

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

B E T W E E N:

**LONDON VALLEY IV INC.,
by its Court-Appointed Receiver and Manager, KSV RESTRUCTURING INC.**

Plaintiff

- and -

**BEHZAD PILEHVER also known as BEN PILEHVER also known as BEHZAD
PILEHVAR also known as BEN PILEHVAR also known as BEN PILEVHR, MAHTAB
NALI also known as MAHTAB NALI PILEHVAR also known as MAHTAB PILEHVAR
and 2621598 ONTARIO INC. doing business as NALI AND ASSOCIATES**

Defendants

**FACTUM OF THE PLAINTIFF
(Motion for Default Judgment)**

November 5, 2025

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Mark van Zandvoort (LSO No. 59120U)
Email: mvanzandvoort@airdberlis.com

Kyle Plunkett (LSO No. 61044N)
Email: kplunkett@airdberlis.com

Adrienne Ho (LSO No. 68439N)
Email: aho@airdberlis.com

Calvin Horsten (LSO No. 90418I)
Email: chorsten@airdberlis.com

Lawyers for the Plaintiff

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PART I – OVERVIEW

1. This is a motion by the Plaintiff, London Valley IV Inc. (“**LV IV**”) by KSV Restructuring Inc. (“**KSV**”) solely in its capacity as the Court-appointed receiver and manager of LV IV, and not in its personal, corporate or any other capacities (the “**Receiver**”), for default judgment against the Defendants, Behzad Pilehver also known as Ben Pilehver also known as Behzad Pilehvar also known as Ben Pilehvar also known as Ben Pilevhr (“**Pilehver**”), Mahtab Nali also known as Mahtab Nali Pilehvar also known as Mahtab Pilehvar (“**Nali**”) and 2621598 Ontario Inc. doing business as Nali and Associates (“**Nali and Associates**”).

2. The Defendants were each served with the Statement of Claim (the “**Claim**”) in accordance with the *Rules of Civil Procedure* (the “**Rules**”), and, having failed to file any Statement of Defence within the time required by the *Rules*, have now each been noted in default.

3. Pursuant to Orders of this Court, Mareva injunction relief was granted as against each of the Defendants and multiple case conferences have been convened in August, September and October 2025. Despite the foregoing, the Defendants have failed to defend the action or to comply with the Orders issued.

4. LV IV accordingly seeks default judgment against the Defendants in the form of the proposed draft Judgment included at Tab 4 of the Motion Record dated November 5, 2025.

PART II – FACTS

Parties and Procedural History

5. On March 6, 2025, under Court File No. CV-25-00736577-00CL (the “**Receivership Proceedings**”), the Honourable Madam Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) appointed KSV as Receiver of the assets, undertakings and properties of, *inter alios*, LV IV, and the proceeds thereof, including with respect to the LV IV Property (as defined below), pursuant to section 101 of the *Courts of Justice Act* (the “**Appointment Order**”).¹

6. LV IV is an Ontario corporation which held legal title to the property municipally known as 6211 Colonel Talbot Road, London, Ontario (the “**LV IV Property**”).² Pursuant to certain Sale Agreements and Co-Owner Agreements (as defined below), LV IV held the LV IV Property as nominee and bare trustee for underlying investors (the “**Co-Owners**”).³

7. Pilehver is the sole director and officer of LV IV.⁴

8. Nali and Associates is a registered business name of 2621598 Ontario Inc., which is also an Ontario Corporation.⁵

9. Nali is Pilehver’s spouse (or ex-spouse) and the sole director and officer of Nali and Associates.⁶

¹ Affidavit of Jordan Wong sworn November 5, 2025 (“**Affidavit**”) at para 1.

² Claim at para 3.

³ Claim at paras 9(a)(i) and (b).

⁴ Claim at para 5.

⁵ Claim at para 4.

⁶ Claim at para 5.

10. The LV IV Property was sold and transferred at the direction of Pilehver to a third-party purchaser for consideration of \$2 million on February 5, 2025. The transfer occurred prior to the Receiver's appointment.⁷ Certain of the proceeds of sale, which are the subject of this action, were distributed to Nali, Nali and Associates and other persons and entities at Pilehver's direction, without any legal entitlement, when such proceeds ought to have been retained in LV IV for distribution to the underlying Co-Owners.⁸

11. This action was accordingly commenced by the Receiver, on behalf of LV IV, by issuance of a Notice of Action on August 5, 2025 (the "**Notice of Action**"). After *Mareva* relief was obtained, the Claim was thereafter filed with the Court on September 3, 2025.⁹

12. Pursuant to an *ex parte* Order issued August 7, 2025, and a continuation Order issued on notice to the Defendants on August 15, 2025 (together, the "**Mareva Orders**"), this Court granted *Mareva* injunctive relief as against each of the Defendants.¹⁰ Specifically, this Court found that by orchestrating a sale of the LV IV Property without proper authorization and then improperly transferring the proceeds to benefit the Defendants, the Receiver had established: (i) a strong *prima facie* case that Pilehver had breached his fiduciary duty to LV IV;¹¹ and (ii) the mere fact that Nali and Nali and Associates obtained the sale proceeds belonging to LV IV (and by virtue, its underlying Co-Owners) without permission, and without any legal entitlement, amounts to a strong *prima facie* case of conversion.¹²

⁷ Claim at para 3.

