swore he was the prior owner of the Cash House. Yet, the purchaser on the Agreement of Purchase and Sale is "Red Quest Holdings Inc.". Linda De Maria signed on behalf of Cash House. De Maria does not show Cash House or its sale proceeds as an asset. No explanation was provided for this.

[32] The purchase price for Cash House was stated as \$1,000,000 but it is payable as follows: \$20,000 deposit, \$20,000 on closing, \$40,000 annual instalments for four years and the balance on the fifth year. The purchaser is not Mr. Khan but a company to be incorporated by Mr. Khan. Hence, Mr. Khan acquired and closed his purchase of Cash House for \$40,000 with no personal liability and a large balance to be possibly paid in the future.

[33] There were no appraisals, no valuations or any other indicia as to the value of Cash House at the time.

[34] Mr. Khan stated that the Cash House business had done in April (which he described as a slow month): \$9,000,000 in cheque cashing, \$500,000 in pay day loans and \$6,500,000 in

foreign exchange. The gross revenue from those activities was alleged to be \$370,000 for the month (or approximately \$4,400,000 per year).

[35] Even accepting Mr. Khan's numbers, it is difficult to fathom why someone would sell this business for an initial payment of \$40,000, no personal liability for the balance, and only small amounts payable over the next five years when the business appears to be successful and continuing. This was not explained.

[36] Mr. Khan described the bank accounts that Cash House operated. This fact becomes significant later in these reasons as he failed to disclose one particularly important bank account.

ADJOURNMENT REQUEST BY THE MOVING DEFENDANTS

[37] Not surprisingly, in its factum, Trade Capital questioned the validity and *bona fides* of the sale of Cash House to Mr. Khan.

[38] On May 19, 2015, Mr. Racca also brought a motion to dissolve the Mareva Order as against him and his company. He alleged he had no part in the fraudulent scheme.

[39] The moving defendants sought an adjournment as counsel indicated they were surprised at the position Trade Capital had taken that the sale of Cash House was highly suspicious and wished to file additional evidence. The moving defendants were granted the adjournment.

[40] A new date for the moving defendant's motion was set for May 29, 2015. Unfortunately, the motion had to be put over until June 1, 2015, when it was heard.

[41] Mr. Racca's motion to dismiss the Mareva Order against him and his company was heard and dismissed.

THE MAY 22, 2015 AFFIDAVIT OF MR. DE MARIA

[42] Again, De Maria repeats that he was the former owner of the Cash House. Again he makes no explanation of “Red Quest”, the seller of Cash House to Mr. Khan.

[43] De Maria denies that there was anything suspicious about the sale of Cash House to Mr. Khan. He states that because of pending criminal charges, his bankers were withdrawing or limiting their support. He also expressed concerns whether his license would be renewed under the *Payday Loans Act*. As a result, he decided to sell Cash House. De Maria denied that the sale was in any way related to the allegations made by Trade Capital.

[44] De Maria explained that individuals and companies used Cash House's cheque cashing for two reasons: first, banks hold cheques until they clear and second, banks do not have enough cash to give the individual or corporation for the cheque. Clearly, a great deal of Cash House's business was dealing with cash. In some cases, it might be understandable that an individual might want a cheque payable to him negotiated immediately and be prepared to pay a 3 per cent fee for this privilege. However, when it comes to large corporations with ongoing businesses, De Maria's explanation makes little sense. Neither a 3 per cent charge for getting the cash a few days earlier (i.e. the few days it takes to clear a cheque) nor a 3 per cent charge because the bank does not have the cash that day makes any commercial sense to any significantly large company or for a company to engage in this practice repeatedly for large amounts of money. For example, on a \$300,000 cheque the fee paid by the company would be \$9,000!

[45] But by the date of this further affidavit, Mr. Racca's motion had been dismissed. While no suggestion had been made in De Maria's May 15, 2015 affidavit as to Mr. Racca's role in the fraudulent scheme, now De Maria provided another explanation of Cash House's dealings with

Mr. Racca despite having already sworn an affidavit that cheques received from Mr. Racca were “processed in the ordinary course of business” – being cashing of cheques for payees for a fee.

[46] De Maria now stated that Mr. Racca would get a large cash advance in exchange for Mr. Racca's cheque payable to Cash House in the future. I note that this is not Cash House’s specific line of business. Mr. Racca would also provide third party cheques payable to Cash House (such as those referred to above from Superior and Greelink) in exchange for immediate cash. Again, this is not Cash House’s specific line of business. In other words, Mr. Racca would appear with a large cheque from some third party payable to the Cash House and Cash House would simply give Mr. Racca the cash. This makes little sense. Further, there are no records showing that this is what happened at the Cash House. As a financial services company, one would logically expect to see detailed records for these transactions if they were real. DeMaria event stated that Cash House kept historical accounts of customer dealings. Some documents (which were heavily redacted) were attached to De Maria’s second affidavit but, in my view, they do not substantiate the transaction he described.

[47] Next, De Maria now attempted to explain the substantial amount of cheques, some which were certified and bank drafts, from Mr. Racca to Cash House. Clearly, it would make no sense to cash these cheques or drafts at Cash House and pay the fee when a bank would cash these cheques for no fee. De Maria explained that a number of Mr. Racca's cheques were dishonoured (but copies of these NSF cheques are not included in his affidavit). De Maria states that Mr. Racca provided further third party cheques to cover the dishonoured cheques. Who were these cheques from? The same third parties whose cheques De Maria alleges had been dishonoured but this time the amounts of the cheques were much larger, one as high as \$278,200 and in total these “replacement” cheques were approximately \$1,400,000. No account was produced

showing this shortfall by Mr. Racca. No reconciliation with dishonoured cheques was produced either. NOTHING.

[48] I note one other matter. Given the amounts of money involved and how these are prominently set out in Trade Capital's affidavit, no explanation was given why this information was not in De Maria's first affidavit.

[49] De Maria provided an explanation regarding the email from his Director of Operations that she was simply asking Mr. Racca for payment by the next day. However, none of the alleged repayments by Mr. Racca took place in January 2013. Further, this doesn't explain why Mr. D'Aoust and Mr. Cook were copied. Again, there is no accounting information showing Mr. Racca's balance in January 2013 to explain why this amount was demanded by Cash House payable the next day.

[50] In summary, De Maria's affidavit contains no further explanation of the sale to Mr. Khan (which had been the basis of the adjournment sought); contains many bald statements of denial; contains implausible explanations; and produces no documentation supporting his explanations.

THE MAY 22, 2015 AFFIDAVIT OF MR. OSMAN KHAN

[51] Mr. Khan states the price paid for the Cash House was excessive because of the risk the licenses might not be renewed.

[52] Mr. Khan admits he was not involved in the Cash House financial dealings prior to his purchase and, as such, his evidence as to the Cash House's transactions in question is nothing more than hearsay and has no probative value.

[53] Mr. Khan now allegedly controls Cash House but he too fails to produce any of the documentation and records to support what De Maria stated or he alleges in his affidavit.

THE CROSS EXAMINATION OF MR. KHAN

[54] Several significant facts come from the cross examination of Mr. Khan:

- a) He has no experience in running a financial services firm, let alone one which operates a \$30,000,000 per month in cheque cashing business, in addition to payday loans and foreign exchange. He has a psychology degree. He has no accounting or financing courses. He operated an armed transport business many years ago. He started to work at the Cash House in 2011 as a driver making approximately \$50,000 plus bonus (up to \$20,000). More importantly, this continued to be Mr. Khan's job until he signed the share purchase agreement in 2015 – the result of which he now owns the company, all for a \$40,000 payment!
- b) He has deliberately breached the Mareva Order. Mr. Khan opened a new undisclosed bank account to operate the Cash House business and has continued to operate that business from that bank account in the normal fashion without regard to the Mareva Order. Mr. Khan failed to disclose this account in his affidavit when he listed the Cash House's bank accounts in his May 15, 2015 affidavit where he stated he was "describing in detail the nature, value and location of all of The Cash House Inc.'s worldwide assets". This information only came to light during his cross examination.
- c) De Maria approached Mr. Khan to buy the Cash House business. Mr. Khan did not retain counsel on the purchase. Mr. Khan did not obtain a valuation or appraisal of the business or apparently do any analysis on its profitability. When asked where the \$40,000 came from, Mr. Khan refused to answer.
- d) Mr. Khan could not produce a shareholder register for his company that bought the Cash House.

THE ANALYSIS

[55] I accept that the onus remains on Trade Capital to establish its entitlement to the Mareva Order as against these moving defendants.

[56] The issue before me is whether, in light of the additional evidence now available to this court, do the requirements for the issuance of a Mareva Injunction continue to exist?

[57] The moving defendants raised two issues:

- a) there is no strong prima facie case of fraud against the moving defendants;
- b) there is no evidence of any intention to dissipate assets by the moving defendants.

[58] I will deal with those two issues.

STRONG PRIMA FACIE CASE

[59] The first issue to be decided is whether, in light of all of the evidence now before this court, is whether Trade Capital has continued to establish a strong prima facie case of fraud against the moving defendants.

[60] I remain persuaded that a strong prima case of fraud has been made out by Trade Capital against the moving defendants.

[61] Trade Capital's evidence continues to show that Cash House participated in many highly unusual financial transactions, outside its usual business, which resulted in the Cash House and 116 receiving the largest portion of monies fraudulently obtained from Trade Capital.

[62] Further, these fraudulently obtained monies were received by Cash House from most of the companies and persons who participated in the fraud, making a coincidence highly unlikely.

[63] The monies were transferred to Cash House in a variety of ways: many which were not within its normal business operations; many which were in a circuitous route, eventually culminating in Cash House receiving the money. While De Maria described the Cash House business as cashing third party cheques (for a 3 per cent fee), there was almost \$1,200,000 in cheques or bank drafts payable to Cash House that it cashed, all from Trade Capital's fraudulently obtained monies.

[64] De Maria's affidavits do little to explain these transactions as reasonable commercial transactions. Explanations by De Maria were difficult to accept as reasonable commercial transactions and lacked any supporting documentation. These bald denials of involvement in the fraud have little persuasive value in the same manner that such statements have little value to respond to a summary judgment motion. See *Bank of Montreal v. Abdel-Messih* (2006) A.C.W.S. (3d) 380 (C.A.).

[65] I reject the submission that De Maria has not had sufficient time to fully respond to the allegations, does not have access to the documentation or has not had time to obtain the documentation. De Maria has had almost a month. Besides, no further adjournment was asked for by De Maria's counsel. I can only presume this is the best record available at this time.

[66] I am also concerned about De Maria and Cash House's delayed explanations after May 19, 2015. For example, it was only after Trade Capital raised the issue in its factum on May 19, 2015 that it made no commercial sense for someone to attend at Cash House with a bank draft or certified cheque to have this type of cheque/draft negotiated for a fee that De Maria responded

with a subsequent affidavit that these were "repayments" and no fee was charged. Why wasn't this explanation proffered in De Maria's first affidavit? Was there any documentary proof of this bald assertion? No.

[67] De Maria attempts to deal with the over \$1,100,000 which was paid from the Trade Capital advances through the companies used to perpetrate the fraud to the Cash House during the relevant period. What De Maria fails to deal with is the \$2,722,222.50 which was paid to Cash House from Virtucall, which had circuitously come from Trade Capital. No explanation has been given for the receipt of payout of these monies.

[68] There are several other unusual transactions not dealt with by the Cash House. For example, a bank draft was purchased by 2242116 Ontario from a chartered bank payable to Virtucall on January 27, 2012. That same bank draft was subsequently deposited into the Cash House's bank account. There is no explanation for this or even any document showing who negotiated this cheque, who received the cash, whether a 3 per cent fee was retained. Nothing.

[69] For the reasons discovered during the cross examination of Mr. Khan set out above, I am satisfied that the transfer of Cash House to Mr. Khan has all the indicia of a "fake" transaction.

[70] Given Cash House's complete disregard for the Mareva Order, I am not prepared to dissolve the Mareva Order as against Cash House.

[71] I am not persuaded that the additional evidence of DeMaria or Mr. Khan detracts from the strong prima facie case of fraud involving these moving defendants.

EVIDENCE OF DISSIPATION OF ASSETS

[72] Given the strong prima facie case of fraud, the vast amounts of cash, the lack of documentation disclosed by the moving defendants, an inference can be drawn that there is a significant risk of removal or dissipation of assets by the moving defendants.

[73] I agree with Trade Capital's submission that there is actual evidence of dissipation of assets by the moving defendants:

- a) The alleged sale of Cash House by De Maria to Khan (and possibly to Red Quest) in circumstances which are highly questionable that this is a *bona fide* transaction;
- b) The use of another undisclosed bank account by Cash House to carry on business despite the Mareva Order; and
- c) Despite the many millions of dollars of business through Cash House each month, it appears that Cash House has little or no assets besides some leasehold improvements.

CONCLUSION

[74] The motion by the moving defendants to dissolve the Mareva Order as against them is dismissed.

MOTION FOR LIVING/BUSINESS EXPENSES

[75] In the alternative, De Maria seeks to exempt certain expenses for himself, 116 and one of his other businesses.

[76] The applicable test the moving defendants must meet to gain access to the frozen funds and assets for the payment of expenses is set out *Canadian Imperial Bank of Commerce v. Credit Valley Institute of Business and Technology*, supra at paragraph 26 and affirmed by the Court of Appeal in *Waxman v. Waxman*, [2007] O.J. No. 1688 as follows:

(i) Has the defendant established on the evidence that he has no other assets available to pay his expenses other than those frozen by the injunction?

(ii) If so, has the defendant shown on the evidence that there are assets caught by the injunction that are from a source other than the plaintiff, i.e., assets that are subject to a Mareva Order, but not a proprietary claim?

(iii) The defendant is entitled to the use of non-proprietary assets frozen by the Mareva Order to pay his reasonable living expenses, debts and legal costs. Those assets must be exhausted before the defendant is entitled to look to the assets subject to the proprietary claim.

(iv) If the defendant has met the previous three tests and still requires funds for legitimate living expenses and to fund his defence, the court must balance the competing interests of the plaintiff in not permitting the defendant to use the plaintiff's money for his own purposes and of the defendant in ensuring that he has a proper opportunity to present his defence before assets in his name are removed from him without a trial. In weighing the interests of the parties, it is relevant for the court to consider the strength of the plaintiff's case, as well as the extent to which the defendant has put forward an arguable case to rebut the plaintiff's claim.

[77] No specific oral submissions were made with respect to the relief sought by the moving defendants or Trade Capital. In particular, there is no evidence regarding what the amounts set out in paragraph 105 of the De Maria factum are for or why those amount reasonably necessary for these defendants.

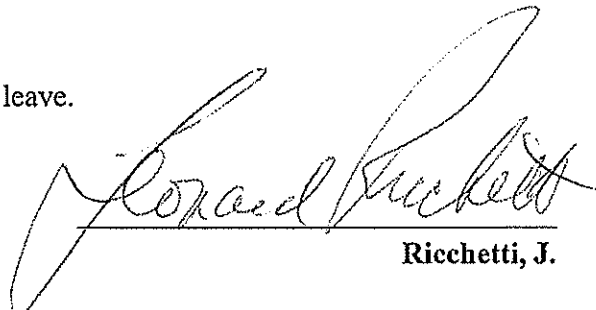
[78] This relief is adjourned *sine die* and may be brought back before me, on notice to Trade Capital, to permit a more complete evidentiary record and submissions.

COSTS

[79] Any party seeking costs shall serve and file written submission on entitlement and quantum within two weeks of the release of these reasons. Written submissions shall be limited to three pages, with attached Costs Outline and any authorities.

[80] Any responding party shall have one week thereafter to serve and file responding submissions. Written submissions shall be limited to three pages with any authorities relied on attached.

[81] There shall be no reply submissions without leave.



Ricchetti, J.

Date: June 10, 2015

TAB X

This is Exhibit "X" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

CITATION: Trade Capital v. De Maria, 2015 ONSC 5409
 COURT FILE NO.: CV-15-2110-00
 DATE: 2015-08-28

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

TRADE CAPITAL FINANCE CORP.

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIO MEDE also known as BRUNO DIAIO MEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC., carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC. 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC., operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

)
)
) Michael B. McWilliams,
) for the
) Plaintiff/Respondent
)

)
)
) Alysha Shore,
) for the
) Defendant/Appellants,
) Carlo De Maria and
) 1160376 Ontario Limited
)

)
)
) HEARD: August 24, 2015
)

RULING

M. J. Donohue, J.

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[1] This motion for leave to appeal was heard by way of written submissions.

[2] The defendants, Carlo De Maria and 1160376 Ontario Limited, seek leave to appeal to the Divisional Court from a motion involving the interlocutory order of Ricchetti, J. dated June 10, 2015. He dismissed the Appellants' motion to set aside a Mareva order issued against them on May 6, 2015.

[3] Trade Capital's claim is that it was a victim of fraud perpetrated by its former President, the defendant, Peter Cook. The appellant De Maria and numbered company are two of the defendants named in connection with the alleged fraud.

[4] Pursuant to a Norwich order a trace of the fraudulent funds determined that a number of companies who received such funds cashed cheques at "Cash House". Cash House had been owned by the defendant/appellant De Maria. His company 116, the corporate defendant/appellant, had acted as a guarantor of Cash House for a time and its bank account had been used to operate Cash House.

[5] Justice Ricchetti granted a Mareva order on a motion without notice on May 6, 2015. These two defendant/appellants brought a motion to have the Mareva order as against them set aside. Justice Ricchetti dismissed their motion on June 10, 2015.

Test for Leave to Appeal to Divisional Court

[6] The test for granting leave to appeal is set out under Rule 62.02(4) and is not easily granted. Leave shall not be granted unless either Rule 62.02(4)(a) or Rule

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62.02(4)(b) are satisfied. Each involves a two-part test and in each case, both aspects of the two-part test must be met before leave is granted.

[7] Rule 62.02(4)(a) allows for leave where there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted. A conflicting decision exists where a court chooses different legal principles to decide a comparable legal problem or to guide the exercise of the court's discretion. *McDonald v. The United States of America* 2014 ONSC 5819 at para. 30.

[8] Rule 62.02(4)(b) allows for leave where there appears, to the judge hearing the motion, good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted.

[9] In considering whether there is good reason to doubt the correctness of the decision the court is to "ask itself whether the correctness of the decision is open to "very serious debate" and, if so, is it a decision that warrants resolution by a higher level of judicial authority". See *Brownhall v. Canada* 80 O.R. (3d) 91 para 30.

Analysis

[10] The defendant appellants argue that the motion judge relied on a "fraud exception" which excuses a moving party on a Mareva motion from proffering evidence of dissipation of assets. The defendant appellants offered that there were two

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conflicting lines of authority on whether evidence of dissipation of assets is required even in cases of fraud.

[11] On review of the motion judge's decision, although he *stated* he inferred dissipation of assets by the strong prima facie case of fraud, he went on to find *evidence* of such dissipation of assets.

[12] Justice Ricchetti found Cash House's cheque cashing service to be a lucrative asset. As a fee, Cash House received three per cent of the face value on each payee's cheque. He found that Cash House could generate approximately \$900,000 of fees generated each month just for this line of its business at Cash House's eight locations between 2011 and 2013.

[13] De Maria sold Cash House to Mr. Khan for a price that Justice Ricchetti found to be far below its value.

[14] Justice Ricchetti found no documentation of sale to support any of De Maria's explanations about the transaction.