⁸ Claim at paras 16 and 19.

⁹ Affidavit at paras 3-4.

¹⁰ Affidavit at paras 9 and 19.

¹¹ Affidavit, Exhibit H, August 7 Endorsement at para 27.

¹² Affidavit, Exhibit H, August 7 Endorsement at para 28.

13. Notwithstanding the obligation imposed upon the Defendants by the August 7 Mareva Order, as continued, to produce a sworn statement of assets to the Plaintiff and to attend for examination: (i) Nali and Nali and Associates have failed to deliver a sworn statement, without explanation; and (ii) Pilehver delivered an incomplete sworn statement on September 16, 2025, but has failed to attend for examination on it given his request to delay the examination pending his change of counsel, which change never materialized.¹³

14. Nali and Nali and Associates were served with the Claim and Notice of Action on September 9, 2025 by personal service.¹⁴ Both of these Defendants failed to serve a Statement of Defence, failed to comply with the Mareva Orders by not delivering sworn statements of assets, and have failed to attend any of the case conferences scheduled in this proceeding or to otherwise participate in these proceedings.¹⁵ As a result, they were each noted in default on October 2, 2025.¹⁶

15. Pilehver was served with the Claim and Notice of Action on September 3, 2025 by service on Pilehver's counsel of record, Henein Hutchison Robitaille LLP ("**HHR**"), which endorsed its acceptance of both the Claim and Notice of Action in accordance with the *Rules*.¹⁷

16. On September 23, 2025, Pilehver, HHR and the Receiver and its counsel attended a case conference in this matter before the Honourable Madam Justice J. Dietrich. At this case conference, HHR advised that it would be seeking to withdraw as counsel. Pilehver advised that he was in the process of retaining new counsel and hoped to have that completed the following week, being the week ending October 3, 2025.¹⁸

¹³ Affidavit at paras 25 and 28-29.

¹⁴ Affidavit at para 8.

¹⁵ Affidavit at para 34.

¹⁶ Affidavit at para 34.

¹⁷ Affidavit at para 6.

¹⁸ Affidavit at para 27.

17. On October 14, 2025, Pilehver, HHR and the Receiver and its counsel attended a further case conference before Justice Dietrich. Despite Pilehver's earlier representation that he was in the process of retaining new counsel, as of the time of this case conference, Pilehver had not yet done so. In addition, and despite having been served with the Claim and Notice of Action more than a month before, Pilehver had also not delivered a Statement of Defence. Pilehver advised the Court that he was in the process of retaining new counsel and that he expected to file a Statement of Defence by the end of October 2025.¹⁹

18. At the October 14, 2025 case conference before Justice Dietrich at which Pilehver attended, the Receiver, on behalf of LV IV, scheduled this default judgment motion.²⁰

19. Pilehver failed to serve a Statement of Defence (or to retain new counsel) by the end of October 2025.²¹ As a result, he was noted in default on November 3, 2025.²²

20. To date, no steps have been taken by the Defendants to have the noting in default set aside, and the Receiver has not heard from Pilehver further to the October 14, 2025 case conference.²³

Background to Receivership Proceedings and the Co-Owner Agreements

21. The receivership application was brought by Mizue Fukiage, Akiko Kobayashi, Yoshiki Fukiage, Kobayashi Kyohodo Co., Ltd. and Toru Fukiage (collectively, the "**Kobayashi Group**").²⁴

¹⁹ Affidavit at para 35.

²⁰ Affidavit at para 29.

²¹ Affidavit at para 35.

²² Affidavit at para 37.

²³ Affidavit at para 39.

²⁴ Claim at para 6.

22. The Kobayashi Group are investors (Co-Owners) in the LV IV Property, having acquired an approximately 72% undivided beneficial interest in this property pursuant to four sale agreements among the applicable member of the Kobayashi Group, as purchaser, LV IV, as nominee, and TSI-LV IV International Canada Inc., as vendor.²⁵

23. Attached to the foregoing sale agreements (the “**Sale Agreements**”) were certain co-owner agreements (the “**Co-Owner Agreements**”) which governed the ownership of the LV IV Property.²⁶

24. The Sale Agreements provide, among other things:²⁷

(a) Pursuant to sections 11.1 and 11.3:

(i) LV IV, as nominee, holds the registered title to the LV IV Property to the extent of the co-owner’s interest as nominee and bare trustee for the co-owner to the extent of its undivided interests in the LV IV Property;

(ii) LV IV agreed to execute and deliver to the co-owner a declaration of trust wherein it will confirm that it is holding the title to the LV IV Property for and on behalf of the co-owner to the extent of its interest;

(b) Pursuant to sections 13.1 and 13.2, the Co-Owners Agreements govern any future sale of the LV IV Property, procedures for consents and approvals by co-owners, and the obligations of LV IV as nominee for and on behalf of the co-owners; and

²⁵ Claim at para 7.

²⁶ Claim at para 8.

²⁷ Claim at para 9.

- (c) Pursuant to section 20, Schedule “C”, the Co-Owners Agreement forms an integral part of the Sale Agreement.

25. The Co-Owners Agreements provide, among other things:²⁸

- (a) Pursuant to section 19, any offer to purchase the LV IV Property is to be presented to all co-owners for consideration;
- (b) Pursuant to section 8, the LV IV Property can only be sold if an ordinary resolution is passed by the owners, being a resolution signed by the co-owners (which includes the Kobayashi Group) holding in aggregate not less than 51% of the interests in the property; and
- (c) Pursuant to section 6(j), the net income from the financing, refinancing and sale of the LV IV Property is to be distributed to the Co-Owners, which includes the Kobayashi Group.

26. The sale of the LV IV Property (as is addressed below) was completed without the Kobayashi Group’s knowledge or consent, in violation of the Sale Agreements and Co-Owner Agreements.²⁹ Nor did the Kobayashi Group receive any net income or other proceeds in connection with the sale of the LV IV Property.³⁰

²⁸ Claim at para 10.

²⁹ Claim at para 15.

³⁰ Claim at para 11.

Misappropriation of Funds

27. On February 5, 2025, the LV IV Property was improperly sold and transferred for \$2 million at the direction of Pilehver, without notice to or the consent of the Co-Owners.³¹ Prior to the Receiver's appointment, a significant portion of the sale proceeds, being \$1,071,551.06, were improperly diverted by Pilehver from LV IV and its Co-Owners (including the Kobayashi Group) to Nali and Nali and Associates and to other persons and entities for the benefit of the Defendants.³² Such funds ought to have been distributed to the underlying Co-Owners of LV IV, including the Kobayashi Group.³³

28. The sale of the LV IV Property was in contravention of the Sale Agreements and Co-Owner Agreements governing the LV IV Property which, as stated above, require that, *inter alia*, such property can only be sold if an ordinary resolution is passed by the applicable Co-Owners and that net income from the financing, refinancing and sale of the LV IV Property is to be distributed to the Co-Owners. No such distribution occurred.³⁴

29. Upon the sale of the LV IV Property, proceeds of \$1,899,510.74 (the "**Proceeds**") were paid into the trust account of a lawyer named Parminder Hundal also known as Pam Hundal of the law firm Parminder Hundal Law Professional Corporation ("**Hundal**"), who acted as counsel to LV IV in the transaction and who took instructions from Pilehver.³⁵

³¹ Claim at para 17.

³² Claim at para 14.

³³ Claim at para 14.

³⁴ Claim at para 16.

³⁵ Claim at para 18.

30. In February and March 2025, prior to the Receiver's appointment, the Proceeds were disbursed at Pilehver's direction, including as follows:

- (a) Per a written direction executed by Pilehver, Pilehver directed that the net Proceeds of the sale be payable to Nali and Associates and Mahtab Nali, which resulted in the following disbursements totalling \$897,859.49:³⁶
 - (i) by certified cheque dated February 6, 2025, \$817,859.49 of the Proceeds was paid from Hundal's trust account to Nali, which was deposited in the Nali Bank Account at TD Bank bearing account number 6177612;³⁷
 - (ii) by cheque dated February 18, 2025, a further \$80,800 was paid from Hundal's trust account to Nali and Associates and was deposited into the Nali Bank Account at TD Bank bearing account number 5023332;³⁸
- (b) Per a further written direction executed by Pilehver on February 10, 2025:³⁹
 - (i) On February 12, 2025, \$5,000 was wired by Hundal to Bally Hundal/Hundal Law Firm which appears to have no connection to LV IV or the LV IV Property;⁴⁰

³⁶ Claim at para 19(a).

³⁷ Claim at para 19(a)(i).

³⁸ Claim at para 19(a)(ii).

³⁹ Claim at para 19(b).

⁴⁰ Claim at para 19(b)(i).