[15] I am not satisfied, therefore, that the motion judge relied on a fraud exception. His decision, accordingly, does not fall within the conflicting lines of authority, as noted above

[16] The defendant/appellants, therefore, fail to satisfy the test under Rule 62.02(4)(a).

- 5 -

[17] The second test pursuant to Rule 62.02(4)(b) is whether there is good reason to doubt the correctness of the decision and it involves matters of general importance.

[18] The defendant/appellants point to several errors made by the motions judge:

(a) that the plaintiff evidence showed Cash House had participated in unusual financial transactions, outside its usual business; when Trade Capital proffered no evidence as to Cash House's usual business;

(b) that the Statement of Claim sets out allegations of fraud against these two defendants; when there are no particulars of specific allegations of wrongdoing against these two defendants;

(c) that the defendant De Maria failed to list Cash House as an asset; when at the time it had been sold;

(d) that there was dissipation of assets by Mr. De Maria and 116; when the majority of the assets are in the form of real property and had not been sold; and

(e) that the sale of Cash House amounted to dissipation of an asset; when Cash House remains a named defendant in any event and so would not affect the plaintiff's ability to recover against either defendant.

[19] Although the motion's judge may have misstated some points, his decision as a whole is supported by the evidence and the inferences he was entitled to draw from the evidence provided.

- 6 -

[20] In considering the second part of the test under Rule 62.04(b) the defendant/appellants again refer to whether the fraud exception should excuse the moving party on a Mareva motion from the burden of proffering actual evidence of dissipation of assets as being the issue of general importance.

[21] As noted above, I find that the motion judge did not rely on the exception and did find as a fact that there was dissipation of assets.

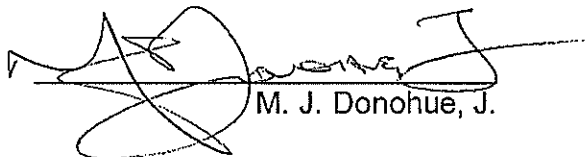
[22] The defendant/appellants have not satisfied the test that this matter is of general importance.

Conclusion

[23] Accordingly, leave to appeal is denied.

Costs

[24] Neither party filed costs submissions. The Plaintiff may file written costs submissions limited to one page with an attached costs outline and any authorities within ten days. The Appellant/Defendants shall have one week thereafter to file responding submissions.


M. J. Donohue, J.

Released: August 28, 2015

CITATION: Trade Capital v. De Maria, 2015 ONSC 5409
COURT FILE NO.: CV-15-2110-00
DATE: 2015-08-28

SUPERIOR COURT OF JUSTICE – ONTARIO

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC., carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC. 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC., operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

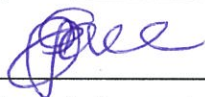
Defendant

RULING

M.J. Donohue, J.

TAB Y

This is Exhibit "Y" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

COURT FILE NO.: CV-15-2110-00

DATE: 2016 01 21

SUPERIOR COURT OF JUSTICE - ONTARIO

BETWEEN:

RE:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO MR. DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT MR. DE MARIA also known as CARLO VINCENZO MR. DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

ENDORSEMENT RE: RULING ON CONTEMPT MOTION

MacKenzie J.

COURT FILE NO.: CV-15-2110-00

DATE: 2016 01 21

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO MR. DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT MR. DE MARIA also known as CARLO VINCENZO MR. DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

BEFORE: MACKENZIE J.

COUNSEL: Peter W. G. Carey and Christopher R. Lee, for the Plaintiff

Andrew Parley and Laura E. Robinson, for the Defendants, The Cash House Inc., and non-parties Osman Khan and 2454904 Ontario Inc.

HEARD: December 4 and 11, 2015 and January 8, 2016

2.

**ENDORSEMENT RE: CONTEMPT MOTION BY PLAINTIFF AGAINST
DEFENDANT THE CASH HOUSE INC. (CASH HOUSE) AND NON-PARTIES
OSMAN KHAN (KHAN) AND 2454904 ONTARIO INC. (245)**

Introduction

[1] The plaintiff has made a motion for an order finding the Cash House, Khan and 245 in contempt of a Mareva Order made by Mr. Justice Ricchetti on May 6, 2015. For ready reference, a copy of the Mareva Order is appended to this endorsement but a brief summary of the salient features of the same is in order by way of overview and background to this contempt proceeding.

The Structure of the Mareva Order

[2] In the introductory part of the Mareva Order the following paragraphs appear:

NOTICE

If you, as a defendant, disobey this order you may be held in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on 10 days' notice to the plaintiff for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits any Defendant to breach the terms of this order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized. (see page 2)

[3] Cash House is one of the named Defendants, all of whom are collectively referred to as the "Mareva Defendants" (See page 2).

[4] The injunctive relief begins under the heading "Mareva Injunction": paragraph 1 stipulates that each Mareva defendant, including Cash House as a named defendant, and its servants, employees, agents, assigns officers, directors, affiliates and anyone else acting on their behalf or in conjunction with

3.

any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva defendants that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto.
- b) instructing, requesting, request counselling, demanding or encouraging any other person to do so; and
- c) facilitating, assisting in aiding, abetting or participating in any acts the effect of which is to do so. See page 3

[5] The injunctive relief in paragraph 1 is further expanded by paragraph 2 in the following terms:

This court orders that paragraph 1 applies to all of the assets of each Mareva defendant whether or not they are in such defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the defendant. For purposes of this order, defendants' assets include any assets which such defendant has the power, directly or indirectly, to dispose of or deal with as if it were such defendant's own. A defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such defendant's direct or indirect instructions. (emphasis added): see page 3

[6] The Mareva Order deals with the disclosure of information in paragraphs 4 and 5, in the following terms:

4 This court orders that each Mareva Defendant prepare and provide to counsel of record within ten (10) days of the date of service of this order, a sworn statement describing, in detail, the nature, value and location of all assets worldwide whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Defendant providing the sworn statement.

5 This court orders that each Mareva Defendant submit to examinations under oath within 30 days of the delivery by such Mareva Defendant of the aforementioned sworn statements or by such later date as may be confirmed

4.

by the plaintiffs' counsel of record. The Mareva Defendants shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Defendant. See page 4.

[7] The Mareva Order provides for its variation, discharge or extension in the following paragraphs:

10 This court orders that anyone served with or notified of this Order may apply, to the court, to vary or discharge this order, on five days' notice to the plaintiff and all other parties.

11 This court orders that this Order will be brought back before the judge who issued this order on May 19, 2015 at 9:00 a.m. All motions or applications to vary or discharge this order or arising out the issuance or enforcement of this order shall be heard by the judge who issued this order with exception of:

- a) urgent matters for which the judge is not available; or
- b) as otherwise directed by the judge.

See page 5.

[8] It is not in issue that the Mareva Order was served together with the statement of claim in the action and the electronic version of the motion record and supporting materials on Cash House on May 8, 2015: see email by the counsel for the Cash House and other defendants to counsel for the plaintiff herein. (Reference, Plaintiffs' motion record, Tab 2-E, page 59)

Follow-on events

[9] Cash House, in pursuance of paragraphs 10 and 11 of the Mareva Order, above, moved before Mr. Justice Ricchetti on May 19, 2015 at 10:00 a.m. to set aside or vary the Mareva Order as it related to Cash House. In support of this motion, the then counsel of the Cash House served and filed an affidavit by Osman Khan. This affidavit is noteworthy in that Mr. Khan states that he is the owner of Cash House and, among other things, denied any direct knowledge by him of the alleged underlying fraud that is the subject of the action, stating in effect there is no evidentiary foundation for the relief in the Mareva Order applying to the Cash House. In his affidavit, he seeks to supply a detailed

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statement outlining the nature, value and location of all the Cash House's worldwide assets. (see paragraph 6)

[10] On May 19th, 2015 Cash House's motion at their request was adjourned to May 29th, 2015 on terms setting out scheduling for the exchange of materials and cross-examination on affidavit materials filed.

[11] A supplementary motion record was filed, comprising an affidavit sworn by Osman Khan on May 22nd, 2015. Among other things, Mr. Khan denies any knowledge of the plaintiffs' allegations respecting any money negotiations by Cash House on the basis that he was not an owner, officer or director of Cash House at the material time. He was in due course cross-examined on both the May 15 and May 22, 2015 affidavits.

[12] The motion by Cash House to set aside or vary the Mareva Order was heard by Justice Ricchetti on June 1, 2015, and dismissed by him in an Endorsement dated June 10, 2015. In his May 15, 2015 affidavit, Mr. Khan recognizes his obligation to supply all relevant information respecting the assets of Cash House. In the course of his cross-examination on his affidavit, he acknowledges the existence of 245, which he incorporated on or about February 23, 2015 and in respect of which he is the sole director and officer. This corporation is significant in context: Mr. Khan's position is that utilizing 245, he purchased Cash House on or about February 27, 2015 and he is now the sole shareholder of Cash House. This is reflected in a Corporation Profile report which indicates Mr. Khan has been the corporation's sole director and officer since March 27, 2015. In his endorsement dated June 10, 2015, Justice Ricchetti alluded to this in the following words:

[Mr. Khan] has deliberately breached the Mareva Order. Mr. Khan opened a new undisclosed bank account to operate the Cash House business and has continued to operate that business from that bank account in the normal fashion without regard to the Mareva Order. Mr. Khan failed to disclose this account in his affidavit when he listed the Cash House's bank accounts in his May 15, 2015 affidavit where he stated he was "describing in detail the nature,

6.

value and location of all of The Cash House Inc.'s worldwide assets". This information only came to light during his cross-examination.

No appeal was taken by the Cash House nor Mr. Khan by way of a leave application for appellate review of Justice Ricchetti's decision as set out in the above endorsement.

[13] Subsequent to the endorsement of Justice Ricchetti on June 10, 2015, various attempts were made on behalf of the plaintiff through counsel to obtain production of information, namely, books, records and documents pertaining to the financial affairs and assets of Cash House, including the examination under oath prescribed under paragraph 5 of the Mareva Order. Correspondence was exchanged in September 2015 without a date being fixed for such examination of Mr. Khan on behalf of the Cash House. Failing agreement as to a fixed date, counsel for the plaintiff scheduled an examination of Mr. Khan in that capacity for October 27, 2015 and served a notice of such examination on his counsel. Notwithstanding communication between then counsel for Mr. Khan and counsel for the plaintiff, Mr. Khan failed to attend the scheduled examination on October 27th, 2015 and plaintiff's counsel obtained a certificate of non-attendance.

[14] The matter came before me in relation to the subject motion for contempt against Cash House, Mr. Khan and 245 on December 4, 2015. In addition to other terms, I ordered that Cash House, Mr. Khan and 245 were to deliver to counsel for the plaintiff an updated list of assets of Cash House together with all current supporting documents on or before 5:00 p.m. on Wednesday, December 7, 2015. Mr. Khan was also ordered on December 4, 2015 to attend on December 11, 2015 for his examination pursuant to paragraph 5 of the Mareva Order. In the event, Mr. Khan's present counsel only delivered non-current documents relating to the bank accounts of Cash House and no documents for the accounts of 245. Mr. Khan attended physically at the examination scheduled for December 11, 2015 but did not produce the

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documents that were subject to the Mareva Order and further stipulated in the December 4, 2015 order.

The Issues

[15] Counsel for the plaintiff in his factum frames the issues in this contempt motion in the following terms:

1. What is the procedure on a civil contempt motion?
2. What is the test for finding liability for contempt?
3. Does the Mareva Order state clearly and unequivocally what should and should not be done?
4. Did the Cash House, Mr. Khan and 245 have actual knowledge of the Mareva Order?
5. Did the Cash House, Mr. Khan and 245 intentionally do any act prohibited by the Mareva Order or intentionally failed to do any act required by the Mareva Order?

Paragraph 44, moving plaintiffs' factum on the contempt motion

(Counsel for the plaintiffs states other issues relating to the manner in which appropriate sanctions against a contemnor should be determined. These issues are more appropriate for determination if and after a finding of contempt is made.)

The Governing Law

[16] It will be useful at this stage to briefly set out some of the governing principles pertaining to civil contempt, the proceedings on a civil contempt motion as well as the test for finding liability for contempt.

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[17] The offence of contempt consists of the intentional doing of an act which is prohibited by court order. Where the alleged contempt is the failure to comply with a court order, a three pronged test is applied:

1. Did the order clearly and unequivocally state what should and should not be done?
2. Did the person disobey the order deliberately or wilfully?
3. Was the contempt proven beyond a reasonable doubt?

[18] An intention to disobey the order is not an element of the tort of civil contempt. It is not necessary to show that the deliberate act(s) was(were) deliberately contumacious. It is not necessary to prove that the alleged contemnor intended to put himself or herself in contempt. However, it must be established that s(he) or it deliberately or wilfully or knowingly did some act which was designed to result in the breach of a court order.

[19] A finding of contempt will not be made for breach of an order unless its meaning in the particular circumstances is clear and unambiguous. For there to be a finding of contempt, it must be shown that the alleged contemnor had actual knowledge of the order that is the subject of the contempt proceedings. Motions for contempt are said to be *strictissimi juris*, that is to say, all proper procedures must be complied with including service personally on the person against whom the contempt order is sought.

[20] An affidavit in support of a motion for contempt may contain statements of the deponent's information and belief only with respect to facts that are not contentious and the source of the information and the facts of the belief must be specified in the affidavit. The notice of motion and supporting material must identify the acts alleged to be contemptuous with sufficient particularity so that the person alleged to have committed the contempt has the opportunity to purge his or her or its contempt.

9.

[21] Where there are controverted facts relating to matters essential to a decision as to whether a party is in contempt of court, trial of an issue must be ordered. A contempt hearing is normally a bifurcated process with a liability phase followed by a penalty phase, the latter often in a second hearing.

[22] The above principles have been enunciated and referred to at length in the judgment of the Supreme Court of Canada in *Carey v. Laiken*, 2015 SCC 17, dated April 16, 2015. Both sides in this contempt motion have cited this case for their respective purposes. There is no dispute between them as to the principles enunciated in the case but rather the application of those principles in this motion.

[23] I turn now to the positions of the parties.

Position of the Plaintiff

[24] Counsel for the plaintiff refers to Rule 60.05 of the *Rules of Civil Procedure* which provides for orders respecting the performance or abstaining from performance of an act (other than the payment of money) which are not complied with are enforceable by contempt orders, and to Rule 60.11(1) which provides that a contempt order is obtainable on the motion to a judge in the proceeding in which the order was made. As noted above, the contempt motion relating to the Mareva Order was referred to me by Mr. Justice Ricchetti in late November 2015. Counsel further acknowledges that contempt proceedings are bifurcated into a liability phase and if liability is established, then continuing in a penalty phase, as previously noted and as specifically adopted in *Carey v. Laiken*, above paragraph 18.

[25] Counsel for the plaintiff acknowledges the applicability of the three pronged test to establish liability for civil contempt, also noted above.

[26] Counsel contends that the Mareva Order states clearly and unequivocally what should and what should not be done. In this regard counsel

10.

acknowledges that a Mareva Order may be found to be unclear if it is missing any essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning. In support counsel refers to the reasons in *Carey*, above, paragraph 33.

[27] Counsel submits the Mareva Order states clearly and unequivocally (among other things) that:

- a) Cash House is a defendant to which the Mareva Order applies: see recitals in paragraph 1;
- b) Cash House and its directors, officers and any and all persons with notice of the Mareva Order, among others, are restrained from directly or indirectly by any means whatsoever dealing with any assets of Cash House located in Canada: paragraph 1;
- c) Cash House is required to prepare and provide [the plaintiff's] lawyers within 10 days of the service of the Mareva Order a sworn statement describing in detail the nature, value and location of all assets worldwide, whether in its own name or not, and whether solely or jointly owned, and whether owned directly and indirectly including any assets held in trust: paragraph 4;
- d) Cash House is required to submit to examination under oath within 30 days of the delivery of the sworn statements above or by such later date as may be confirmed by plaintiff's counsel and bring to the examination all original books, records and other documents relating to its financial affairs and assets: paragraph 5.

[28] Counsel submits the language employed in the operative sections of the Mareva Order previously referred to in these reasons meet the test of stating clearly and unequivocally what should and should not be done, namely, that there are no essential details missing about where, when or to whom it applies

and that the language is not overly broad nor have the external circumstances obscured the meaning of the language in the Mareva Order.

[29] Counsel further contends that each of the Cash House, Mr. Khan and 245 had actual knowledge of the Mareva Order and the operative terms. In support of this proposition, counsel contends that the Cash House and Mr. Khan had actual knowledge of the Mareva Order for the following reasons:

1. Each location of the Cash House including its registered office was served with a copy of the Mareva Order on May 8, 2015;
2. The then lawyers for Cash House accepted service of the Mareva Order on May 8, 2015;
3. Cash House following such service moved to set aside the Mareva Order; its motion was dismissed on June 10, 2015;
4. In support of the motion to set aside the Mareva Order, two affidavits sworn by Mr. Khan (May 15, 2015 and May 27, TBC 2015) were filed by Cash House as evidence on its set-aside motion;
5. In his May 15, 2015 affidavit, Mr. Khan expressly, and unequivocally referred to and acknowledged the obligations of Cash House under the Mareva Order.

[30] Counsel further contends there is no question that 245 had actual knowledge of the Mareva Order inasmuch as Mr. Khan in his cross-examination on the affidavits acknowledged he was the sole officer and director of 245 at the material time.

[31] Counsel for the plaintiff addresses the element of the test for liability relating to the intention of the alleged contemnor in either doing the act or acts prohibited by the Mareva Order or intentionally failing to do the act or acts required by the Mareva Order. This element of intention does not relate to an

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intention to disobey the order; rather it relates to either intentionally doing the prohibited acts or intentionally failing to do the compelled act: in support, counsel refers to *Carey*, paragraphs 35 and 38.

[32] Counsel acknowledges that Mr. Khan in his affidavit sworn May 15th, 2015 provided a sworn statement respecting the assets of the Cash House. Nonetheless, it is argued that Mr. Khan in that statement neglected to disclose a bank account which Cash House was using to operate its business, thereby contravening paragraph 4 of the Mareva Order. Counsel contends the existence of this account was determined as a result of the cross-examination of Mr. Khan on both his May 15 and May 27, 2015 affidavits.

[33] Counsel argues that both the Cash House and Mr. Khan have intentionally operated Cash House's business and otherwise dealt with its assets on a continuing basis since they became aware of the Mareva Order, thereby constituting a breach of paragraph 1 of the Mareva Order. Further it is argued that since the account which Mr. Khan used to operate the business of Cash House was registered in the name of 245, 245 accordingly dealt with the assets of Cash House and facilitated, assisted in, aided, abetted and participated in the operation of Cash House business and thereby breached paragraph 1 of the Mareva Order.

[34] On the question of whether Cash House, Mr. Khan or 245 intentionally failed to do other acts compelled by the Mareva Order, counsel refers to the failure to obtain a date for examination under oath as required in paragraph 5 of the Mareva Order, notwithstanding attempts by counsel to arrange a mutually convenient date for such examination. Counsel points out that the plaintiff was required to properly serve a notice of examination under paragraph 5 of the Mareva Order but then counsel for Cash House was unamenable to proposals for a date within the specific time provisions (or extension of time provisions) set out in the Mareva Order. In the event, Mr. Khan failed to attend the first

scheduled examination and the plaintiff obtained a certificate of nonattendance. In this regard, counsel submits that Mr. Khan intentionally failed to attend the examination being a compelled act, thereby contravening section 5 of the Mareva Order.