- (ii) on February 14, 2025, \$30,000 was wired by Hundal to “Unik Credit mgmt in trust” which again appears to have no connection to LV IV or the LV IV Property;⁴¹
- (c) payments totalling \$103,040.42 were paid to Hundal on February 10, 12, 20, and March 5, 2025 in purported satisfaction of accounts rendered, of which at least \$94,000.42 appears to have no connection to LV IV or the LV IV Property;⁴² and
- (d) on March 5, 2025, one day prior to the Receivership Order, \$34,000 was wired by Hundal to a third law firm, Blaney McMurtry LLP (“**Blaney**”).⁴³ On March 21, 2025, Blaney advised the Service List in the Receivership Proceedings that it was retained by Pilehver in his personal capacity, as well as by 2630306 Ontario Inc. o/a Paybank Financial (“**Paybank**”) and TGP Canada Management Inc. (“**TGP Canada**”) (collectively, the “**Paybank Parties**”).⁴⁴ Blaney has since withdrawn as counsel to the Paybank Parties, offered to pay these funds to the Receiver, and has indicated that it will hold these funds in trust pending further Order of the Court.⁴⁵

31. Pilehver, in his capacity as director of LV IV, breached his fiduciary and other legal obligations to LV IV and exercised his powers as a director in a manner that was oppressive, unfairly prejudicial and which unfairly disregarded the interests of LV IV and its underlying Co-Owners, by failing to comply with the co-ownership arrangements governing the LV IV Property.⁴⁶

⁴¹ Claim at para 19(b)(ii).

⁴² Claim at para 19(c).

⁴³ Claim at para 19(d).

⁴⁴ Claim at para 19(d).

⁴⁵ Affidavit at para 32.

⁴⁶ Claim at para 20.

32. Pilehver wrongfully directed the sale of the LV IV Property and then misappropriated the proceeds of sale therefrom by directing LV IV's counsel, Hundal, to disburse the foregoing proceeds as detailed above. There was no consideration nor valid business purpose for the proceeds of sale to have been disbursed in this regard.⁴⁷

33. Pilehver unlawfully profited and benefited from these breaches of his duties, as did the Defendants Nali and Nali and Associates.⁴⁸

PART III – ISSUE

34. The sole issue to be determined on this Motion is whether LV IV is entitled to default judgment against the Defendants.

PART IV – LAW AND ARGUMENT

A. Default Judgment

35. Where a defendant has been noted in default, the plaintiff may move before a judge for judgment against the defendant.⁴⁹ A motion for judgment shall be supported by evidence given by affidavit if the claim is for unliquidated damages.⁵⁰

36. A defendant noted in default is deemed to admit the truth of all allegations of fact made in the Statement of Claim. Nevertheless, the pleaded facts must entitle the plaintiff to judgment.⁵¹

⁴⁷ Claim at para 20.

⁴⁸ Claim at para 21.

⁴⁹ [Rule 19.05](#).

⁵⁰ [Rule 19.05\(2\)](#).

⁵¹ Rules [19.02\(1\)\(a\)](#) and [19.06](#).

37. The test on a motion for default judgment is as follows:⁵²

- (a) What deemed admissions of fact flow from the facts pleaded in the Statement of Claim?
- (b) Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgment on the Claim?
- (c) If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgment on the pleaded claim?

38. The Defendants have all been noted in default, and none of the Defendants have taken any steps to set aside such noting in default. Nor have they otherwise contested the evidence filed by the Receiver which led to a strong *prima facie* case being found by this Court in the issuance of the *Mareva* Orders.

B. LV IV is Entitled to Judgment

39. LV IV submits that the facts and evidence contained in its Statement of Claim, as well as the evidence contained in the Affidavit, entitle LV IV to judgment against the Defendants.

1. Fraud

40. To establish the tort of civil fraud in Ontario, a party must satisfy the following elements:⁵³

- (a) a false representation of fact by the defendant to the plaintiff;
- (b) knowledge that the representation was false, absence of belief in its truth, or recklessness as to its truth;

⁵² *Elektro Ltd. v. Rodkin*, [2012 ONSC 2062](#) at [para 14](#); *Kahil v. Youvic Investments Group Inc., et al.*, [2025 ONSC 4999](#) at [para 57](#).

⁵³ *Paulus v. Fleury*, [2018 ONCA 1072](#) at [paras 8-9](#).

- (c) an intention the plaintiff act in reliance on the representation;
- (d) the plaintiff acts on the representation; and
- (e) the plaintiff suffers a loss in doing so.

41. The knowledge of Pilehver, as the directing mind of LV IV, is not imputed to LV IV.⁵⁴

42. The facts set out in the Statement of Claim, which are deemed to be admitted, demonstrate that Pilehver fraudulently directed the sale of the LV IV Property and the transfer of the proceeds therefrom, and that Nali and Nali and Associates were either active or passive accomplices in the fraud.⁵⁵ The admitted facts reflect that Pilehver committed fraud *vis-à-vis* the Plaintiff as he:

- (a) falsely and knowingly represented to LV IV that the Co-Owners of LV IV had consented to the sale of the LV IV Property and/or that the Plaintiff was entitled to sell the LV IV Property and to distribute the proceeds as directed by Pilehver;⁵⁶
- (b) in reliance on Pilehver's representations, LV IV followed his direction in causing prohibited payments of the sale proceeds to be made by LV IV: (i) to related, non-arm's length parties, for which no goods or services, or no good or service or any material value, was provided to LV IV; and (ii) to other entities for the improper benefits for himself and the other Defendants;⁵⁷ and
- (c) knowingly received, retained and used these funds which rightfully belonged to LV IV, and as a direct result of which LV IV suffered a loss.⁵⁸

⁵⁴ *Aquino v. Bondfield Construction Co.*, [2024 SCC 31](#) at [para 81](#); *Canadian Dredge & Dock Co. v. The Queen*, [1985 CanLII 32](#) (SCC), [1985] 1 SCR 662 at [para 65](#).

⁵⁵ *Sibley & Associates LP v Ross*, [2011 ONSC 2951](#) at [para 9](#); *1999269 Ontario Limited et al v. Aguiar et al*, [2023 ONSC 787](#) at [para 49](#).

⁵⁶ Claim at para 22(a).

⁵⁷ Claim at paras 22(b)-(c).

⁵⁸ Claim at paras 22(d), 27, 30 and 35, 42 and 43.

2. Breach of Fiduciary Duty

43. To establish a breach of fiduciary duty under Ontario law, a plaintiff must establish the following elements:⁵⁹

- (a) proof of the duty, including that the fiduciary has scope for the exercise of some discretion or power, the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interest, and the beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power; and
- (b) breach of the duty, including concealment or failure to advise of material facts, breach of trust, making a secret profit or acting in a conflict of interest, a causal connection between the breach and the alleged damages and the fiduciary's profit from its actions.

44. Pilehver owed a fiduciary duty to LV IV as the sole director thereof.⁶⁰ By engaging in his fraudulent and improper transfer of funds – misappropriating company funds to benefit the Defendants – Pilehver breached that fiduciary duty.⁶¹ Moreover, he did so deceitfully and dishonestly by failing to make proper disclosure to LV IV's stakeholders.⁶²

3. Unjust Enrichment and Conversion

45. The tort of conversion involves a wrongful interference with the goods of another, such as taking, using or destroying the goods in a manner inconsistent with the owner's right to possession. The tort is one of strict liability, and accordingly, it is no defence that the wrongful act was committed in all innocence.⁶³

⁵⁹ *Hodgkinson v Simms*, [1994] 3 SCR 377 at paras 16, 30, 44, 58, 79-80 and 108.

⁶⁰ Claim at paras 24 and 29.

⁶¹ Claim at paras 25-26 and 30-31.

⁶² Claim at para 26(c).

⁶³ *Boma Manufacturing Ltd. v Canadian Imperial Bank of Commerce*, [1996] 3 SCR 727 at paras 31-32; and *Wymor Construction Inc. v Gray*, 2012 ONSC 5022 at paras 18-19.

46. In *Wymor Construction Inc. v Gray*, an employee bookkeeper defrauded her employer by forging unauthorized cheques and depositing those cheques into her partner's bank account. Despite having no knowledge of the fraud, or that the funds were obtained through fraudulent means, Justice Aitken found the partner liable for the tort of conversion, stating "*The mere fact that she had, to her credit, funds belonging to another, without that person's permission, and without such possession being pursuant to any legal entitlement, amounts to conversion.*"⁶⁴

47. The mere fact that Nali and Nali and Associates obtained funds belonging to LV IV (and, by virtue, its Co-Owners) without permission, and without any legal entitlement, amounts to conversion.

48. By virtue of the facts set out above and in the Statement of Claim,⁶⁵ Pilehver, Nali and Nali and Associates have been unjustly enriched. LV IV has suffered a corresponding deprivation. There is no juristic reason for the Defendants' enrichment or for LV IV's corresponding deprivation.⁶⁶

49. Given the deemed admissions and evidence that the misappropriated funds were deposited into Nali's and Nali and Associates' accounts contrary to the interests of LV IV and its stakeholders, and were used by Pilehver to make payments unrelated to LV IV or the LV IV Property, conversion and unjust enrichment have been demonstrated.

⁶⁴ *Wymor Construction Inc. v Gray*, [2012 ONSC 5022](#) at [paras 18-19](#).

⁶⁵ Claim at paras 14-21.

⁶⁶ Claim at para 36.