[35] I turn now to the position of the alleged contemnors.

Position of the Alleged Contemnors

[36] Counsel for Cash House, Mr. Khan and 245 opposes the plaintiff's motion for contempt on various grounds. One of the most salient of these grounds is that the test for a finding of liability for contempt has not been established as the plaintiff has failed to discharge its burden of proving beyond a reasonable doubt the elements of the test to establish liability for civil contempt. In this regard, counsel argues that the Mareva Order fails to state clearly and unequivocally what should and should not be done and that any ambiguity in the provisions of the Order must be resolved in favour of the alleged contemnors, and further that the plaintiff has failed to prove beyond a reasonable doubt that Cash House, Mr. Khan and 245 intentionally breached the provisions of the Mareva Order.

[37] Counsel develops the argument of ambiguity in the following terms,

- a) It is not at all clear or obvious what a party must list in its sworn statement pursuant to paragraph 4 of the Mareva Order as it relates to assets that are "not in its own name"; and
- b) It is not at all clear what is required of the party being examined under paragraph 5 of the Mareva Order to ensure that the examination takes place or what it means to "confirm" the examination of a party. See paragraph 5, factum for the alleged contemnors.

14.

[38] Counsel's focus on ambiguity relates to what a party must list in its sworn statement under paragraph 4 of the Mareva Order. Counsel argues that the Mareva Order provides the named defendant must list assets that are not in its own name and it is unclear in these circumstances what would be listed in describing assets that are not in ones' own name. Counsel contends a party can be expected to know what assets are in its own name or even what assets it holds beneficially through a formal trust but it is more difficult for a party to know what assets it has that are not held in its own name. Further, counsel submits the plaintiff has put in no direct evidence which suggests Cash House has power to dispose of or deal with the assets of 245 as if they were the assets of Cash House such that the assets of 245 fall within paragraph 2 of the Mareva Order. Finally counsel suggests in its factum that the plaintiffs are asking the court to infer that accounts held in the name of 245 are, or contain, assets belonging to Cash House simply because the stores bearing Cash House's name were operating in October of 2015. Counsel submits the evidence on the motion does not permit such an inference especially in circumstances where the plaintiff's burden is to prove these assets belong to the Cash House beyond a reasonable doubt.

[39] Counsel further argues the Mareva Order does not apply to accounts held by 245 and that 245, not being a named defendant in the Mareva Order as a separate corporate entity, has no obligations under the Mareva Order. Counsel contends the fact that stores operating as of October 2015 under the name "Cash House" does not assist the court in determining whether the funds in 245's bank account should be treated as an asset of Cash House.

[40] Counsel addresses the alleged non-compliance with the examination under oath set out in paragraph 5 of the Mareva Order. Counsel submits that paragraph 5 of the Mareva Order provides that each defendant must attend for an examination within 30 days of the Mareva Order or "by such later date as may be confirmed by plaintiff's counsel of record". Counsel argues this provision of

15.

the Mareva Order does not stipulate the defendant or any of them must attend on any date chosen by the plaintiff regardless of issues of convenience to the defendant or any of them, or that the plaintiff has a unilateral right to select a date for examination without consulting with the defendant or any of them through counsel. In this regard, counsel argues that the Mareva Order in section 5 is ambiguous as to what powers are provided to the plaintiff to select a date for the examination.

[41] In dealing with the plaintiff's position that a breach of paragraph 5 of the Mareva Order arises out of the failure of Cash House and Mr. Khan to attend for examination on the date stipulated in the notice of appointment, counsel suggests this raises a question as to whether the defendants' obligation under paragraph 5 was to attend on any date selected by the plaintiff or whether the defendants' obligation is to actively seek out a date that is convenient to the plaintiff and its counsel. Counsel contends these questions admit of no clear answers and thereby establish that the Mareva Order in this regard is ambiguous. Counsel describes the events leading to the scheduled examination and submits that the representative of the Cash House or its counsel were not available on the date unilaterally selected by the plaintiff.

[42] Counsel further raises the point that admissible evidence on a contempt motion may only include evidence in the nature of hearsay based on the deponent's information and belief in relation to facts that are non-contentious and the source of information and facts for the belief are specified in the affidavit. Counsel further argues that the responding parties as alleged contemnors are entitled to the same rights as an accused in a criminal context, particular in reference to the *Charter of Rights* such as the burden on the party moving for a contempt order to prove essential elements beyond a reasonable doubt and meet the above-noted three pronged test. The position is that the plaintiff has not discharged this burden and a contempt order cannot be used to exert pressure on a party allegedly defaulting in its obligations under a Mareva Order.

ANALYSIS

[43] I reject the submissions and arguments of counsel for Cash House, Mr. Khan and 245 as they pertain to the findings to be made by the court in this contempt motion.

[44] In turn, I accept the submissions and arguments of counsel for the plaintiff as they pertain to the findings to be made by the court in this contempt motion.

[45] I am not persuaded there exists ambiguity in the substantive parts of the Mareva Order as submitted by counsel for Cash House. I am persuaded the language in the Mareva Order previously referred to clearly and unambiguously states what should and should not be done and where, when and by whom the thing(s) should be done or not be done.

[46] I am further persuaded that,

- (a) Cash House and Mr. Khan had actual knowledge of the Mareva Order and its prohibitions and obligations by reason of their then counsel accepting service of the same on May 8, 2015; and
- (b) 245 had actual knowledge of the Mareva Order by reason of Mr. Khan's acknowledgement in his cross-examination on his affidavits that he was and is the sole officer and director of 245.

[47] I am also further persuaded that Cash House, Mr. Khan and 245 have intentionally done the act(s) prohibited, and have intentionally failed to do the act(s) compelled, under the Mareva Order. I find Cash House and Mr. Khan have intentionally operated the business of Cash House on an ongoing basis since the inception of the Mareva Order on May 5, 2015 utilizing the bank account(s) of 245. As noted above, Mr. Khan as the sole officer and director of 245 exercised control over 245 in respect of Cash House's banking needs, resulting in 245

17.

facilitating, aiding and abetting Cash House's business and assets, in contravention of the prohibitions in the Mareva Order.

[48] I turn now to certain arguments made by counsel for Cash House, Mr. Khan and 245.

[49] Counsel contends there are contentious and/or controverted facts and the contempt power attracting *Charter* rights in light of the potential penal consequences of a contempt finding should proceed on the basis of a trial of the issues giving rise to the allegation of contempt.

[50] I reject the submission that on the evidentiary record on this motion, there are contentious and/or controverted facts that require a trial of the issue or issues. There are allegations of contentious and/or controverted facts but the substantive provision of the Mareva Order are, as previously described, clear and unambiguous and no responding material has been filed to substantially controvert these provisions nor the evidence adduced by the plaintiff in this motion.

[51] Counsel for Cash House, Mr. Khan and 245 has argued that evidence of Mr. Khan's operation of 245's bank account in aid or furtherance of Cash House's business is based on hearsay is without merit. The basis for the proposition that Mr. Khan is utilizing 245's bank account in aid of Cash House business is based on statements from Mr. Khan arising out of his cross-examination on his affidavits. The foundation for these statements arise not from information and belief in the affidavit of Mr. Thompson (of the plaintiff) but from evidence by Mr. Khan; they cannot be characterized as hearsay. A logical inference can be drawn from these statements that Mr. Khan is operating the business of Cash House through 245's bank account(s) notwithstanding there may be separate transactions that pertain solely to any business of 245 utilizing the same bank account(s).

18.

[52] Finally, counsel for Cash House, Mr. Khan and 245 submitted that no findings or conclusions made by Mr. Justice Ricchetti in his decision of June 1, 2015 respecting the motion of the responding parties to set aside the Mareva Order would be binding on this court in this contempt hearing. In this regard, counsel points out that the burden in the motion before Mr. Justice Ricchetti on June 1, 2015 was the balance of probabilities, whereas here stated the burden on the moving party is to establish and meet the elements of the three pronged test beyond a reasonable doubt. I do not take issue with this proposition.

DISPOSITION

[53] In the result, I conclude that the moving party has established and satisfied the three pronged test beyond a reasonable doubt and that the Cash House, Mr. Khan and 245 are in contempt of the Mareva Order dated May 5, 2015. There remains the second phase of this contempt proceeding, namely the penalty phase. The return date shall be fixed for this phase by the trial coordinator in consultation with counsel.

[54] The plaintiff's motion to strike the pleadings of Cash House and costs herein shall be heard prior to the commencement of the penalty phase at a date/time to be arranged with the trial coordinator.

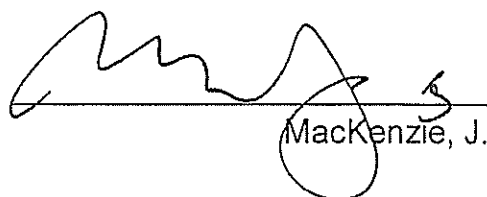
[55] In the interval, I make the following orders:

- a) the Cash House is in contempt of court for breaching the Mareva Order;
- b) Osman Khan is in contempt of court for breaching the Mareva Order;
- c) 245 is in contempt of court for breaching the Mareva Order;
- d) the Cash House, Osman Khan and 245 shall within seven days of this Order serve on Trade Capital and file with the court a sworn

19.

statement listing all accounts at any bank, financial institution or other entity into which any money in which the Cash House has or had a legal or beneficial interest, was deposited or withdrawn since May 6, 2015 and shall provide the full particulars of each account including the name of each account holder, the account numbers, the name of the bank, financial institution or entity, and the branch location;

- e) Osman Khan shall to deliver to Trade Capital within ten days of the date of the Order all original books, records and other documents relating to all financial affairs and assets of the Cash House and 245, and any other company or entity in which Mr. Khan has any interest (beneficial or otherwise), or of which he is the directing mind, or that he has incorporated (directly or indirectly), ~~which~~ carries on, or has carried on, the business of the Cash House or any other company or entity where funds or assets reside that are traceable back to the Cash House ("Other Companies", collectively with the Cash House and 245, the "Disclosing Companies"), including the documents referred to in Schedule C hereto;
- f) Osman Khan shall submit to an examination under oath to be conducted by Trade Capital on a date to be determined by Trade Capital; *factum*
ps 2, et the order
- g) that should there be any further non-compliance with the terms of this order or the Mareva Order, this court may impose upon the Cash House, Osman Khan or 245 any terms it may consider just.


Mackenzie, J.

Date: January 21, 2016

SCHEDULE "A" to ENDORSEMENT
OF JUSTICE A.D.K. MACKENZIE
DATED JANUARY 21, 2016

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Court File No.: CV-15-2110-00

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE
RICCHETTI)
)
)

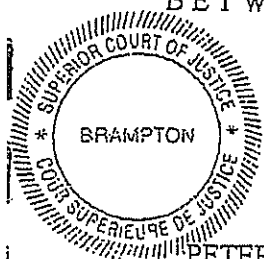
WEDNESDAY, THE 6TH
DAY OF MAY, 2015

BETWEEN:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -



PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as
JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER
(personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and
GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as
BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS
BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT
(personally and carrying on business as CJR CONSULTING), TODD CADENHEAD,
DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY
LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-
MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC.,
THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE,
2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and
SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE
MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO
DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO,
SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC.,
2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN
LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754
ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS
and MILLWALK ENTERPRISES INC.

Defendants

ORDER

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NOTICE

If you, as a Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least five (5) days notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits any Defendant to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, brought without notice by the Plaintiff, TRADE CAPITAL FINANCE CORP., for an an interim Order in the form of a *Mareva* injunction restraining each of the Defendants, Peter Cook also known as Peter William Cook, Marc D'Aoust also known as Jean Marc D'Aoust, Thomas Barker also known as Thomas Richard Barker (personally and carrying on business as LC Exchange, Global Medical and Greenlink Canada Group), Rocky Racca, Bruno Didiomede also known as Bruno Diaiomede, Alan Keery also known as Alan John Keery, Chris Bennett Jr. also known as Chris Bennett also known as Christopher Bennett (personally and carrying on business as CJR Consulting), Todd Cadenhead, Virtucall Inc., Debt Resolve-Mortgage Funding Solutions Inc. carrying on business as Debtresolve Inc., 2242116 Ontario Inc. carrying on business as Superior Medical Services Inc. and Superior Medical Services, The Cash House Inc., 1160376 Ontario Inc., Carlo De Maria also known as Carlo Vince De Maria also known as Carlo Vince De Maria also known as Carlo Vincenzo De Maria, Matteo Pennacchio, Frank Zito also known as Francesco Zito, Simone Sladkowski also known as Simona Sladkowski, Jobec Trade Finance Inc., 1461350 Ontario Inc., 2299430 Ontario Inc., WF Canada Limited, Jobec Investments RT Ltd., Green Link Canada Inc., 2339989 Ontario Inc., 2252364 Ontario Inc. and Millwalk Enterprises Inc. (collectively the "Mareva Defendants"), from dissipating their assets and other relief, was heard on May 4, 2015 at the Brampton Courthouse, 7755 Hurontario Street, Brampton Ontario.

ON READING the Affidavits of Darcy Thompson sworn April 30, 2015 and May 4, 2015, the Affidavit of Kevin D. Bousquet sworn April 27, 2015, and the Affidavit of Catherine Herring sworn April 27, 2015, and on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order as set out in the Guarantee of Parkview Capital TCFC Inc. dated April 29, 2015,

Mareva Injunction

1. **THIS COURT ORDERS** that each Mareva Defendant and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva Defendants, that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and,
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. **THIS COURT ORDERS** that paragraph 1 applies to all of the assets of each Mareva Defendant whether or not they are in such Defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Defendant. For the purpose of this order, a Defendant's assets include any asset which such Defendant has the power, directly or indirectly, to dispose of or deal with as if it were such Defendant's own. A Defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such Defendant's direct or indirect instructions.

Ordinary Living Expenses

3. THIS COURT ORDERS that any Defendant may apply for an order, on at least five (5) days notice to the Plaintiff, specifying the amount of funds which such Mareva Defendant seeks to have exempted from this Order as being needed and required by the Mareva Defendant for his/its ordinary living expenses and legal advice and representation.

Disclosure of Information

4. THIS COURT ORDERS that each Mareva Defendant prepare and provide to the Plaintiff's counsel of record within ten (10) days of the date of service of this Order, a sworn statement describing, in detail, the nature, value, and location of all assets worldwide, whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Defendant providing the sworn statement.

5. THIS COURT ORDERS that each Mareva Defendant submit to examinations under oath within thirty (30) days of the delivery by such Mareva Defendant of the aforementioned sworn statements or by such later date as may be confirmed by the Plaintiff's counsel of record. The Mareva Defendant shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Defendant.

6. THIS COURT ORDERS that if the provision of any of this information is likely to incriminate a particular Mareva Defendant, such Mareva Defendant shall immediately seek an order within forty eight (48) hours permitting the Mareva Defendant not to answer the question or provide the information required to be provided herein or, alternatively, an order that any answer or information provided in accordance with this order shall not be admissible in any criminal proceedings in Canada, failing which, the Mareva Defendant shall answer any and all relevant questions regarding his/its financial affairs and assets.

Third Parties

7. **THIS COURT ORDERS** The Toronto-Dominion Bank also known as TD Canada Trust, The Bank of Nova Scotia also known as Scotiabank, Canadian Imperial Bank of Commerce also known as CIBC, Royal Bank of Canada also known as RBC, Bank of Montreal also known as BMO, City Savings and Credit Union Limited and the Buduchnist Credit Union Limited (the "Financial Institutions") to forthwith freeze and prevent any removal or transfer of monies or assets of the Mareva Defendants held in any account or on credit or on behalf of any Mareva Defendant with the Financial Institutions, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that the Financial Institutions forthwith disclose and deliver up to the Plaintiff any and all records held by the Financial Institutions, and not already delivered to the Plaintiff, in any way relating to the Mareva Defendants whether such documentation includes information relating to assets and accounts other than those listed in Schedule "A" hereto or disclose the existence, nature, value and location of any other monies or assets or credit, wherever situate, held by or on behalf of the Mareva Defendants.

Alternative Payment of Security into Court

9. **THIS COURT ORDERS** that this Order will cease to have effect as against the Mareva Defendants if the Mareva Defendants, or any of them, deposit with the Accountant of the Superior Court of Justice to the credit of this action in total the sum of \$10,000,000.00 (CDN).

Variation, Discharge or Extension of Order

10. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply, to the Court, to vary or discharge this order, on five (5) days' notice to the Plaintiff and all other parties.

11. **THIS COURT ORDERS** that this Order will be brought back before the Judge who issued this Order on May 19, 2015 at 9:00 a.m. All motions or applications to vary or discharge this Order, or arising out of the issuance or enforcement of this Order, shall be heard by the Judge who issued this Order with the exception of:

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- (a) urgent matters for which the Judge is not available; or
- (b) as otherwise directed by the Judge.

Expiry of Norwich Order

12. THIS COURT ORDERS that upon this Order being issued and entered, the Order of Justice Ricchetti dated October 28, 2013 (as extended and amended) shall immediately expire.

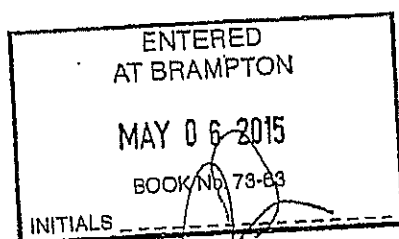
Service of Materials

13. THIS COURT ORDERS that the Plaintiff may serve the materials filed in relation to this Order, but not the order itself, on any person by attachments in PDF file format on a USB stick.

14. THIS COURT ORDERS that the Plaintiff shall, with this court within five (5) days of the issuance of this order, deposit the original guarantee of Parkview Capital TCFC Inc. dated April 29, 2015 as the Plaintiff's undertaking as to damages in this proceeding.

Sean Murphy

Ricchetti, J.