4. Constructive Trust/Equitable Lien and Equitable Tracing

50. In light of the foregoing, the Plaintiff also seeks a declaration that it is entitled to a constructive trust and equitable lien over the misappropriated funds, and an order for equitable tracing.⁶⁷ The trust nature of this property is confirmed by the deemed admissions, as well as by the Co-Owner Agreements themselves which clearly provide that the Co-Owners' interests in the LV IV Property are to be held in trust by LV IV as bare trustee and contain declarations of trust as attachments.⁶⁸

51. Courts may impress a constructive trust, and issue tracing and accounting orders, to assist in recovery efforts "where good conscience so requires".⁶⁹ Such orders are appropriate where the moneys were fraudulently procured and there is evidence that the funds were not used for their designated purposes, and, in respect of the tracing and accounting orders, where the plaintiff has not been able to trace what happened to the loan funds.⁷⁰ Such orders are also appropriate in cases where there was a breach of fiduciary duty or unjust enrichment.⁷¹

52. Similarly, an equitable lien will be available in circumstances that would give rise to a constructive trust.⁷² The general approach that courts have taken is to declare an equitable lien where there is a finding of an unjust enrichment or a constructive trust.⁷³ The equitable lien is then impressed upon the trust property as a security interest.⁷⁴

⁶⁷ *Kerr v Baranow*, [2011 SCC 10](#) at [para 50](#); *Moore v Sweet*, [2018 SCC 52](#) at [para 91](#); *Sirius Concrete Inc. (Re)*, [2022 ONCA 524](#) at [para 19](#); *Soulos v Korkontzilas*, [\[1997\] 2 SCR 217](#) at [para 45](#); and *Treaty Group Inc. v Simpson*, [2001 CarswellOnt 617](#), [2001] O.J. No. 725 at para 25, Tab 1 of the Book of Authorities.

⁶⁸ Claim at para 9.

⁶⁹ *Soulos v Korkontzilas*, [\[1997\] 2 SCR 217](#) at [paras 34-36](#); *Noreast Electronics Co. v. Danis*, [2018 ONSC 5169](#) at [para 153](#).

⁷⁰ *Bank of Montreal v. 1886758 Ontario Inc.*, [2022 ONSC 4642](#) at [para 40](#).

⁷¹ *Soulos v Korkontzilas*, [\[1997\] 2 SCR 217](#) at [paras 33-34](#) and [43](#); *Noreast Electronics Co. v. Danis*, [2018 ONSC 5169](#) at [para 153](#).

⁷² *Trez v. Wynford*, [2015 ONSC 2794](#) at [para 25](#).

⁷³ *Caroti v. Vuletic*, [2024 ONSC 6776](#) at [para 107](#).

⁷⁴ *Caroti v. Vuletic*, [2024 ONSC 6776](#) at [para 107](#).

53. The imposition of a constructive trust over certain of the Proceeds which are known by the Receiver to be held by third parties,⁷⁵ without consideration or entitlement,⁷⁶ would have the effect of entitling LV IV to the return of such Proceeds by such third parties.⁷⁷ For greater certainty and without limitation, LV IV therefore seeks an Order requiring the sum of \$34,000 to be returned to LV IV by Blaney.⁷⁸

5. Knowing Receipt and Knowing Assistance

54. With respect to knowing receipt, a third-party to a fiduciary relationship may be liable if the third party receives trust property in their own personal capacity with constructive or actual knowledge of the breach of fiduciary duty.⁷⁹

55. Nali is deemed to have admitted actual knowledge that Pilehver controlled LV IV and, as such, was in a fiduciary relationship to LV IV, and that he breached that relationship, including by directing that certain of the LV IV Property sale proceeds be paid to Nali and Nali and Associates.

56. Furthermore, the Defendants are deemed to have admitted that they participated in, authorized and/or acquiesced to the transfer or misappropriation of the sale proceeds and knew that such conduct was in breach of LV IV's obligations, which amounts to knowing assistance.⁸⁰

⁷⁵ Affidavit at para 31.

⁷⁶ Claim at para 20.

⁷⁷ *Elekta Ltd. v. Rodkin*, [2012 ONSC 2062](#) at [para 35](#); *Noreast Electronics Co. v. Danis*, [2018 ONSC 5169](#) at [para 152](#).

⁷⁸ Claim at para 19(d).

⁷⁹ *DBDC Spadina Ltd. v. Walton*, [2018 ONCA 60](#) at [para 37](#).

⁸⁰ *DBDC Spadina Ltd. v. Walton*, [2018 ONCA 60](#) at [para 40](#).

C. Damages

57. LV IV submits that the facts and evidence contained in its Claim, as well as the evidence contained in the Affidavit, entitle LV IV to the judgment sought as against the Defendants.

58. A Court may award punitive damages on a motion for default judgment.⁸¹ Here, an award of punitive damages against the Defendants in favour of the Plaintiff is warranted, given their high-handed, malicious, arbitrary and reprehensible misconduct that markedly departs from ordinary standards of decent behaviour, and given the misappropriated funds were trust funds which are beneficially owned by vulnerable investors, being the Co-Owners. The loss and harm suffered by the Plaintiff cannot be adequately compensated merely by compensatory damages equal to the sum of the misappropriated Proceeds.⁸²

59. LV IV submits that the quantum of damages sought, equivalent to the amount wrongfully obtained by the Defendants from the Proceeds, being \$1,071,551.06, plus punitive damages in the amount of \$250,000.00, plus prejudgment and postjudgment interest, is fair and reasonable in all the circumstances.