SCHEDULE "A"

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Virtucall TD US Virtucall Account	1038-7303753
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Global Medical Tom Barker Barker Global Account	1038-7303850
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Virtucall TD Virtucall Canadian Account	1038-5214772
TD Canada Trust	2453 Yonge Street Toronto, Ontario M4P 2H6	2242116 Ontario Inc. Superior TD Superior Account	1928-5233022
Canadian Imperial Bank of Commerce	136 Rexdale Boulevard Etobicoke, Ontario M9W 1P6	2242116 Ontario Inc. Superior CIBC Superior Account	05022-9956611
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc. TD 233 Account	1552-5270311
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc.	1552-7327733
Royal Bank of Canada	5125 Sheppard Avenue E Scarborough, Ontario M1S 4N8	CJR Consulting o/b Christopher Jr. Bennett RBC CJR Consulting Account	06492-1010289
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Virtucall Scotiabank Virtucall Account	10132-0073911
Canadian Imperial Bank of Canada	1 St. Clair Avenue West Toronto, Ontario M4V 1K7	Green Link Canada Inc. CIBC Greenlink Account	00112-4224213
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Greenlink Canada Group Tom Barker Scotiabank Greenlink Account	10132-0151319

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BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	LC Exchange Tom Barker Scotiabank LC Account	10132-0141216
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1067356
Royal Bank of Canada	99 Mapleview Drive W Barrie, Ontario L4N 9H7	Millwalk RBC Millwalk Account	00292-1010024
Canadian Imperial Bank of Commerce	291 Rexdale Boulevard Etobicoke, Ontario M9W 1R8	2252364 Ontario Inc. (Rocky Racca)	05922-9991514
Canadian Imperial Bank of Commerce	15 Westney Road N Unit 22 Ajax, Ontario L1T 1P4	Rocky Racca	02542-6194338
Royal Bank of Canada	2 Harwood Avenue South Ajax, Ontario L1S 7L8	Rocky Racca	00042-5169057
Buduchnist Credit Union	2280 Bloor Street West Toronto, Ontario M6S 1N9	1160376 Ontario Limited (o/a The Cash House)	37922
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1072075
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didionede	0006-4615388
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didionede	0006-8986451
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didionede	0006-10081205986 (TFSA)
Bank of Montreal	999 Upper Wentworth Street Hamilton, Ontario L9A 4X5	Bruno Didionede	2919-8019047

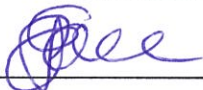
BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Meridian Credit Union Limited	Jackson Square 2 King Street West Hamilton, Ontario L8P 1A1	Bruno Didiomede	00842-037-7454903
TD Mutual Funds TD Investment Services Inc. Toronto-Dominion Bank	55 King Street West Toronto, Ontario M5K 1A2	Bruno Didiomede	0004-10202- 06905235875 91 479 5510439
Manulife Bank of Canada Royal Bank of Canada	8 Prince Andrew Place Don Mills, Ontario M3C 2B4	Bruno Didiomede	0003-02234- 000009930769
TD Canada Trust	981 Taunton Road East Oshawa, Ontario L1H 7K5	Peter Cook	3202-n/a
Bank of Nova Scotia	544 Bayfield Street Barrie, Ontario L4M 5A2	Alan Keery	85092
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	3012-0003-1029909
Canadian Imperial Bank of Commerce	1700 Wilson Avenue North York, Ontario M3L 1B2	Rocky Racca	00922
Buduchnist Credit Union Limited	1891 Rathburn Road East Mississauga, Ontario L4W 3Z3	The Cash House Inc.	1163457311
Bank of Nova Scotia	8565 Highway 27 Vaughan, Ontario L4L 1A7	Francesco Zito	42952-0045624
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Tom Barker	10132
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	03012-4002010
Canadian Imperial Bank of Commerce	7220 Kennedy Road Markham, Ontario L3R 7P2	Matteo Pennacchio	03232

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BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	n/a	Todd Cadenhead	01238400
Wells Fargo Bank, N.A.	n/a	Marc D'Aoust	1221-0527-84 1221-0537-84

TAB Z

This is Exhibit "Z" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

CITATION: Trade Capital Finance Corp v. Cook et al., 2016 ONSC 3339
COURT FILE NO.: CV-15-2110-00
DATE: 2016 05 24

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO MR. DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT MR. DE MARIA also known as CARLO VINCENZO MR. DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

BEFORE: MACKENZIE J.

COUNSEL: Peter W. G. Carey and Christopher R. Lee, for the Plaintiff

Andrew Parley and Eli S. Lederman, for the Defendant, The Cash House Inc. (Cash House), and non-parties, Osman Khan (Khan), and 2454904 Ontario Inc. (245)

HEARD: March 14, 30 and 31; April 6, 2016

ENDORSEMENT RE: SANCTION PHASE

Introduction

[1] By Endorsement dated January 21, 2016 (“the Contempt Endorsement”), the Defendants The Cash House Inc. (“Cash House”), Osman Khan (“Khan”) and the non-parties were found in contempt of the Mareva Order of Ricchetti J. issued May 6, 2015 (“the Ricchetti Mareva Order”) and my Order dated December 4, 2015 made in aid of the Ricchetti Mareva Order (“the December 4, 2015 Order”). One of the terms in the Contempt Endorsement is for the continuance of the obligations of the Cash House, Khan and 245 mandated by the Ricchetti Mareva Order and the December 4, 2015 Order. As well, the Contempt Endorsement set out more detail with respect to the documentary disclosure obligation created under the above-mentioned Orders.

[2] The acts and omissions constituting the contempt as set out in the Contempt Endorsement have been detailed in that Contempt Endorsement and need not be repeated here. They are incorporated by reference into this Endorsement: in particular paras. 32, 33, 34, 44 and 47, 50 and 54.

[3] The Contempt Endorsement sets out the findings and conclusions in the liability phase of the contempt proceeding: see paras. 55(a) to 55(c) of the Contempt Endorsement.

The Governing Law

[4] Rule 60.11(1) provides as follows:

A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

[5] Rule 60.11(5) provides as follows:

In disposing of a motion under sub rule(1), the judge may make such order as is just, and where a finding of contempt is made, the judge may order the person in contempt,

- a) be imprisoned for such period and on such terms as are just;
- b) be imprisoned if the person fails to comply with the term of the order;
- c) pay a fine;
- d) do or refrain from doing an act;
- e) pay such costs as are just;
- f) and comply with any other order that the judge considers necessary and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.

[6] Rule 60.11(1) constitutes the initial or first phase of contempt proceedings, sometimes referred to as the liability phase. Rule 60.11(5) sets out the court's authority where a finding of contempt has been made and is sometimes referred to as the penalty or sanction phase of the contempt proceeding.

[7] Rule 60.11(6) provides as follows:

Where a corporation is in contempt, the judge may also make an order under sub rule 5 against any officer or director of the corporation and may grant leave to issue a writ of sequestration under rule 60.09 against his or her property.

The Principles of Sentencing for Contempt

[8] The principles of sentencing for contempt are similar to those of the criminal law, namely:

- a) the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the contemnor;
- b) the sentence should be increased or reduced to account for aggravating or mitigating factors surrounding the contempt or the contemnor;
- c) the sentence should be similar to sentence imposed on similar contemnors for similar contempts committed in similar circumstances ;
- d) sentences should denounce unlawful conduct, promote a sense of responsibility in the contemnor and deter the contemnor and others from defying court orders;
- e) the court should consider sanctions other than imprisonment.

See *Astley v. Verdun* [2003] O.J. 4942 (SCJ), paras 16-19.

[9] The court has a broad discretion under rule 60.11(5) in fashioning an appropriate punishment or sanction for contempt. As noted, the judge in the exercise of that discretion will take into account proportionality, denunciation, deterrence (general and specific), rehabilitation, the presence of mitigating and aggravating factors and the promotion of a sense of responsibility and respect for the rule of law embodied in the orders of the court.

[10] Aggravating factors in this context include blatantly or intentionally violating court orders, continued defiance of court orders, lack of remorse, untenable or incredible explanations on the part of the contemnor. Mitigating factors include the absence of contumacious intent, acknowledgment or admission of wrongdoing, sincere apology, and purging of the contemptuous conduct.

[11] . In contrast to the sanction for criminal contempt which is basically punishment, the purpose of sentencing for civil contempt is coercive or persuasive, with the intention to obtain compliance by the contemnor with the terms of the court's orders thereby safeguarding the authority of the court and contributing to respect for the rule of law and the administration of justice.

[12] It must be noted at this point that among other orders or sanctions sought by the plaintiff in this second phase, i.e. the penalty or sanction hearing, the plaintiff seeks an order striking out the defence and cross-claim of Cash House in this action, without leave to amend pursuant to rule 60.12(b). The issue of striking the statement of defence will be dealt with by way of a separate endorsement.

[13] Nonetheless, many of the factors to be taken into account in the motion to strike will be equally applicable to the factors to be taken into account in determining the appropriate penalty or sanction for the breaches and non-compliance of the Contemnors that are the subject of this hearing. These factors in the motion to strike shall be incorporated by reference into the findings and reasons pertaining to the penalty or sanctions phase in this contempt proceeding.

The Position of the Plaintiff

[14] Counsel for the plaintiff describes in detail the torrent of correspondence that ensued between him and counsel for the Contemnors with particular reference to the problem of documentary disclosure arising out of the 1,000 bankers boxes of Cash House documents in a storage facility. Particulars of this correspondence and its relevancy on the issues of deliberate and continuing non-disclosure and discharge of the documentary production mandated under the Ricchetti Mareva Order and the December 4, 2015 Order in aid, are set out in the endorsement respecting the plaintiff's motion to strike the statement of defence of the defendant Cash House. Of note is counsel's argument that the bank

accounts in the name of 245 over which the Contemnors or any of them have control disclose withdrawals totalling \$12.4 million dollars.

[15] Whether the totality of the withdrawals or even the average monthly balance in the subject bank accounts are pertinent or even determinative of the issues in the underlying fraud action, they nonetheless are in breach of the restrictions in the Ricchetti Mareva Order over a period of approximately 7 months from on or about May 6, 2015 up to the commencement date of the liability phase contempt proceeding on January 8, 2016.

[16] In sum, counsel for the plaintiff contends that Cash House and Khan have deliberately operated the business of Cash House and otherwise dealt with its assets on a continuing basis, all in breach of Section 1 of the Ricchetti Mareva Order. Further, that these activities demonstrate a continuation to operate Cash House's business and deal with its assets even after Cash House and Khan claim they shut down Cash House and even after the Contempt Endorsement which clearly stated that running the banking aspects of Cash House's business through the 245 account was an act in contempt of the Ricchetti Marevea Order.

[17] Counsel for the plaintiff contends a severe sanction should be imposed for the contemptuous acts in question on the basis that these acts are in breach of the Ricchetti Mareva Order and the above-mentioned orders in aid and the breaches are grave in nature. In this regard counsel submits that Khan deliberately misled the plaintiff as well as the court by providing a sworn statement as to the assets of the Cash House which omitted the accounts in the name of 245 by which Cash House was actively using to operate its business. In this regard, counsel argues that by dealing with the Cash House assets in breach of the Ricchetti Mareva Order and the above-mentioned orders in aid, Khan has thwarted the purpose of the Ricchetti Mareva Order by putting Cash House assets outside the reach of the plaintiff and has been aided by 245 in accomplishing this objective through the use of 245's bank accounts. As well,

counsel submits that by failing to produce the required documents described in the examination of Khan ordered on December 11th, 2015 Cash House and Khan have prevented the plaintiff from learning anything about the assets and financial affairs of Cash House including, without limitation, where the funds that were to be frozen pursuant to the Ricchetti Mareva Order have been dispersed. In this regard, counsel argues that Cash House, Khan and 245 have not purged their respective contempts and in fact continue to fail to provide the supporting documentation which would allow the court and the plaintiff to determine where the funds transferred in breach of the Ricchetti Mareva Order were directed.

[18] On the question of the continuing nature of the acts of contempt, counsel contends Cash House and Khan have breached the Ricchetti Mareva Order on a continuing basis in various ways, as previously outlined. Counsel argues not only have they failed to purge their acts or omissions of contempt but they have continued these acts or omissions even after they were found in contempt under the Contempt Endorsement. In this regard, counsel submits the Contemnors have shown a complete disregard for the legal system, the administration of justice and the respect necessary for the rule of law in obtaining compliance with court orders.

[19] Counsel emphasizes the Ricchetti Mareva Order and the December 4, 2015 Order in aid have failed to effect compliance by the Contemnors with their obligations under the court's orders.

[20] Counsel also argues Khan has persisted in the continuing breaches from the date of the Ricchetti Mareva Order and above-mentioned orders in aid even after having been found in contempt. In all, counsel for the plaintiff submits that a term of imprisonment for Khan should be imposed (originally 12 months and revised to 18 months), with the provision that he should have leave to move for variation or discharge of a custodial sanction when Khan is of the view that he

has purged his contempt on materials served on counsel for the plaintiff as contemplated by rule 60.11(8).

[21] In sum, the plaintiff's position is that in disposing of the penalty or sanction phase, the court should: (a) continue the orders contained in the Contempt Endorsement; (b) freeze all assets held by the Contemnors, Khan and 245, in addition to those assets of Khan and 245 already frozen; (c) require Khan to provide a sworn statement on behalf of himself, Cash House and 245 listing all persons who have performed work for Cash House, Khan and 245 from the date of the Ricchetti Mareva Order, including each person's title and duties and a copy of the relevant payroll records whether or not the person was an employee of Cash House, 245 or any other person or corporation, plus (d) costs of the contempt proceeding.

The Position of the Contemnors

[22] I turn now to the position of the Contemnors.

[23] Counsel for the Contemnors submit they have attempted to comply with the orders and directives in the Contempt Endorsement but submit the documentary production in question is a "monumental undertaking" and is ongoing.

[24] In support of this position, counsel argues, among other things, Khan only "recently" became a principal of Cash House and was not involved in its storage of historical records, especially for the period prior to March 2015 when 245 purchased Cash House. In this vein, counsel argues that a document production exercise of this magnitude [the present task] can only be managed effectively through the cooperation between counsel and the "Responding Parties [the Contemnors] have repeatedly requested the assistance and cooperation of counsel for the Plaintiff in managing this process, but have received nothing in response but further allegations of contempt: para 9, Factum

of the Responding Parties, March 10, 2016. Counsel further submits “the Responding Parties” [the Contemnors] have been working diligently responding to each of the various demands of the plaintiff as they arise and “the Responding Parties” [the Contemnors] are continuing to seek out any other documents that fall within the scope of the McKenzie [sic] Decision [the Contempt Endorsement]: para 11, Factum of the Responding Parties, March 10, 2016. In sum, counsel for the Contemnors contends the Contemnors have complied with their obligations in the Ricchetti Mareva Order and in the Contempt Endorsement by making documents in the 1,000 bankers' boxes available to the plaintiff.

Analysis

[25] I reject these submissions.

[26] In the circumstances of this case, the proffered documentary production made on behalf of the Contemnors is tantamount to the “dump truck” concept of documentary production. To contend that the plaintiff through counsel had an obligation here to attend at the storage site with counsel for the Contemnors and sort through the contents of each of the 1,000 bankers boxes in order to identify and classify documents without any sort of road map or chart is simply untenable. The Contemnors, in particular Cash House and Khan, had an obligation to sort out or make a form of inventory of the relevant documents in the 1,000 bankers boxes as a first step in establishing compliance with the obligations of documentary production mandated in the Ricchetti Mareva Order and the above-mentioned orders.

[27] There have been other significant developments since the date of the Contempt Endorsement on January 21, 2016¹. There is evidence of the transfer

¹ It is important to note in this regard that a second Mareva application was mounted and an ex parte Order was granted in this action on March 24, 2016 which has been continued by order dated April 8, 2016 (the second Mareva Order). Although there may be overlapping areas of evidence between the Ricchetti Mareva Order and the second Mareva Order, the factual underpinning for the sanction phase in the Ricchetti Mareva Order contempt proceeding does not take into account or rely upon any evidence elicited in the second Mareva Order proceeding.

of the leased premises at which Cash House was carrying on its business to a corporation called Tax Tag Inc., incorporated by or on behalf of Ms. A. Calderan. It is noteworthy that Ms. Calderan was a former significant employee of Cash House until it ceased carrying on its business. In these circumstances it is not unreasonable to consider that the "transfer" of the tenancies of Cash House to Tax Tag Inc. is a "construct" whose *raison d'être* is to enable Khan and Cash House to frustrate the operation of the Ricchetti Mareva Order and the above-mentioned orders in aid, including the Contempt Endorsement. Although the foregoing statement is not a finding of fact herein and may be subject to further enquiry during the course of this action, it nonetheless provides a basis on which to reasonably infer the Contemnors in light of their other acts or omissions of non-compliance have deliberately acted to set up a scheme to frustrate and evade the purpose and obligations in the Ricchetti Mareva Order and the above-mentioned orders in aid.

[28] I turn now to the imposition of an appropriate sanction. As has been noted, imprisonment is the ultimate sanction on a contemnor and is not to be imposed if another sanction can be imposed which will maintain the integrity of the justice system in obtaining respect for the orders of the court and the administration of justice. As has been observed in the jurisprudence, the focus in the sanction phase in civil contempt proceedings is coercive rather than punitive. The goal is to obtain compliance with court orders. In this case, having regard to the conduct of the Contemnors since the Contempt Endorsement of January 21, 2016 the likelihood that the Contemnors will comply with the reiteration of their obligations under the Ricchetti Mareva Order and the above-mentioned orders in aid, in particular the Contempt Endorsement, is dubious in the extreme if not outright improbable.

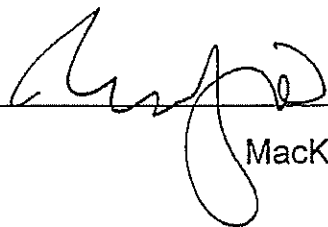
Disposition

[29] I decline to order the Contemnors or any of them to pay a fine in accordance with rule 60.11. However, pursuant to rule 60.11 5(e), I order the Contemnors jointly and severally to pay the costs of the contempt proceedings in respect of which no previous cost orders have been made, on a full indemnity basis forthwith upon assessment.

[30] I turn to the disposition of Khan's situation as Contemnor herein. Having regard to all the above circumstances, and the applicable law, I am of the view the appropriate sanction for Khan is a term of imprisonment for a period of 90 days, to be served intermittently from Friday evenings at 6 p.m. to Sunday evening at 6 p.m., commencing June 3, 2016 and weekly thereafter for the balance of the 90 days intermittent sentence, all subject to further order. A warrant of committal in Form 60L shall issue for execution by the police service having jurisdiction in the place where Khan may be found.

[31] In keeping with the ultimate purpose of sanction in civil contempt proceedings, namely, compliance with the court's orders, the Contemnors through counsel shall forthwith supply the plaintiff through counsel with a comprehensive and detailed written inventory of the documents contained in each of the 1,000 bankers boxes. The plaintiff through counsel shall supply the Contemnors through counsel with a written status report as to the outstanding documentary production from time to time, in compliance with the Ricchetti Mareva Order, the above-mentioned orders in aid, including the Contempt Endorsement. In addition, Khan shall provide a sworn statement or statutory declaration on behalf of himself, Cash House and 245 listing all persons who have performed work for Cash House, Khan and 245 from the date of the Ricchetti Mareva order including each person's title and duties and a copy of all relevant payroll records whether or not such person was an employee of Cash House, 245 or some other person or at all.

[32] Orders to issue accordingly



Mackenzie, J.

Date: May 24, 2016

CITATION: Trade Capital Finance Corp v. Cook et al., 2016 ONSC 3339
COURT FILE NO.: CV-15-2110-00
DATE: 2016 05 24

SUPERIOR COURT OF JUSTICE - ONTARIO

B E T W E E N:

RE:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -


PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO MR. DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT MR. DE MARIA also known as CARLO VINCENZO MR. DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

ENDORSEMENT
RE: SANCTION PHASE

MacKenzie J.

TAB AA

This is Exhibit "AA" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.


A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.

CITATION: Trade Capital Finance Corp v. Cook et al., 2016 ONSC 3338
COURT FILE NO.: CV-15-2110-00
DATE: 2016 05 24

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO MR. DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT MR. DE MARIA also known as CARLO VINCENZO MR. DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

BEFORE: MACKENZIE J.

COUNSEL: Peter W. G. Carey and Christopher R. Lee, for the Plaintiff

Andrew Parley and Eli S. Lederman, for the Defendant, The Cash House Inc. (Cash House), and non-parties, Osman Khan (Khan), and 2454904 Ontario Inc. (245)

ENDORSEMENT RE: MOTION UNDER RULE 60.12

Introduction

[1] By Endorsement dated January 21, 2016, (The Contempt Endorsement), I found the defendant Cash House and the non-parties Khan and 245 in contempt of a Mareva Order by Ricchetti J. dated May 6, 2015 (the Ricchetti Mareva Order).

[2] For ready reference, the Ricchetti Mareva Order is appended to the Contempt Order, both of which are Appendix 'A' herein.

[3] As the liability phase of the contempt proceedings has been disposed of in the Endorsement of January 21, 2016, the second phase of the contempt proceeding, namely, the sanction phase, was put over to March 14 and 15, 2016. The hearing of the sanction phase commenced on, March 14, 2016 but was adjourned to March 30 and 31, 2016. A further adjournment was necessitated on March 31, 2016, for return on April 6, 2016.

***Rule 60.12 motion
to strike the Cash House statement of defence***

[4] I turn now to the plaintiff's motion to strike out the statement of defence of the defendant Cash House without leave to amend, pursuant to Rule 60.12.

3.

[5] Rule 60.12 provides as follows:

FAILURE TO COMPLY WITH INTERLOCUTORY ORDER

60.12 Where a party fails to comply with an interlocutory order, the court may, in addition to any other sanction provided by these rules,

- (a) stay the party's proceeding;
- (b) dismiss the party's proceeding or strike out the party's defence; or
- (c) make such other order as is just. R.R.O. 1990, Reg. 194, r. 60.12.

[6] The Ricchetti Mareva Order and my follow-on orders of December 4 and 11, 2015 are interlocutory orders engaging Rule 60.12.

The Governing Law

[7] The striking of a statement of defence is an extreme remedy and should only be ordered by the courts as a last resort. In other words, an order striking a statement of defence should not be one of first resort at least without providing a defendant/contemnor with an opportunity to cure the subject default or noncompliance: see *Signal Chemicals Ltd. v. Singh*, 2014 ONSC 5228 (Div. Ct.); *Bell ExpressVu Limited Partnership v. Torroni* (2009), 94 O.R. (3d) 614 (OCA); and *Koohestani v. Mahmood*, 2015 ONCA 56 (OCA).

[8] In *Koohestani*, the Ontario Court of Appeal develops the above principles by setting out factors to be considered. These are: the merits of the defence and the relevancy of the context of the misconduct of the defendant(s) in default not only as to the proportionality of the misconduct but also in keeping with the objectives guiding the application of the Rules, i.e. the Rules should be interpreted to secure the just determination of every civil proceeding on its merits: see paras. 57-61, *Koohestani*.

[9] Finally, *Bell ExpressVu* and *Koohestani* stand for the proposition that a defaulting party should be given 'one last chance' to comply with the order(s) of the court.

4.

The 'context': events after the Ricchetti Mareva Order

[10] Subsequent to the Ricchetti Mareva Order, correspondence ensued between counsel for the plaintiff and counsel for the Cash House, Khan and 245 with a view to obtaining production of books, financial records and documents pertaining to the financial affairs and assets of Cash House and relating to the examination of Khan pursuant to paragraph 5 of the Ricchetti Mareva Order. As this correspondence failed to reach an agreement by September 2015 for a date for an examination of Khan on behalf of Cash House, counsel for the plaintiff scheduled an examination of Khan in that capacity for October 27, 2015, and a notice of such examination was served on his counsel. Khan failed to attend the scheduled examination and counsel for the plaintiff obtained a Certificate of Non-attendance.

[11] The plaintiff then moved for an order finding Cash House, Khan and 245 in contempt of the Ricchetti Mareva Order. This motion came on before me on or about December 4, 2015. On that date, I ordered that Cash House, Khan and 245 were to deliver to counsel for the plaintiff an updated list of assets of Cash House with all current supporting documents on or before December 7, 2015 and for Khan to attend on December 11, 2015 for his examination pursuant to paragraph 5 of the Ricchetti Mareva Order.

[12] Khan attended the examination on December 11, 2015 but failed to produce documents which, among others, were the subject of the Ricchetti Mareva Order, and which documents were stipulated and confirmed in my December 4, 2015 Order.

[13] The liability phase of the contempt hearing was completed on January 8, 2016. On January 21, 2016, findings of contempt on the liability phase were set out in the Contempt Endorsement. After discussions with counsel as to an appropriate interval between the findings of contempt and the commencement of the sanction or penalty phase of the contempt proceeding, I adjourned the

5.

sanction or penalty phase hearing to March 14, 2016. The rationale of this return date for the sanction or penalty phase was to permit the Contemnors as found in the Contempt Endorsement (Cash House, Khan and 245) to have just under two months within which to comply with the extant court orders, relating to full documentary production and the examination under oath of Khan as prescribed in the Ricchetti Mareva Order and my December 4, 2015 Order.

[14] It is appropriate to note the torrent of correspondence between counsel for the Contemnors and counsel for the plaintiff. One of the main subjects in this voluminous exchange was the position taken by counsel for the Contemnors relating to (approximately) 1,000 bankers boxes of documents pertaining to the affairs of Cash House. Counsel for the Contemnors, by letter dated January 28, 2016, informed counsel for the plaintiff that the 1,000 bankers boxes would be available for inspection at the storage site by the plaintiff's counsel on January 29, 2016, i.e. (the next day), from 8:00 a.m. through 5:00 p.m.

[15] Counsel for the plaintiff on the next day, (January 29, 2016) rejected the suggestion inherent in the position of counsel for the Contemnors that this proposal constituted compliance with the Ricchetti Mareva Order, and my December 11, 2015 Order respecting delivery/production of documents relating to the Cash House and that the counsel for the Contemnors had a positive obligation to sort through the documents and provide copies in understandable form. On the same day, January 29, 2016, counsel for the Contemnors responded by letter indicating that there was no obligation on the Contemnors to sort through and organize the documents, let alone provide copies of relevant documents.

[16] Further correspondence ensued between the parties up to the return date of the sanction hearing on March 30, 2016 in which counsel for the Contemnors put forward various scenarios in which there would be joint attendances at the storage site for the 1,000 bankers boxes to examine the

6.

contents of the 1,000 bankers boxes. The position of counsel for the plaintiff, quite apart from the documentary issues pertaining to the 1,000 boxes of documents in storage, was that there was an obligation on the Cash House and the non-party Contemnors to produce accounting records relating to the business of the Cash House, at the very least in electronic form.

[17] The foregoing description is a compelling example of the attitude and actions by the Contemnors through their counsel as to their obligations relating to documentary production. As well, the obligation with respect to documentary production, albeit significant, is accompanied by the obligation of Khan, arising from terms requiring him to be examined pursuant to paragraph 5 of the Ricchetti Mareva Order as confirmed by the December 4, 2015 Order. Although Khan attended on December 11, 2015, he failed to make any fulsome efforts to comply with the documentary production mandated by the Ricchetti Mareva Order: only 22 pages were produced. Through counsel, he took the position that the December 4, 2015 Order was in clarification and subsequent narrowing of the breadth of documents to be produced under paragraph 5 of the Ricchetti Mareva Order. As well, he declined to produce any documents pertaining to 245 notwithstanding he had admitted under oath during his cross-examination on his affidavits (May 15 and 22, 2015) filed, held on May 27, 2015, that he had diverted business of the Cash House to 245.

[18] He also refused to answer questions respecting the interactions of 245 with the Cash House, where any funds arising from cheques cashed at the Cash House had been directed and who operated the business locations of the Cash House at the material time.

[19] A transcript of his examination on December 11, 2015 is noteworthy, not only for the subject matter of the answers or non-answers to the questions properly put, but also the atmosphere or tone in which the examination proceeded from Khan's aspect. The transcript of the examination contains

7.

properly put, but also the atmosphere or tone in which the examination proceeded from Khan's aspect. The transcript of the examination contains approximately 87 pages. At the outset, counsel for Khan records that Khan in his personal capacity and as representative of the Cash House is invoking and availing himself and the Cash House of the protections of the *Canada Evidence Act*, the *Ontario Evidence Act*, the *Charter of Rights and Freedoms* "and all related protections in connection with all of the evidence given on this examination". Khan then, at page 11 of the transcript, states he honestly believes that "the answers I provide to the questions asked in this examination may tend to incriminate me. I object to answer questions that may tend to incriminate me and invoke the protection of section 5(2) of *Canada Evidence Act* and section 9(2) of the *Ontario Evidence Act* and the *Charter*". During his examination, Khan in response to various questions invokes the protection of the subject legislation and declines to answer the questions¹. There are also approximately 28 refusals made on behalf of Khan, outside the scope of the

¹ This position appears to reflect a misunderstanding of the operation of the legislation in question. By way of example, section 5 of the *Canada Evidence Act*, RSC 1970, c.E-10, as amended, provides as follows:

s. 5(1) No witness shall be excused from answering any question on the ground that the answer to the question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.

s. 5(2) Where with respect to any question a witness objects to answer on the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if but for this Act, or the Act of any provincial legislature, the witness would therefore have been excused from answering the question, then although the witness is by reason of this Act or the provincial Act compelled to answer, the answer so given shall not be used or admissible in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of that evidence or for the giving of contradictory evidence.

(Emphasis added)

The subsequent use immunity of compelled answers after objection is taken on behalf of the witness is by operation of the statute; the entitlement of the witness in this regard does not engage the exercise of judicial discretion.

8.

cheques cashed at the Cash House through 245 and the identity of the persons or entities who operated the business locations of the Cash House.

Analysis

[20] The Contempt Endorsement sets out in detail the acts or omissions constituting contempt of the Ricchetti Mareva Order and the December 4, 2015 Order in aid. It is not open to counsel for the parties to essentially relitigate the breadth of these enumerated acts or omissions in dealing with the aptness of the plaintiff's motion to strike the statement of defence without leave to amend.

[21] Counsel for the parties do not differ as to the principles and factors to be considered in the test for striking out pleadings, in this case, a statement of defence. The bone of contention here whether the defence is "blatantly unmeritorious so as to give rise to the inference that the defendant's refusal to comply with a court order is part of a deliberate strategy to delay a decision on the merits." see *Koohestani*, para. 8. In this regard, counsel for the Cash House, Khan and 245 contends that the defence of the Cash House has merit and is not part of a strategy to delay the proper adjudication of the action.

[22] It is not the court's role in this motion to strike to determine ultimately the viability of either the claims or any defence to the claims. The focus here is to assess the appropriate sanction for the enumerated acts or omissions in the Contempt Endorsement.

[23] I turn now to the proportionality of the remedy of striking out the statement of defence without leave to amend in relation to the severity of the misconduct constituting the enumerated acts or omissions of contempt. In this case, there must be close scrutiny of the conduct of the Contemnors through their counsel from the date of the Ricchetti Mareva Order through the December 11, 2015 order in aid, and the Contempt Endorsement up to the return of the adjourned Sanction phase hearing on March 30, 2016. The salient aspect in this

9.

scrutiny is whether the Contemnors have demonstrated by their non-compliance with the documentary production mandated by the Ricchetti Mareva Order, the December 11, 2016 order in aid and confirmed in the Contempt Endorsement a continuing and deliberate intention to disobey and disrespect the above orders of the court, thereby hindering and delaying the disclosure of information essential to the disposition of the action on the merits.

[24] Under the above heading "Context (events after the Ricchetti Mareva Order)", I have described in some detail the correspondence between counsel on/about January 29, 2016 respecting the 1,000 bankers boxes of records of the Cash House. The essence of this correspondence by the Contemnors through counsel was that the Cash House, in making the 1,000 boxes available for inspection by counsel for the plaintiff (initially over an 8 hour period, on one day's notice) had discharged its documentary production obligations under the Ricchetti Mareva Order, the December 11, 2015 order in aid and the Contempt Endorsement. In opposition to this stance, counsel for the plaintiff countered that the Contemnors through counsel had "a positive obligation to sort these documents [in the 1,000 banker boxes] and provide copies to us in an understandable form", see letter dated January 20, 2015 to counsel for the Contemnors. The suggestion inherent in the foregoing extract is that the Contemnors through counsel had at the very least a duty to inventory the documents in the 1,000 bankers boxes, in order to discharge their documentary disclosure obligations. Counsel for the Contemnors in his follow-on correspondence and submissions emphasizes the magnitude of undertaking the sorting or making such an inventory or index. There is every likelihood that such a task would be onerous; however, 'onerous' here does not equate with 'impossible'. The Contemnors were aware of their documentary disclosure obligations from the date of the Ricchetti Mareva Order but failed to embark upon a rational course of action on a timely basis to meet or address their obligations.

10.

Their failure to do so cannot be the impetus for a 'dump-truck' mode of documentary disclosure as initially proposed by their counsel on their behalf.

[25] The foregoing aspect highlights the frailty of the position of the Contemnors not being in contempt of their documentary disclosure obligations. It remains then to address the remedy sought by the plaintiff in its motion to strike the statement of defence without leave to amend.

[26] I am persuaded that the plaintiff has satisfied the test for the motion to strike the statement of defence and cross-claim of the Cash House. I accept the following submissions made by counsel for the plaintiff, namely,

- (1) the merits of the defence are weak, in the absence of a full evidentiary record: 'bald assertions' will not suffice; and
- (2) the remedy sought is proportional to the misconduct, which demonstrates a continuing deliberate intention to disobey and disrespect the authority of the court's orders.

[27] I am nonetheless mindful that striking out the statement of defence without leave to amend would have the effect of turning the action into a default proceeding and that the governing case law provides that the court should give a contemnor/defaulting party "one last chance" to comply with the court's orders.

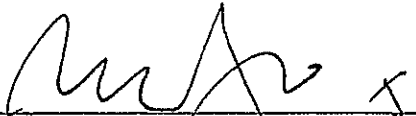
Disposition

[28] In these circumstances, an order shall issue:

1. striking out the statement of defence and cross-claim of the Cash House, without prejudice to move for leave to amend, upon satisfying the court that the acts or omissions enumerated in the Contempt Endorsement have been fully purged; and

11.

2. awarding the plaintiff the costs of this motion on a full indemnity basis, payable forthwith upon assessment.



MacKenzie, J.

Date: May 24, 2016

APPENDIX 'A' TO ENDORSEMENT RE: MOTION UNDER RULE 60.12

COURT FILE NO.: CV-15-2110-00

DATE: 2016 01 21

SUPERIOR COURT OF JUSTICE- ONTARIO

RE: TRADE CAPITAL FINANCE
CORP.]

Plaintiff

-and-

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO MR. DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT MR. DE MARIA also known as CARLO VINCENZO MR. DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LT()., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTO., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

BEFORE: MACKENZIE J.**COUNSEL:** Peter W. G. Carey and Christopher R. Lee, for the Plaintiff

Andrew Parley and Laura E. Robinson, for the Defendants, The Cash House Inc., and non-parties Osman Khan and 2454904 Ontario Inc.

HEARD: December 4 and 11, 2015 and January 8, 2016

**ENDORSEMENT RE: CONTEMPT MOTION BY PLAINTIFF AGAINST
DEFENDANT THE CASH HOUSE INC. (CASH HOUSE) AND NON-PARTIES
OSMAN KHAN (KHAN) AND 2454904 ONTARIO INC. (245)**

Introduction

[1] The plaintiff has made a motion for an order finding the Cash House, Khan and 245 in contempt of a Mareva Order made by Mr. Justice Ricchetti on May 6, 2015. For ready reference, a copy of the Mareva Order is appended to this endorsement but a brief summary of the salient features of the same is in order by way of overview and background to this contempt proceeding.

The Structure of the Mareva Order

[2] In the introductory part of the Mareva Order the following paragraphs appear:

NOTICE

If you, as a defendant, disobey this order you may be held in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on 10 days' notice to the plaintiff for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits any Defendant to breach the terms of this order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized. (see page 2)

[3] Cash House is one of the named Defendants, all of whom are collectively referred to as the "Mareva Defendants" (See page 2).

[4] The injunctive relief begins under the heading "Mareva Injunction": paragraph 1 stipulates that each Mareva defendant, including Cash House as a named defendant, and its servants, employees, agents, assigns officers, directors, affiliates and anyone else acting on their behalf or in conjunction with

3.

any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva defendants that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto.
- b) instructing, requesting, request counselling, demanding or encouraging any other person to do so; and
- c) facilitating, assisting in aiding, abetting or participating in any acts the effect of which is to do so. See page 3

[5] The injunctive relief in paragraph 1 is further expanded by paragraph 2 in the following terms:

This court orders that paragraph 1 applies to all of the assets of each Mareva defendant whether or not they are in such defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the defendant. For purposes of this order, defendants' assets include any assets which such defendant has the power, directly or indirectly, to dispose of or deal with as if it were such defendant's own. A defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such defendant's direct or indirect instructions. (emphasis added): see page 3

[6] The Mareva Order deals with the disclosure of information in paragraphs 4 and 5, in the following terms:

4 This court orders that each Mareva Defendant prepare and provide to counsel of record within ten (10) days of the date of service of this order, a sworn statement describing, in detail, the nature, value and location of all assets worldwide whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Defendant providing the sworn statement.

5 This court orders that each Mareva Defendant submit to examinations under oath within 30 days of the delivery by such Mareva Defendant of the aforementioned sworn statements or by such later date as may be confirmed

4.

by the plaintiffs' counsel of record. The Mareva Defendants shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Defendant. See page 4.

[7] The Mareva Order provides for its variation, discharge or extension in the following paragraphs:

10 This court orders that anyone served with or notified of this Order may apply, to the court, to vary or discharge this order, on five days' notice to the plaintiff and all other parties.

11 This court orders that this Order will be brought back before the judge who issued this order on May 19, 2015 at 9:00 a.m. All motions or applications to vary or discharge this order or arising out the issuance or enforcement of this order shall be heard by the judge who issued this order with exception of:

- a) urgent matters for which the judge is not available; or
- b) as otherwise directed by the judge.

See page 5.

[8] It is not in issue that the Mareva Order was served together with the statement of claim in the action and the electronic version of the motion record and supporting materials on Cash House on May 8, 2015: see email by the counsel for the Cash House and other defendants to counsel for the plaintiff herein. (Reference, Plaintiffs' motion record, Tab 2-E, page 59)

Follow-on events

[9] Cash House, in pursuance of paragraphs 10 and 11 of the Mareva Order, above, moved before Mr. Justice Ricchetti on May 19, 2015 at 10:00 a.m. to set aside or vary the Mareva Order as it related to Cash House. In support of this motion, the then counsel of the Cash House served and filed an affidavit by Osman Khan. This affidavit is noteworthy in that Mr. Khan states that he is the owner of Cash House and, among other things, denied any direct knowledge by him of the alleged underlying fraud that is the subject of the action, stating in effect there is no evidentiary foundation for the relief in the Mareva Order applying to the Cash House. In his affidavit, he seeks to supply a detailed

5.

statement outlining the nature, value and location of all the Cash House's worldwide assets. (see paragraph 6)

[10] On May 19th, 2015 Cash House's motion at their request was adjourned to May 29th, 2015 on terms setting out scheduling for the exchange of materials and cross-examination on affidavit materials filed.

[11] A supplementary motion record was filed, comprising an affidavit sworn by Osman Khan on May 22nd, 2015. Among other things, Mr. Khan denies any knowledge of the plaintiffs' allegations respecting any money negotiations by Cash House on the basis that he was not an owner, officer or director of Cash House at the material time. He was in due course cross-examined on both the May 15 and May 22, 2015 affidavits.