D. Mareva In Aid of Execution

60. LV IV seeks the continuation of the *Mareva* relief previously granted in this matter on an enduring basis until the judgment sought has been fully satisfied.

61. The test for a “*Mareva* in aid of execution” was set out in *Coast to Coast Against Cancer v. Sokolowski* (“*Coast to Coast*”) and is the same as the ordinary test for a *Mareva* injunction.⁸³

⁸¹ *Bank of Montreal v. 1886758 Ontario Inc.*, [2022 ONSC 4642](#) at [paras 34-38](#).

⁸² *Carbone v. Boccia*, [2025 ONSC 1966](#) at [paras 10-14](#); *Elekta Ltd. v. Rodkin*, [2012 ONSC 2062](#) at [paras 24-31](#).

⁸³ *Coast to Coast Against Cancer v. Sokolowski*, [2016 ONSC 170](#) at [para 6](#).

62. Notably, in *Coast to Coast*, the Honourable Justice Diamond recognized that the plaintiff had already satisfied the requirements for a *Mareva* injunction when it obtained such order as an interlocutory step prior to final judgment.⁸⁴ Accordingly, the Court granted a post-judgment *Mareva* injunction in aid of execution in identical terms to the previous injunction.⁸⁵

63. Similarly, and in conjunction with imposing a constructive trust, in *Noreast* the Court extended its prior *Mareva* injunction “until the defendants have fully satisfied this judgment.”⁸⁶

E. Declaratory Relief

64. Consistent with the language of section 178(1)(d) and (e) of the *Bankruptcy and Insolvency Act*, LV IV also seeks a declaration that the Defendants’ debt and liability results from obtaining property by false pretences or by fraud and therefore survives any past, present or future assignment in bankruptcy.⁸⁷

65. Alternatively, LV IV seeks such declaratory relief without the accompanying order at this time that its claim will survive a bankruptcy discharge, though LV IV does intend to rely on s. 178 should the Defendants take the protection of bankruptcy.⁸⁸

⁸⁴ *Coast to Coast Against Cancer v. Sokolowski*, [2016 ONSC 170](#) at [para 9](#).

⁸⁵ *Coast to Coast Against Cancer v. Sokolowski*, [2016 ONSC 170](#) at [paras 10-11](#).

⁸⁶ *Noreast Electronics Co. v. Danis*, [2018 ONSC 5169](#) at [para 156](#). See also *Ernst & Young Inc. v. Aquino*, [2025 ONSC 3101](#) at [para 60](#), where a *Mareva* injunction was continued indefinitely.

⁸⁷ *Ingarra v. Cartel & Bui LLP, et al.*, [2024 ONSC 6228](#) at [paras. 15](#) and [22.F](#); *Bankruptcy and Insolvency Act*, s. [178\(1\)\(d\)-\(e\)](#) and [s. 97](#) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

⁸⁸ *Bank of Montreal v. 1886758 Ontario Inc.*, [2022 ONSC 4642](#) at [para 45](#).

G. Costs

66. LV IV seeks an award of costs on a full indemnity basis, or in the alternative, a substantial indemnity basis. The costs sought cover legal work performed to commence and prosecute these proceedings, to obtain and execute the *Mareva* Orders, to coordinate with and review records provided by financial institutions in connection with the Orders, to attend various case conferences at the request of Pilehver, to arrange and prepare for an examination of Pilehver which did not occur, at his then-counsel's request, and to bring this motion for default judgment.

67. An award of costs lies in the discretion of the Court.⁸⁹

68. Courts have found that fraud amounts to reprehensible conduct which merits an award of substantial indemnity costs.⁹⁰

69. This Court may award elevated, full indemnity costs where one party was an innocent party to the proceeding and the court concludes that it should not experience any loss as a result of the conduct and actions of the defendant which resulted in the litigation,⁹¹ particularly where the losing party has engaged in behaviour worthy of sanction.⁹²

70. In the present case, a number of aggravating factors warrant full indemnity costs:

- (a) the Defendants' behaviour in perpetrating the scheme described in the Claim, as against helpless and unaware foreign investors, is particularly egregious;⁹³

⁸⁹ *Courts of Justice Act*, [s. 131\(1\)](#); *Rules of Civil Procedure*, [r. 57.01\(1\)](#).

⁹⁰ *Elekta Ltd. v. Rodkin*, [2012 ONSC 2062](#) at [para 41](#); *Bank of Montreal v. 1886758 Ontario Inc.*, [2022 ONSC 4642](#) at [para 46](#).

⁹¹ *Elekta Ltd. v. Rodkin*, [2012 ONSC 2062](#) at [para 40](#).

⁹² *Net Connect Installation Inc. v. Mobile Zone Inc.*, [2017 ONCA 766](#) at [para 8](#).