[12] The motion by Cash House to set aside or vary the Mareva Order was heard by Justice Ricchetti on June 1, 2015, and dismissed by him in an Endorsement dated June 10, 2015. In his May 15, 2015 affidavit, Mr. Khan recognizes his obligation to supply all relevant information respecting the assets of Cash House. In the course of his cross-examination on his affidavit, he acknowledges the existence of 245, which he incorporated on or about February 23, 2015 and in respect of which he is the sole director and officer. This corporation is significant in context: Mr. Khan's position is that utilizing 245, he purchased Cash House on or about February 27, 2015 and he is now the sole shareholder of Cash House. This is reflected in a Corporation Profile report which indicates Mr. Khan has been the corporation's sole director and officer since March 27, 2015. In his endorsement dated June 10, 2015, Justice Ricchetti alluded to this in the following words:

[Mr. Khan] has deliberately breached the Mareva Order. Mr. Khan opened a new undisclosed bank account to operate the Cash House business and has continued to operate that business from that bank account in the normal fashion without regard to the Mareva Order. Mr. Khan failed to disclose this account in his affidavit when he listed the Cash House's bank accounts in his May 15, 2015 affidavit where he stated he was "describing in detail the nature,

6.

value and location of all of The Cash House Inc.'s worldwide assets". This information only came to light during his cross-examination.

No appeal was taken by the Cash House nor Mr. Khan by way of a leave application for appellate review of Justice Ricchetti's decision as set out in the above endorsement.

[13] Subsequent to the endorsement of Justice Ricchetti on June 10, 2015, various attempts were made on behalf of the plaintiff through counsel to obtain production of information, namely, books, records and documents pertaining to the financial affairs and assets of Cash House, including the examination under oath prescribed under paragraph 5 of the Mareva Order. Correspondence was exchanged in September 2015 without a date being fixed for such examination of Mr. Khan on behalf of the Cash House. Failing agreement as to a fixed date, counsel for the plaintiff scheduled an examination of Mr. Khan in that capacity for October 27, 2015 and served a notice of such examination on his counsel. Notwithstanding communication between then counsel for Mr. Khan and counsel for the plaintiff, Mr. Khan failed to attend the scheduled examination on October 27th, 2015 and plaintiff's counsel obtained a certificate of non-attendance.

[14] The matter came before me in relation to the subject motion for contempt against Cash House, Mr. Khan and 245 on December 4, 2015. In addition to other terms, I ordered that Cash House, Mr. Khan and 245 were to deliver to counsel for the plaintiff an updated list of assets of Cash House together with all current supporting documents on or before 5:00 p.m. on Wednesday, December 7, 2015. Mr. Khan was also ordered on December 4, 2015 to attend on December 11, 2015 for his examination pursuant to paragraph 5 of the Mareva Order. In the event, Mr. Khan's present counsel only delivered non-current documents relating to the bank accounts of Cash House and no documents for the accounts of 245. Mr. Khan attended physically at the examination scheduled for December 11, 2015 but did not produce the

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documents that were subject to the Mareva Order and further stipulated in the December 4, 2015 order.

The Issues

[15] Counsel for the plaintiff in his factum frames the issues in this contempt motion in the following terms:

1. What is the procedure on a civil contempt motion?
2. What is the test for finding liability for contempt?
3. Does the Mareva Order state clearly and unequivocally what should and should not be done?
4. Did the Cash House, Mr. Khan and 245 have actual knowledge of the Mareva Order?
5. Did the Cash House, Mr. Khan and 245 intentionally do any act prohibited by the Mareva Order or intentionally failed to do any act required by the Mareva Order?

Paragraph 44, moving plaintiffs' factum on the contempt motion

(Counsel for the plaintiffs states other issues relating to the manner in which appropriate sanctions against a contemnor should be determined. These issues are more appropriate for determination if and after a finding of contempt is made.)

The Governing Law

[16] It will be useful at this stage to briefly set out some of the governing principles pertaining to civil contempt, the proceedings on a civil contempt motion as well as the test for finding liability for contempt.

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[17] The offence of contempt consists of the intentional doing of an act which is prohibited by court order. Where the alleged contempt is the failure to comply with a court order, a three pronged test is applied:

1. Did the order clearly and unequivocally state what should and should not be done?
2. Did the person disobey the order deliberately or wilfully?
3. Was the contempt proven beyond a reasonable doubt?

[18] An intention to disobey the order is not an element of the tort of civil contempt. It is not necessary to show that the deliberate act(s) was(were) deliberately contumacious. It is not necessary to prove that the alleged contemnor intended to put himself or herself in contempt. However, it must be established that s(he) or it deliberately or wilfully or knowingly did some act which was designed to result in the breach of a court order.

[19] A finding of contempt will not be made for breach of an order unless its meaning in the particular circumstances is clear and unambiguous. For there to be a finding of contempt, it must be shown that the alleged contemnor had actual knowledge of the order that is the subject of the contempt proceedings. Motions for contempt are said to be *strictissimi juris*, that is to say, all proper procedures must be complied with including service personally on the person against whom the contempt order is sought.

[20] An affidavit in support of a motion for contempt may contain statements of the deponent's information and belief only with respect to facts that are not contentious and the source of the information and the facts of the belief must be specified in the affidavit. The notice of motion and supporting material must identify the acts alleged to be contemptuous with sufficient particularity so that the person alleged to have committed the contempt has the opportunity to purge his or her or its contempt.

9.

[21] Where there are controverted facts relating to matters essential to a decision as to whether a party is in contempt of court, trial of an issue must be ordered. A contempt hearing is normally a bifurcated process with a liability phase followed by a penalty phase, the latter often in a second hearing.

[22] The above principles have been enunciated and referred to at length in the judgment of the Supreme Court of Canada in *Carey v. Laiken*, 2015 SCC 17, dated April 16, 2015. Both sides in this contempt motion have cited this case for their respective purposes. There is no dispute between them as to the principles enunciated in the case but rather the application of those principles in this motion.

[23] I turn now to the positions of the parties.

Position of the Plaintiff

[24] Counsel for the plaintiff refers to Rule 60.05 of the *Rules of Civil Procedure* which provides for orders respecting the performance or abstaining from performance of an act (other than the payment of money) which are not complied with are enforceable by contempt orders, and to Rule 60.11(1) which provides that a contempt order is obtainable on the motion to a judge in the proceeding in which the order was made. As noted above, the contempt motion relating to the Mareva Order was referred to me by Mr. Justice Ricchetti in late November 2015. Counsel further acknowledges that contempt proceedings are bifurcated into a liability phase and if liability is established, then continuing in a penalty phase, as previously noted and as specifically adopted in *Carey v. Laiken*, above paragraph 18.

[25] Counsel for the plaintiff acknowledges the applicability of the three pronged test to establish liability for civil contempt, also noted above.

[26] Counsel contends that the Mareva Order states clearly and unequivocally what should and what should not be done. In this regard counsel

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acknowledges that a Mareva Order may be found to be unclear if it is missing any essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning. In support counsel refers to the reasons in *Carey*, above, paragraph 33.

[27] Counsel submits the Mareva Order states clearly and unequivocally (among other things) that:

- a) Cash House is a defendant to which the Mareva Order applies: see recitals in paragraph 1;
- b) Cash House and its directors, officers and any and all persons with notice of the Mareva Order, among others, are restrained from directly or indirectly by any means whatsoever dealing with any assets of Cash House located in Canada: paragraph 1;
- c) Cash House is required to prepare and provide [the plaintiff's] lawyers within 10 days of the service of the Mareva Order a sworn statement describing in detail the nature, value and location of all assets worldwide, whether in its own name or not, and whether solely or jointly owned, and whether owned directly and indirectly including any assets held in trust: paragraph 4;
- d) Cash House is required to submit to examination under oath within 30 days of the delivery of the sworn statements above or by such later date as may be confirmed by plaintiff's counsel and bring to the examination all original books, records and other documents relating to its financial affairs and assets: paragraph 5.

[28] Counsel submits the language employed in the operative sections of the Mareva Order previously referred to in these reasons meet the test of stating clearly and unequivocally what should and should not be done, namely, that there are no essential details missing about where, when or to whom it applies

11.

and that the language is not overly broad nor have the external circumstances obscured the meaning of the language in the Mareva Order.

[29] Counsel further contends that each of the Cash House, Mr. Khan and 245 had actual knowledge of the Mareva Order and the operative terms. In support of this proposition, counsel contends that the Cash House and Mr. Khan had actual knowledge of the Mareva Order for the following reasons:

1. Each location of the Cash House including its registered office was served with a copy of the Mareva Order on May 8, 2015;
2. The then lawyers for Cash House accepted service of the Mareva Order on May 8, 2015;
3. Cash House following such service moved to set aside the Mareva Order; its motion was dismissed on June 10, 2015;
4. In support of the motion to set aside the Mareva Order, two affidavits sworn by Mr. Khan (May 15, 2015 and May 27, TBC 2015) were filed by Cash House as evidence on its set-aside motion;
5. In his May 15, 2015 affidavit, Mr. Khan expressly, and unequivocally referred to and acknowledged the obligations of Cash House under the Mareva Order.

[30] Counsel further contends there is no question that 245 had actual knowledge of the Mareva Order inasmuch as Mr. Khan in his cross-examination on the affidavits acknowledged he was the sole officer and director of 245 at the material time.

[31] Counsel for the plaintiff addresses the element of the test for liability relating to the intention of the alleged contemnor in either doing the act or acts prohibited by the Mareva Order or intentionally failing to do the act or acts required by the Mareva Order. This element of intention does not relate to an

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intention to disobey the order; rather it relates to either intentionally doing the prohibited acts or intentionally failing to do the compelled act: in support, counsel refers to *Carey*, paragraphs 35 and 38.

[32] Counsel acknowledges that Mr. Khan in his affidavit sworn May 15th, 2015 provided a sworn statement respecting the assets of the Cash House. Nonetheless, it is argued that Mr. Khan in that statement neglected to disclose a bank account which Cash House was using to operate its business, thereby contravening paragraph 4 of the Mareva Order. Counsel contends the existence of this account was determined as a result of the cross-examination of Mr. Khan on both his May 15 and May 27, 2015 affidavits.

[33] Counsel argues that both the Cash House and Mr. Khan have intentionally operated Cash House's business and otherwise dealt with its assets on a continuing basis since they became aware of the Mareva Order, thereby constituting a breach of paragraph 1 of the Mareva Order. Further it is argued that since the account which Mr. Khan used to operate the business of Cash House was registered in the name of 245, 245 accordingly dealt with the assets of Cash House and facilitated, assisted in, aided, abetted and participated in the operation of Cash House business and thereby breached paragraph 1 of the Mareva Order.

[34] On the question of whether Cash House, Mr. Khan or 245 intentionally failed to do other acts compelled by the Mareva Order, counsel refers to the failure to obtain a date for examination under oath as required in paragraph 5 of the Mareva Order, notwithstanding attempts by counsel to arrange a mutually convenient date for such examination. Counsel points out that the plaintiff was required to properly serve a notice of examination under paragraph 5 of the Mareva Order but then counsel for Cash House was unamenable to proposals for a date within the specific time provisions (or extension of time provisions) set out in the Mareva Order. In the event, Mr. Khan failed to attend the first

13.

scheduled examination and the plaintiff obtained a certificate of nonattendance. In this regard, counsel submits that Mr. Khan intentionally failed to attend the examination being a compelled act, thereby contravening section 5 of the Mareva Order.

[35] I turn now to the position of the alleged contemnors.

Position of the Alleged Contemnors

[36] Counsel for Cash House, Mr. Khan and 245 opposes the plaintiff's motion for contempt on various grounds. One of the most salient of these grounds is that the test for a finding of liability for contempt has not been established as the plaintiff has failed to discharge its burden of proving beyond a reasonable doubt the elements of the test to establish liability for civil contempt. In this regard, counsel argues that the Mareva Order fails to state clearly and unequivocally what should and should not be done and that any ambiguity in the provisions of the Order must be resolved in favour of the alleged contemnors, and further that the plaintiff has failed to prove beyond a reasonable doubt that Cash House, Mr. Khan and 245 intentionally breached the provisions of the Mareva Order.

[37] Counsel develops the argument of ambiguity in the following terms,

- a) It is not at all clear or obvious what a party must list in its sworn statement pursuant to paragraph 4 of the Mareva Order as it relates to assets that are "not in its own name"; and
- b) It is not at all clear what is required of the party being examined under paragraph 5 of the Mareva Order to ensure that the examination takes place or what it means to "confirm" the examination of a party. See paragraph 5, factum for the alleged contemnors.

14.

[38] Counsel's focus on ambiguity relates to what a party must list in its sworn statement under paragraph 4 of the Mareva Order. Counsel argues that the Mareva Order provides the named defendant must list assets that are not in its own name and it is unclear in these circumstances what would be listed in describing assets that are not in ones' own name. Counsel contends a party can be expected to know what assets are in its own name or even what assets it holds beneficially through a formal trust but it is more difficult for a party to know what assets it has that are not held in its own name. Further, counsel submits the plaintiff has put in no direct evidence which suggests Cash House has power to dispose of or deal with the assets of 245 as if they were the assets of Cash House such that the assets of 245 fall within paragraph 2 of the Mareva Order. Finally counsel suggests in its factum that the plaintiffs are asking the court to infer that accounts held in the name of 245 are, or contain, assets belonging to Cash House simply because the stores bearing Cash House's name were operating in October of 2015. Counsel submits the evidence on the motion does not permit such an inference especially in circumstances where the plaintiff's burden is to prove these assets belong to the Cash House beyond a reasonable doubt.

[39] Counsel further argues the Mareva Order does not apply to accounts held by 245 and that 245, not being a named defendant in the Mareva Order as a separate corporate entity, has no obligations under the Mareva Order. Counsel contends the fact that stores operating as of October 2015 under the name "Cash House" does not assist the court in determining whether the funds in 245's bank account should be treated as an asset of Cash House.

[40] Counsel addresses the alleged non-compliance with the examination under oath set out in paragraph 5 of the Mareva Order. Counsel submits that paragraph 5 of the Mareva Order provides that each defendant must attend for an examination within 30 days of the Mareva Order or "by such later date as may be confirmed by plaintiff's counsel of record". Counsel argues this provision of

15.

the Mareva Order does not stipulate the defendant or any of them must attend on any date chosen by the plaintiff regardless of issues of convenience to the defendant or any of them, or that the plaintiff has a unilateral right to select a date for examination without consulting with the defendant or any of them through counsel. In this regard, counsel argues that the Mareva Order in section 5 is ambiguous as to what powers are provided to the plaintiff to select a date for the examination.

[41] In dealing with the plaintiff's position that a breach of paragraph 5 of the Mareva Order arises out of the failure of Cash House and Mr. Khan to attend for examination on the date stipulated in the notice of appointment, counsel suggests this raises a question as to whether the defendants' obligation under paragraph 5 was to attend on any date selected by the plaintiff or whether the defendants' obligation is to actively seek out a date that is convenient to the plaintiff and its counsel. Counsel contends these questions admit of no clear answers and thereby establish that the Mareva Order in this regard is ambiguous. Counsel describes the events leading to the scheduled examination and submits that the representative of the Cash House or its counsel were not available on the date unilaterally selected by the plaintiff.

[42] Counsel further raises the point that admissible evidence on a contempt motion may only include evidence in the nature of hearsay based on the deponent's information and belief in relation to facts that are non-contentious and the source of information and facts for the belief are specified in the affidavit. Counsel further argues that the responding parties as alleged contemnors are entitled to the same rights as an accused in a criminal context, particular in reference to the *Charter of Rights* such as the burden on the party moving for a contempt order to prove essential elements beyond a reasonable doubt and meet the above-noted three pronged test. The position is that the plaintiff has not discharged this burden and a contempt order cannot be used to exert pressure on a party allegedly defaulting in its obligations under a Mareva Order.

16.

ANALYSIS

[43] I reject the submissions and arguments of counsel for Cash House, Mr. Khan and 245 as they pertain to the findings to be made by the court in this contempt motion.

[44] In turn, I accept the submissions and arguments of counsel for the plaintiff as they pertain to the findings to be made by the court in this contempt motion.

[45] I am not persuaded there exists ambiguity in the substantive parts of the Mareva Order as submitted by counsel for Cash House. I am persuaded the language in the Mareva Order previously referred to clearly and unambiguously states what should and should not be done and where, when and by whom the thing(s) should be done or not be done.

[46] I am further persuaded that,

- (a) Cash House and Mr. Khan had actual knowledge of the Mareva Order and its prohibitions and obligations by reason of their then counsel accepting service of the same on May 8, 2015; and
- (b) 245 had actual knowledge of the Mareva Order by reason of Mr. Khan's acknowledgement in his cross-examination on his affidavits that he was and is the sole officer and director of 245.

[47] I am also further persuaded that Cash House, Mr. Khan and 245 have intentionally done the act(s) prohibited, and have intentionally failed to do the act(s) compelled, under the Mareva Order. I find Cash House and Mr. Khan have intentionally operated the business of Cash House on an ongoing basis since the inception of the Mareva Order on May 5, 2015 utilizing the bank account(s) of 245. As noted above, Mr. Khan as the sole officer and director of 245 exercised control over 245 in respect of Cash House's banking needs, resulting in 245

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facilitating, aiding and abetting Cash House's business and assets, in contravention of the prohibitions in the Mareva Order.

[48] I turn now to certain arguments made by counsel for Cash House, Mr. Khan and 245.

[49] Counsel contends there are contentious and/or controverted facts and the contempt power attracting *Charter* rights in light of the potential penal consequences of a contempt finding should proceed on the basis of a trial of the issues giving rise to the allegation of contempt.

[50] I reject the submission that on the evidentiary record on this motion, there are contentious and/or controverted facts that require a trial of the issue or issues. There are allegations of contentious and/or controverted facts but the substantive provision of the Mareva Order are, as previously described, clear and unambiguous and no responding material has been filed to substantially controvert these provisions nor the evidence adduced by the plaintiff in this motion.

[51] Counsel for Cash House, Mr. Khan and 245 has argued that evidence of Mr. Khan's operation of 245's bank account in aid or furtherance of Cash House's business is based on hearsay is without merit. The basis for the proposition that Mr. Khan is utilizing 245's bank account in aid of Cash House business is based on statements from Mr. Khan arising out of his cross-examination on his affidavits. The foundation for these statements arise not from information and belief in the affidavit of Mr. Thompson (of the plaintiff) but from evidence by Mr. Khan; they cannot be characterized as hearsay. A logical inference can be drawn from these statements that Mr. Khan is operating the business of Cash House through 245's bank account(s) notwithstanding there may be separate transactions that pertain solely to any business of 245 utilizing the same bank account(s).

18.

[52] Finally, counsel for Cash House, Mr. Khan and 245 submitted that no findings or conclusions made by Mr. Justice Ricchetti in his decision of June 1, 2015 respecting the motion of the responding parties to set aside the Mareva Order would be binding on this court in this contempt hearing. In this regard, counsel points out that the burden in the motion before Mr. Justice Ricchetti on June 1, 2015 was the balance of probabilities, whereas here stated the burden on the moving party is to establish and meet the elements of the three pronged test beyond a reasonable doubt. I do not take issue with this proposition.

DISPOSITION

[53] In the result, I conclude that the moving party has established and satisfied the three pronged test beyond a reasonable doubt and that the Cash House, Mr. Khan and 245 are in contempt of the Mareva Order dated May 5, 2015. There remains the second phase of this contempt proceeding, namely the penalty phase. The return date shall be fixed for this phase by the trial coordinator in consultation with counsel.

[54] The plaintiff's motion to strike the pleadings of Cash House and costs herein shall be heard prior to the commencement of the penalty phase at a date/time to be arranged with the trial coordinator.

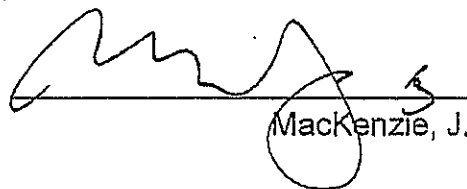
[55] In the interval, I make the following orders:

- a) the Cash House is in contempt of court for breaching the Mareva Order;
- b) Osman Khan is in contempt of court for breaching the Mareva Order;
- c) 245 is in contempt of court for breaching the Mareva Order;
- d) the Cash House, Osman Khan and 245 shall within seven days of this Order serve on Trade Capital and file with the court a sworn

19.

statement listing all accounts at any bank, financial institution or other entity into which any money in which the Cash House has or had a legal or beneficial interest, was deposited or withdrawn since May 6, 2015 and shall provide the full particulars of each account including the name of each account holder, the account numbers, the name of the bank, financial institution or entity, and the branch location;

- e) Osman Khan shall to deliver to Trade Capital within ten days of the date of the Order all original books, records and other documents relating to all financial affairs and assets of the Cash House and 245, and any other company or entity in which Mr. Khan has any interest (beneficial or otherwise), or of which he is the directing mind, or that he has incorporated (directly or indirectly), which carries on, or has carried on, the business of the Cash House or any other company or entity where funds or assets reside that are traceable back to the Cash House ("Other Companies", collectively with the Cash House and 245, the "Disclosing Companies"), including the documents referred to in Schedule C hereto;
- f) Osman Khan shall submit to an examination under oath to be conducted by Trade Capital on a date to be determined by Trade Capital;
- g) that should there be any further non-compliance with the terms of this order or the Mareva Order, this court may impose upon the Cash House, Osman Khan or 245 any terms it may consider just.


Mackenzie, J.

Date: January 21, 2016

SCHEDULE "A" to ENDORSEMENT
OF JUSTICE A.D.K. MACKENZIE
DATED JANUARY 21, 2016

25

Court File No.: CV-15-2110-00

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE
RICCHETTI)

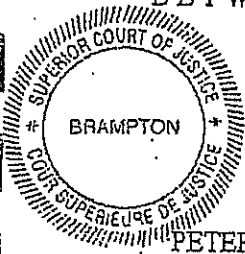
WEDNESDAY, THE 6TH
DAY OF MAY, 2015

BETWEEN:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -



PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as
JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER
(personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and
GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as
BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS
BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT
(personally and carrying on business as CJR CONSULTING), TODD CADENHEAD,
DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY
LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-
MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC.,
THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE,
2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and
SUPERIOR MEDICAL SERVICES, CARLO DE MARIA also known as CARLO VINCE DE
MARIA also known as CARLO VINCENT DE MARIA also known as CARLO VINCENZO
DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO,
SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC.,
2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN
LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754
ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS
and MILLWALK ENTERPRISES INC.

Defendants

ORDER

- 2 -

NOTICE

If you, as a Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least five (5) days notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits any Defendant to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, brought without notice by the Plaintiff, TRADE CAPITAL FINANCE CORP., for an an interim Order in the form of a *Mareva* injunction restraining each of the Defendants, Peter Cook also known as Peter William Cook, Marc D'Aoust also known as Jean Marc D'Aoust, Thomas Barker also known as Thomas Richard Barker (personally and carrying on business as LC Exchange, Global Medical and Greenlink Canada Group), Rocky Racca, Bruno Didiomede also known as Bruno Diaiomede, Alan Keery also known as Alan John Keery, Chris Bennett Jr. also known as Chris Bennett also known as Christopher Bennett (personally and carrying on business as CJR Consulting), Todd Cadenhead, Virtucall Inc., Debt Resolve-Mortgage Funding Solutions Inc. carrying on business as Debtresolve Inc., 2242116 Ontario Inc. carrying on business as Superior Medical Services Inc. and Superior Medical Services, The Cash House Inc., 1160376 Ontario Inc., Carlo De Maria also known as Carlo Vince De Maria also known as Carlo Vince De Maria also known as Carlo Vincenzo De Maria, Matteo Pennacchio, Frank Zito also known as Francesco Zito, Simone Sladkowski also known as Simona Sladkowski, Jobec Trade Finance Inc., 1461350 Ontario Inc., 2299430 Ontario Inc., WF Canada Limited, Jobec Investments RT Ltd., Green Link Canada Inc., 2339989 Ontario Inc., 2252364 Ontario Inc. and Millwalk Enterprises Inc. (collectively the "Mareva Defendants"), from dissipating their assets and other relief, was heard on May 4, 2015 at the Brampton Courthouse, 7755 Hurontario Street, Brampton Ontario.

ON READING the Affidavits of Darcy Thompson sworn April 30, 2015 and May 4, 2015, the Affidavit of Kevin D. Bousquet sworn April 27, 2015, and the Affidavit of Catherine Herring sworn April 27, 2015, and on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order as set out in the Guarantee of Parkview Capital TCFC Inc. dated April 29, 2015,

Mareva Injunction

1. THIS COURT ORDERS that each Mareva Defendant and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva Defendants, that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and,
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. THIS COURT ORDERS that paragraph 1 applies to all of the assets of each Mareva Defendant whether or not they are in such Defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Defendant. For the purpose of this order, a Defendant's assets include any asset which such Defendant has the power, directly or indirectly, to dispose of or deal with as if it were such Defendant's own. A Defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such Defendant's direct or indirect instructions.

Ordinary Living Expenses

3. THIS COURT ORDERS that any Defendant may apply for an order, on at least five (5) days notice to the Plaintiff, specifying the amount of funds which such Mareva Defendant seeks to have exempted from this Order as being needed and required by the Mareva Defendant for his/its ordinary living expenses and legal advice and representation.

Disclosure of Information

4. THIS COURT ORDERS that each Mareva Defendant prepare and provide to the Plaintiff's counsel of record within ten (10) days of the date of service of this Order, a sworn statement describing, in detail, the nature, value, and location of all assets worldwide, whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Defendant providing the sworn statement.

5. THIS COURT ORDERS that each Mareva Defendant submit to examinations under oath within thirty (30) days of the delivery by such Mareva Defendant of the aforementioned sworn statements or by such later date as may be confirmed by the Plaintiff's counsel of record. The Mareva Defendant shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Defendant.

6. THIS COURT ORDERS that if the provision of any of this information is likely to incriminate a particular Mareva Defendant, such Mareva Defendant shall immediately seek an order within forty eight (48) hours permitting the Mareva Defendant not to answer the question or provide the information required to be provided herein or, alternatively, an order that any answer or information provided in accordance with this order shall not be admissible in any criminal proceedings in Canada, failing which, the Mareva Defendant shall answer any and all relevant questions regarding his/its financial affairs and assets.

Third Parties

7. **THIS COURT ORDERS** The Toronto-Dominion Bank also known as TD Canada Trust, The Bank of Nova Scotia also known as Scotiabank, Canadian Imperial Bank of Commerce also known as CIBC, Royal Bank of Canada also known as RBC, Bank of Montreal also known as BMO, City Savings and Credit Union Limited and the Buduchnist Credit Union Limited (the "Financial Institutions") to forthwith freeze and prevent any removal or transfer of monies or assets of the Mareva Defendants held in any account or on credit or on behalf of any Mareva Defendant with the Financial Institutions, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that the Financial Institutions forthwith disclose and deliver up to the Plaintiff any and all records held by the Financial Institutions, and not already delivered to the Plaintiff, in any way relating to the Mareva Defendants whether such documentation includes information relating to assets and accounts other than those listed in Schedule "A" hereto or disclose the existence, nature, value and location of any other monies or assets or credit, wherever situate, held by or on behalf of the Mareva Defendants.

Alternative Payment of Security into Court

9. **THIS COURT ORDERS** that this Order will cease to have effect as against the Mareva Defendants if the Mareva Defendants, or any of them, deposit with the Accountant of the Superior Court of Justice to the credit of this action in total the sum of \$10,000,000.00 (CDN).

Variation, Discharge or Extension of Order

10. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply, to the Court, to vary or discharge this order, on five (5) days' notice to the Plaintiff and all other parties.

11. **THIS COURT ORDERS** that this Order will be brought back before the Judge who issued this Order on May 19, 2015 at 9:00 a.m. All motions or applications to vary or discharge this Order, or arising out of the issuance or enforcement of this Order, shall be heard by the Judge who issued this Order with the exception of:

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- (a) urgent matters for which the Judge is not available; or
- (b) as otherwise directed by the Judge.

Expiry of Norwich Order

12. THIS COURT ORDERS that upon this Order being issued and entered, the Order of Justice Ricchetti dated October 28, 2013 (as extended and amended) shall immediately expire.

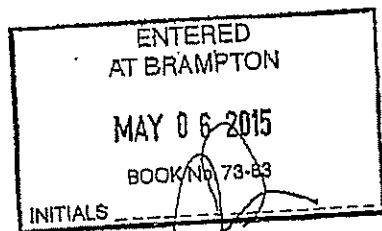
Service of Materials

13. THIS COURT ORDERS that the Plaintiff may serve the materials filed in relation to this Order, but not the order itself, on any person by attachments in PDF file format on a USB stick.

14. THIS COURT ORDERS that the Plaintiff shall, with this court within five (5) days of the issuance of this order, deposit the original guarantee of Parkview Capital TCFC Inc. dated April 29, 2015 as the Plaintiff's undertaking as to damages in this proceeding.

Sean Murphy

Ricchetti, J.



SCHEDULE "A"

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	15255 Yonge Street Aurora, Ontario L4G 1N5	Virtucall TD US Virtucall Account	1038-7303753
TD Canada Trust	15255 Yonge Street Aurora, Ontario L4G 1N5	Global Medical Tom Barker Barker Global Account	1038-7303850
TD Canada Trust	15255 Yonge Street Aurora, Ontario L4G 1N5	Virtucall TD Virtucall Canadian Account	1038-5214772
TD Canada Trust	2453 Yonge Street Toronto, Ontario M4P 2H6	2242116 Ontario Inc. Superior TD Superior Account	1928-5233022
Canadian Imperial Bank of Commerce	136 Rexdale Boulevard Etobicoke, Ontario M9W 1P6	2242116 Ontario Inc. Superior CIBC Superior Account	05022-9956611
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc. TD 233 Account	1552-5270311
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc.	1552-7327733
Royal Bank of Canada	5125 Sheppard Avenue E Scarborough, Ontario M1S 4N8	CJR Consulting o/b Christopher Jr. Bennett RBC CJR Consulting Account	06492-1010289
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Virtucall Scotiabank Virtucall Account	10132-0073911
Canadian Imperial Bank of Canada	1 St. Clair Avenue West Toronto, Ontario M4V 1K7	Green Link Canada Inc. CIBC Greenlink Account	00112-4224213
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Greenlink Canada Group Tom Barker Scotiabank Greenlink Account	10132-0151319

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BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	LC Exchange Tom Barker Scotiabank LC Account	10132-0141216
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1067356
Royal Bank of Canada	99 Mapleview Drive W Barrie, Ontario L4N 9H7	Millwalk RBC Millwalk Account	00292-1010024
Canadian Imperial Bank of Commerce	291 Rexdale Boulevard Etobicoke, Ontario M9W 1R8	2252364 Ontario Inc. (Rocky Racca)	05922-9991514
Canadian Imperial Bank of Commerce	15 Westney Road N Unit 22 Ajax, Ontario L1T 1P4	Rocky Racca	02542-6194338
Royal Bank of Canada	2 Harwood Avenue South Ajax, Ontario L1S 7L8	Rocky Racca	00042-5169057
Educhnist Credit Union	2280 Bloor Street West Toronto, Ontario M6S 1N9	1160376 Ontario Limited (o/a The Cash House)	37922
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1072075
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didimede	0006-4615388
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didimede	0006-8986451
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didimede	0006-10081205986 (TFSA)
Bank of Montreal	999 Upper Wentworth Street Hamilton, Ontario L9A 4X5	Bruno Didimede	2919-8019047

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Meridian Credit Union Limited	Jackson Square 2 King Street West Hamilton, Ontario L8P 1A1	Bruno Didionede	00842-037-7454903
TD Mutual Funds TD Investment Services Inc. Toronto-Dominion Bank	55 King Street West Toronto, Ontario M5K 1A2	Bruno Didionede	0004-10202- 06905235875 91 479 5510439
Manulife Bank of Canada Royal Bank of Canada	8 Prince Andrew Place - Don Mills, Ontario M3C 2B4	Bruno Didionede	0003-02234- 000009930769
TD Canada Trust	981 Taunton Road East Oshawa, Ontario L1H 7K5	Peter Cook	3202-n/a
Bank of Nova Scotia	544 Bayfield Street Barrie, Ontario L4M 5A2	Alan Keery	85092
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	3012-0003-1029909
Canadian Imperial Bank of Commerce	1700 Wilson Avenue North York, Ontario M3L 1B2	Rocky Racca	00922
Buduchnist Credit Union Limited	1891 Rathburn Road East Mississauga, Ontario L4W 3Z3	The Cash House Inc.	1163457311
Bank of Nova Scotia	8565 Highway 27 Vaughan, Ontario L4L 1A7	Francesco Zito	42952-0045624
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Tom Barker	10132
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	03012-4002010
Canadian Imperial Bank of Commerce	7220 Kennedy Road Markham, Ontario L3R 7P2	Matteo Pennacchio	03232

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BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	n/a	Todd Cadenhead	01238400
Wells Fargo Bank, N.A.	n/a	Marc D'Aoust	1221-0527-84 1221-0537-84

COURT FILE NO.: CV-15-2110-00
DATE: 2016 01 21

SUPERIOR COURT OF JUSTICE - ONTARIO

BETWEEN:

RE:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO MR. DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT MR. DE MARIA also known as CARLO VINCENZO MR. DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350-ONTARIO INC., 2299430-ONTARIO INC.; WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

ENDORSEMENT RE: RULING ON CONTEMPT MOTION

Mackenzie J.

CITATION: Trade Capital Finance Corp v. Cook et al., 2016 ONSC 3338
COURT FILE NO.: CV-15-2110-00
DATE: 2016 05 24

SUPERIOR COURT OF JUSTICE - ONTARIO

B E T W E E N:

RE:

TRADE CAPITAL FINANCE CORP.

Plaintiff

- and -

PETER COOK also known as PETER WILLIAM COOK, MARC D'AOUST also known as JEAN MARC D'AOUST, THOMAS BARKER also known as THOMAS RICHARD BARKER (personally and carrying on business as LC EXCHANGE, GLOBAL MEDICAL and GREENLINK CANADA GROUP), ROCKY RACCA, BRUNO DIDIOMEDE also known as BRUNO DIAIOMEDE, ALAN KEERY also known as ALAN JOHN KEERY, CHRIS BENNETT JR. also known as CHRIS BENNETT also known as CHRISTOPHER BENNETT (personally and carrying on business as CJR CONSULTING), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED operating as THE CASH HOUSE, 2242116 ONTARIO INC. carrying on business as SUPERIOR MEDICAL SERVICES INC. and SUPERIOR MEDICAL SERVICES, CARLO MR. DE MARIA also known as CARLO VINCE DE MARIA also known as CARLO VINCENT MR. DE MARIA also known as CARLO VINCENZO MR. DE MARIA, MATTEO PENNACCHIO, FRANK ZITO also known as FRANCESCO ZITO, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC. operating as LIVING BENEFITS and MILLWALK ENTERPRISES INC.

Defendants

ENDORSEMENT
Re: Motion under Rule 60.12

MacKenzie J.

Released: May 24, 2016

TAB BB

This is Exhibit "BB" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



A Commissioner, etc.

Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires June 13, 2020.

COURT OF APPEAL FOR ONTARIO

CITATION: Trade Capital Finance Corp. v. Cook, 2017 ONCA 281

DATE: 20170404

DOCKET: C61750

Rouleau, van Rensburg and Miller JJ.A.

BETWEEN

Trade Capital Finance Corp.

Plaintiff (Respondent)

and

Peter Cook also known as Peter William Cook, Marc D'Aoust also known as Jean Marc D'Aoust, Thomas Barker also known as Thomas Richard Barker (personally and carrying on business as LC Exchange, Global Medical and GreenLink Canada Group), Rocky Racca, Bruno Didiomede also known as Bruno Diaiomede, Alan Keery also known as Alan John Keery, Chris Bennett Jr. also known as Chris Bennett also known as Christopher Bennett (personally and carrying on business as CJR Consulting), Todd Cadenhead, Dayawansa Wickramasinghe, Bonny Lokuge also known as Don Bonny Lokuge, Virtucall Inc., Virtucall International LLC, Debt Resolve-Mortgage Funding Solutions Inc. carrying on business as Debtresolve Inc., The Cash House Inc., 1160376 Ontario Limited operating as The Cash House, 2242116 Ontario Inc. carrying on business as Superior Medical Services Inc. and Superior Medical Services, Carlo De Maria also known as Carlo Vince De Maria also known as Carlo Vincent De Maria also known as Carlo Vincenzo De Maria, Matteo Pennacchio, Frank Zito also known as Francesco Zito, Simone Sladkowski, Jobec Trade Finance Inc., 1461350 Ontario Inc., 2299430 Ontario Inc., WF Canada Ltd., Jobec Investments RT LTD., Green Link Canada Inc., 2339989 Ontario Inc., 2252364 Ontario Inc., 2224754 Ontario Ltd., 6980023 Canada Inc. operating as Living Benefits and Millwalk Enterprises Inc.

Defendant (Appellant)

Andrew Parley and Eli Lederman, for the appellant, The Cash House Inc., and the non-parties, Osman Khan and 2454904 Ontario Inc.

Peter W.G. Carey and Christopher R. Lee, for the respondent

Heard: October 26, 2016

On appeal from the orders of Justice Mackenzie of the Superior Court of Justice, dated January 21, 2016, and May 24, 2016.

B.W. Miller J.A.:

OVERVIEW

[1] The respondent, Trade Capital Finance Corp., is in the business of purchasing accounts receivable. It alleges that it was defrauded of approximately \$6,500,000 in a sophisticated scheme in which it unknowingly purchased fictitious accounts receivable. It alleges that the majority of its lost funds were eventually deposited in bank accounts owned by the appellant, The Cash House Inc., a financial services company in the business of making payday loans, cashing third party cheques, and providing foreign exchange services. Cash House is owned by 2454904 Ontario Inc. ("245"), which in turn is owned by Osman Khan.

[2] On May 6, 2015, the respondent obtained a Mareva Order freezing the assets of named defendants, including Cash House, and ordering financial disclosure. Cash House, 245, and Khan (collectively "the appellants"), were later found to be in contempt of the Mareva Order. Khan was eventually sentenced to 90 days incarceration, and the statement of defence and crossclaim of Cash House was struck.

Page: 3

[3] The appellants now appeal the finding of contempt, the sanction of incarceration, and the striking of the statement of defence and crossclaim of Cash House.

[4] For the reasons given below, I would dismiss the appeal.

FACTS AND DECISIONS BELOW

[5] Trade Capital obtained an *ex parte* Mareva Order on May 6, 2015, freezing the assets of Cash House and other defendants, ordering financial disclosure, and providing other relief.

[6] The Mareva Order provides that all persons with notice are “restrained from directly or indirectly ... (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva Defendants”. The Mareva Order further specifies that “a Defendant’s assets include any asset which such Defendant has the power, directly or indirectly, to dispose of or deal with as if it were the Defendant’s own.”

[7] Cash House moved to set aside or vary the Mareva Order, and in support filed two affidavits from Khan. In his first affidavit, sworn May 15, 2015, Khan provided a list of the assets of Cash House. In his cross-examination on May 27, 2015, he revealed the existence of a bank account held by 245 that he had used for the operations of Cash House, both before and after the Mareva Order had been issued.

[8] The motion to set aside or vary the Mareva Order was dismissed by Ricchetti J. on June 10, 2015. In his endorsement, Ricchetti J. found that the respondent had made out a strong *prima facie* case of fraud against Cash House, and found that Khan had intentionally used 245's bank account in a manner that contravened the Mareva Order. The decision of Ricchetti J. was not appealed.

[9] Through September and October 2015, the respondent sought to schedule an examination of Khan as representative of Cash House, as authorized by the Mareva Order. After the respondent was unsuccessful in doing so, it unilaterally set a date on 7 days' notice. Counsel for the appellants advised that neither he nor Khan were available on that date. Accordingly, Khan did not attend.

[10] The respondent then brought a motion, seeking: (i) to have the appellants found in contempt of the Mareva Order under rule 60.11 of the Rules of Civil Procedure, and (ii) to strike Cash House's statement of defence and crossclaim under rule 60.12 for failure to comply with the Mareva Order.

[11] On December 4, 2015, McKenzie J. granted an adjournment of the contempt motion on terms, which included the requirement that Khan deliver an updated list of assets of Cash House, with supporting documents, by December 7, 2015, and that Khan attend for examination on December 11, 2015.

[12] The hearing of the contempt motion continued on January 8, 2016, with reasons given on January 21, 2016. Reviewing the steps taken by the appellants to comply with their obligations under the Mareva Order and the December 4, 2015 order, the motion judge noted that they “only delivered non-current documents relating to the bank accounts of Cash House and no documents for the accounts of 245”. Although Khan had attended the examination scheduled for December 11, 2015, he “did not produce the documents that were subject to the Mareva Order and further stipulated in the December 4, 2015 order.”

[13] The motion judge found that “Cash House and Mr. Khan ... intentionally operated the business of Cash House on an ongoing basis since the inception of the Mareva Order on May 5, 2015 utilizing the bank account(s) of 245.” He found the appellants to be in contempt (the “Contempt Order”), and adjourned the motion to strike the defence and crossclaim until the sanction hearing. The appellants were given two months to purge their contempt before the sanction hearing.

[14] During that interval, the appellants delivered a sworn statement from Khan listing accounts into which any money in which Cash House had a legal or beneficial interest had been deposited or withdrawn since May 6, 2015. The appellants produced some financial statements, tax returns, and bank statements. They also collected approximately 1,000 boxes of documents in a

storage location, and invited the participation of the respondent to develop a plan for the review and inspection of these documents.

[15] On March 14, 2016, the matter was back before the motion judge for the sanction phase hearing, and the hearing of the motion to strike. He released his decisions on May 24, 2016. He found the appellants' documentary production since the Contempt Order to have fallen short of what was ordered, and ordered the appellants to "forthwith supply the Plaintiff, through counsel, with a comprehensive and detailed written inventory of the documents contained in each of the approximately 1,000 bankers boxes" that the appellants had collected.

[16] The motion judge found that the appellants had intentionally and continually disobeyed orders of the court, and he sentenced Khan to 90 days of imprisonment to be served on weekends (the "Penalty Order"). He further ordered that the statement of defence and crossclaim of Cash House be struck, with leave to amend should Cash House comply with the ordered disclosure.

[17] The appellants appeal the Contempt Order, the Penalty Order, and the order to strike the statement of defence and crossclaim.

ISSUES

[18] The appellants argue that the motion judge erred by:

1. finding the Mareva Order to be clear and unambiguous;
2. failing to correctly apply the test for striking a pleading;
3. providing insufficient reasons;
4. ordering a custodial sentence for the contempt;
5. failing to allow the appellants an opportunity to make submissions before awarding costs on a substantial indemnity basis.

ANALYSIS

A. IS THE MAREVA ORDER CLEAR AND UNAMBIGUOUS?

[19] The elements of civil contempt have been recently summarized by this court in *2363523 Ontario Inc. v. Nowack*, 2016 ONCA 951, leave to appeal to SCC requested, at para. 20:

A party seeking to establish civil contempt must prove that: (a) the order alleged to have been breached states clearly and unequivocally what should and should not have been done; (b) the party alleged to have breached the order had actual knowledge of it; and (c) the party allegedly in breach intentionally did the act the order prohibits or intentionally failed to do the act the order compels. A judge retains an overriding discretion to decline to make a contempt finding where the foregoing factors are met where it would be unjust to do so, such as where the alleged contemnor has acted in good faith to take reasonable steps to comply with the relevant court order. The burden on a party seeking a contempt order is to establish the above elements by proof beyond a reasonable doubt [citations omitted.]

[20] The appellants argue that the motion judge erred by failing to conduct a correct analysis to determine whether the Mareva Order was sufficiently clear and unambiguous in the circumstances to ground a finding of contempt.

[21] The appellants' position, both before the motion judge and this court, is that the Mareva Order is unclear and suffers from multiple ambiguities that must be resolved in favour of the appellants. An ambiguity in an order is to be resolved in favour of the person said to have breached the order: *G.(N.) c. Services aux enfants & adultes de Prescott-Russell* (2006), 82 O.R. (3d) 686 (C.A.), at para. 39. The resolution of these ambiguities, the appellants argue, ought to have resulted in the dismissal of the contempt motion. The ambiguities identified by the appellants can be summarized as follows:

1. It is unclear whether the prohibition of "dealing with the assets" of Cash House prohibits the operation of the Cash House's business;
2. It is unclear whether the Mareva Order obligated Cash House to include the bank account of 245 in a sworn statement describing its worldwide assets; and
3. It is unclear whether Khan, as representative of Cash House, was obligated to attend a unilaterally scheduled examination.

[22] Although this ground of appeal is expressly formulated in terms of ambiguity, the argument, in reality, is that the Mareva Order is not sufficiently clear or precise for the appellants to understand their obligations under that

order. Ambiguity, in the sense employed in *G.(N.)*, indicates uncertainty as to which of two (or perhaps more) discrete meanings was intended by the order. To resolve an ambiguity in favour of the contemnor is to choose the meaning that is most favourable to the contemnor. The appellants have not identified any ambiguity in this sense, but argue instead that the relevant terms of the Mareva Order do not set out the appellants' obligations with sufficient precision for them to know whether or not they have complied.

[23] As I explain below, however, the motion judge made no error in finding the Mareva Order to be sufficiently clear.

(i) **“Dealing with the assets”**

[24] The appellants argue that, if the prohibition against “dealing with the assets” of Cash House was intended to prohibit the continued operations of Cash House, the Mareva Order needed to say so expressly. It did not, the appellants say, and to interpret it in this way would be inconsistent with the purpose of a Mareva Order, which is to prevent a party from depleting its assets, and not to prevent it from carrying on business in the ordinary course: *Farah v. Sauvageau Holdings Inc.*, 2011 ONSC 1819, 11 C.P.C. (7th) 363, at para. 111.

[25] I am not persuaded by this argument. The salient question for the purpose of this appeal is not whether the appellants were operating the business of Cash House, but whether they dealt with the assets of Cash House. It is not necessary

to consider the question of whether the Mareva Order permitted the business of Cash House to be operated in some form. The motion judge found that the appellants, in the mode in which they continued to carry on the business of Cash House, dealt with assets of Cash House – specifically, they dealt with funds deposited into the account of 245 – and that this was expressly prohibited by the Mareva Order. That finding was supported by the evidence before the motion judge, particularly the evidence of Khan on cross-examination.

[26] Khan, on cross-examination, admitted that he opened 245's account contemporaneous with his purchase of 245 and Cash House, and began using the 245 account for the operations of Cash House shortly thereafter. After the Mareva Order was issued and the accounts of Cash House were frozen, Khan continued operation of Cash House through the 245 account, which was used to accept deposits belonging to Cash House.

[27] A review of the 245 account statements provided revealed there were significant sums deposited and paid out of that account commencing in March 2015 and continuing well after the Mareva Order was issued. It appears that any business that Cash House was conducting, including the collection of its receivables, was occurring from 245's account. The motion judge made no error in finding that the 245 account was "directly or indirectly" an asset of Cash House. The use of this asset constituted a breach of the Mareva Order, and the motion judge made no error in so concluding.

(ii) Disclosure

[28] On the second issue, paragraph 4 of the Mareva Order required Cash House to prepare a sworn statement providing particulars of its worldwide assets “whether owned directly or indirectly and including any assets held in trust for [Cash House]”.

[29] The appellants argue that there was no direct evidence in the contempt proceedings to establish that Cash House had the power to dispose of or deal with 245’s account, and that the motion judge erred by not engaging in any reasoning to establish that 245’s account came within the scope of the Mareva Order.

[30] There is no merit to this submission and it cannot be maintained in light of Khan’s evidence on cross-examination. The evidence is clear that the 245 account received funds from Cash House’s operations. Its existence therefore had to be disclosed. It was not disclosed and the motion judge made no error in finding Cash House and Khan thereby breached the Mareva Order.

(iii) Examination under oath

[31] On the third issue, Cash House and Khan have attempted to manufacture confusion where the Mareva Order is abundantly clear: Cash House “must submit to examinations under oath within thirty (30) days of the delivery by [Cash House] of the aforementioned sworn statements or by such later date as may be

confirmed by the Plaintiff's counsel of record." The appellants argue that this provision is unclear because, effectively, it authorizes the respondent to demand the impossible: to schedule an examination unilaterally for a date when a party could not appear.

[32] Again, the motion judge made no error. A Mareva Order does not want for clarity simply because it does not concretize every particular of a party's obligations. It need not do so. The order was made in the context of a self-governing legal profession with settled norms of practice. There can be no suggestion here that the appellants, represented by counsel, did not understand their obligations. Neither did the respondent depart from settled norms of practice and demand the impossible of the appellants. The respondent made reasonable attempts to enlist the assistance of the appellants in coming to a mutually convenient schedule for an examination. That assistance was not forthcoming. The appellants' failure to participate is not the product of any defect in the Mareva Order or, for that matter, any unreasonable demands made by the respondent. The motion judge made no error in refusing to give effect to this argument.

B. STRIKING THE DEFENCE AND CROSSCLAIM

[33] The appellants argue that the motion judge erred by failing to apply correct legal principles on the motion to strike the statement of defence and crossclaim pursuant to rule 60.12. They advance six arguments, all of which I would reject.

[34] First, the appellants argue that the motion judge erred by striking the defence and crossclaim at the first instance, and thus using it as a remedy of first resort. They rely on this court's decision in *Bell ExpressVu Limited Partnership v. Corkery*, 2009 ONCA 85, 94 O.R. (3d) 614, at para. 35, that striking out a defence for failure to comply with a court's order is a severe remedy that should not generally be imposed as a remedy of first resort. This argument is contradicted by the procedural history of the motion: the motion judge adjourned the hearing of the motion to strike for two months to provide the appellants with time to comply with court orders. He found that they did not do so.

[35] Second, the appellants argue that the motion judge erred by failing to consider whether a less extreme remedy would suffice. In fact, after the motion judge chronicled the history of the appellants' contempt, he specifically addressed the need to provide a remedy that is proportionate to the misconduct, expressing concern about turning the action into a default proceeding. Consequently, he made the order without prejudice to Cash House moving for leave to amend after satisfying the court that the contempt has been purged.

[36] Third, the appellants argue that the motion judge erred in stating that the appellants were in contempt of two court orders, the Mareva Order and the December 4, 2015 order in aid of the Mareva Order. In fact, the appellants argue, they were only in contempt of the first of these orders.

[37] It is difficult to see how this submission assists the appellants.

[38] Fourth, the appellants argue that the motion judge misapprehended the requirement that he assess the merits of the defence in order to consider whether the interests of justice warranted another method of sanction, and improperly imposed an evidentiary burden on the appellants to establish the legitimacy of the defence.

[39] The statement of defence and crossclaim, however, amounts to little more than a bare denial. In the context of an action where there has been a determination that the respondent has adduced a strong *prima facie* case, the motion judge was justified in concluding that the merits of the defence were weak and that, in the absence of a full evidentiary record, “bald assertions” would not suffice. There was no misapprehension of the test here, and the motion judge placed no burden on the appellants to establish their defence. Indeed, as he observed, it was not the court’s role to determine the viability of either the claims or any defence, but to assess whether striking the pleading was an appropriate sanction (para. 22).

[40] Fifth, the appellants argue that the motion judge considered only the goal of sanctioning the appellants, and failed to consider the overarching objective that the Rules of Civil Procedure be interpreted so as to secure the just determination of each civil proceeding on its merits.

[41] Again, there is no merit to this submission. Cash House is one among many defendants in the same action. Where one defendant among many does not comply with its procedural obligations, it hinders and delays the expeditious determination of the overall proceeding.

[42] Finally, the appellants argue that the motion judge failed to give Cash House one last chance. Again, I would not give effect to this submission. The motion judge found that Cash House has a lengthy history of non-compliance with the Mareva Order. It received numerous warnings. The hearing of the motion to strike was adjourned for two months after the Contempt Order to allow for further time to comply. It did not do so. Even in striking the defence and crossclaim, Cash House has been permitted to move for leave to amend after it has complied. The motion judge did not err by not providing for further indulgence.

C. SUFFICIENCY OF REASONS

[43] The appellants also appeal on the grounds that the reasons of the motion judge on both the Contempt Order and the motion to strike are inadequate, in that they do not explain why the motion judge decided the way that he did.

[44] I would not give effect to this ground of appeal. With respect to the Contempt Order, the reasons, when read in conjunction with the written record that was before the court (including the endorsement of Ricchetti J., dated June 10, 2015), disclose all that is needed to be known for the purposes of appellate review, and for the purposes of enabling the appellants to understand their obligations. Reasons are given in context and must be understood in that context: *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3. The motion judge set out in detail the submissions of the appellants and the respondent. He accepted the arguments of the respondent as rationally superior to the arguments of the appellants and defeating those arguments. It was not necessary, in this context, that he do anything more than this.

[45] Similarly, with respect to the motion to strike the appellants' statement of defence and crossclaim, I do not accept the appellants' argument that the reasons given by the motion judge are inadequate. None of the five defects that the appellants allege have any merit, and I do not propose to address each individually. One example is sufficient to illustrate their tenor: the appellants ask

how the motions judge could have concluded that the merits of the defence are weak. No one who has read the record, including the statement of defence and crossclaim and the endorsement of Ricchetti J., could be left with any doubt about the basis of the motion judge's conclusion.

D. CONTEMPT SANCTION – ERROR IN ORDERING A CUSTODIAL SENTENCE

[46] The appellants argue that ordering a 90 day custodial sentence is grossly disproportionate for what it describes as a first instance of non-compliance. They further argue that they made massive efforts to comply with the extensive production obligations imposed.

[47] The motion judge did not view the appellants' conduct as either a first instance of non-compliance or as an imperfect but well-intentioned attempt to comply with an onerous production obligation. He found that the appellants breached the Mareva Order continuously, even after the endorsement of Ricchetti J., service with the contempt motion, and after being found in contempt.

[48] The motion judge was not impressed with the production efforts of the appellants. The appellants' production obligations under the Mareva Order were not satisfied, in the view of the motion judge, by simply dumping 1,000 boxes of documents on the respondent. These are not the records of an unsophisticated enterprise, but of a financial services corporation. The motion judge made no

error, in my view, in requiring the appellants to provide a “comprehensive and detailed written inventory” of the documents contained in the 1,000 boxes.

[49] It is important to note that the appellants made no proposal whatsoever as to how they would proceed to satisfy their obligations, and merely invited the respondent to consult with them. The motion judge found this to be insufficient. What the appellants describe as a mammoth task is hardly novel or unprecedented. At a minimum, the appellants ought to have put before the motion judge a plan from which it could have argued for an extension of time before the penalty hearing. It did little more than argue that the task was a large one, and that the respondent had not provided any assistance. The motion judge was accordingly unimpressed.

[50] The motion judge made no error in principle: he did not, as the appellants argue, overemphasize punishment, or lose sight of the purpose of contempt sanctions, namely to secure compliance. To the contrary, the intermittent nature of the custodial sentence was expressly intended to facilitate compliance with disclosure obligations.

Costs appeal

[51] The motion judge imposed an award of costs against the appellants on a full indemnity basis. The appellants appeal on the basis that they did not have an

opportunity to make submissions on costs, and that this constituted a breach of natural justice. They ask this court to set aside the costs order.

[52] As the respondents note, however, the costs award was imposed as a sanction for contempt, pursuant to rule 60.11(e). The quantum of the costs remains to be assessed. This penalty was available to the motion judge under rule 60.11(e). The requirement that costs be assessed provides the appellants with an opportunity to make submissions on quantum. I would not give effect to this ground of appeal.

DISPOSITION

[53] I would dismiss the appeal. I would award the respondent costs in the amount of \$15,000 inclusive of disbursements and HST.

Released:

APR - 4 2017

[Handwritten signature]

I agree *Paul Rouleau J.A.*

I agree. *K. v. Beluzga.*

TAB CC

This is Exhibit "CC" referred to in the
Affidavit of Darcy Thompson sworn before
me, this 12th day of November, 2018.



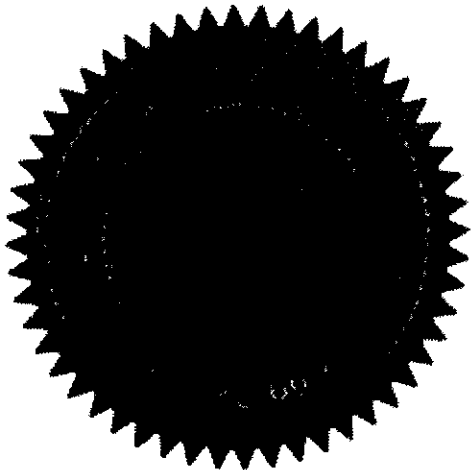
A Commissioner, etc.

*Emily Ann Elizabeth Pace, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 13, 2020.*

Supreme Court of Canada



Cour suprême du Canada



No. 37619

December 7, 2017

Le 7 décembre 2017

Coram: McLachlin C.J. and Abella,
Moldaver, Karakatsanis, Wagner, Gascon,
Côté, Brown and Rowe JJ.

Coram : La juge en chef McLachlin et les
juges Abella, Moldaver, Karakatsanis,
Wagner, Gascon, Côté, Brown et Rowe

BETWEEN:**ENTRE :**

Cash House Inc., Osman Khan and
2454904 Ontario Inc.

Cash House Inc, Osman Khan et 2454904
Ontario Inc.

Applicants

Demandeurs

- and -

- et -

Trade Capital Finance Corp

Trade Capital Finance Corp

Respondent

Intimée

JUDGMENT**JUGEMENT**

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C61750, 2017 ONCA 281, dated April 4, 2017, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C61750, 2017 ONCA 281, daté du 4 avril 2017, est rejetée avec dépens.

J.S.C.C.
J.C.S.C.

BUDUCHNIST CREDIT UNION LIMITED
(Applicant)

vs

2321197 ONTARIO INC. et al
(Respondents)

Court File No. CV 18-00608356-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**RESPONDING APPLICATION
RECORD OF TRADE CAPITAL
FINANCE CORPORATION**
Returnable December 4, 2018
(Volume 2 of 2)

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