⁹³ Affidavit at para 43.

- (b) despite being served personally with the *Mareva* Orders, Nali and Nali and Associates have not participated in any way in these proceedings, in breach of those Orders;⁹⁴
- (c) Pilehver requested numerous case conferences in these proceedings, purportedly for the purpose of scheduling a motion to discharge the *Mareva* Orders, but no such motion was ever scheduled such that the exercise of repeated case conferences merely increased costs to the Plaintiff;⁹⁵
- (d) Pilehver also cannot be said to have complied with the *Mareva* Orders in good faith, given that he did not comply with those Orders in a timely manner, and when he finally provided a sworn statement of assets after the time for doing so had elapsed under the *Mareva* Orders, the sworn statement was deficient in several respects, including that it referenced a bank account but failed to disclose particulars;⁹⁶
- (e) despite being advised in Court of the Receiver's intention to examine Pilehver on September 30, 2025, in accordance with the *Mareva* Orders, Pilehver's former counsel did not advise the Receiver's counsel until within 24-hours of the scheduled examination that Pilehver was objecting to the examination proceedings, such that the time and expense of arranging and preparing for the examination was entirely thrown away;⁹⁷ and

⁹⁴ Affidavit at para 34.

⁹⁵ Affidavit at paras 20-29.

⁹⁶ Affidavit at para 25.

⁹⁷ Affidavit at paras 27-28.

- (f) upon being served with the initial *Mareva* Order, Pilehver and/or his companies caused various communications to be sent to Co-Owners which contained false information regarding the Receiver in an apparent effort to interfere with this litigation and the underlying Receivership Proceedings.⁹⁸

71. The foregoing conduct is egregious and represents efforts by the Defendants to ignore and/or interfere with the Court process. Such conduct is worthy of sanction, and furthermore, LV IV and its investors ought to be saved harmless from the conduct described in the Claim, as well as for the costs of this litigation which was necessitated by the reprehensible actions of the Defendants.

PART V – RELIEF REQUESTED

72. Accordingly, the Plaintiff seeks default judgment in the form of the proposed draft Judgment included at Tab 4 of the Plaintiff's Motion Record.

⁹⁸ Affidavit at paras 13-15.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of November, 2025.



AIRD & BERLIS LLP

Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Mark van Zandvoort (LSO No. 59120U)

Tel: (416) 865-4742

Email: mvanzandvoort@airdberlis.com

Kyle Plunkett (LSO No. 61044N)

Tel: (416) 865-3406

Email: kplunkett@airdberlis.com

Adrienne Ho (LSO No. 68439N)

Tel: (416) 865-7980

Email: aho@airdberlis.com

Calvin Horsten (LSO No. 90418I)

Tel: (416) 865-3077

Email: chorsten@airdberlis.com

Lawyers for the Plaintiff

**SCHEDULE “A”
AUTHORITIES CITED**

Jurisprudence

1. *1999269 Ontario Limited et al v. Aguiar et al*, [2023 ONSC 787](#).
2. *Aquino v. Bondfield Construction Co.*, [2024 SCC 31](#).
3. *Bank of Montreal v. 1886758 Ontario Inc.*, [2022 ONSC 4642](#).
4. *Boma Manufacturing Ltd. v Canadian Imperial Bank of Commerce*, [\[1996\] 3 SCR 727](#).
5. *Canadian Dredge & Dock Co. v. The Queen*, [1985 CanLII 32](#) (SCC).
6. *Carbone v. Boccia*, [2025 ONSC 1966](#).
7. *Caroti v. Vuletic*, [2024 ONSC 6776](#).
8. *Coast to Coast Against Cancer v. Sokolowski*, [2016 ONSC 170](#).
9. *DBDC Spadina Ltd. v Walton*, [2018 ONCA 60](#).
10. *Elekt Ltd. v. Rodkin*, [2012 ONSC 2062](#).
11. *Ernst & Young Inc. v. Aquino*, [2025 ONSC 3101](#).
12. *Hodgkinson v Simms*, [\[1994\] 3 SCR 377](#).
13. *Ingarra v. Cartel & Bui LLP, et al.*, [2024 ONSC 6228](#).
14. *Kahil v. Youvic Investments Group Inc., et al.*, [2025 ONSC 4999](#).
15. *Kerr v Baranow*, [2011 SCC 10](#).
16. *Moore v Sweet*, [2018 SCC 52](#).
17. *Noreast Electronics Co. v. Danis*, [2018 ONSC 5169](#).
18. *Paulus v. Fleury*, [2018 ONCA 1072](#).
19. *Sibley & Associates LP v Ross*, [2011 ONSC 2951](#).
20. *Sirius Concrete Inc. (Re)*, [2022 ONCA 524](#).
21. *Soulos v Korkontzilas*, [\[1997\] 2 SCR 217](#).
22. *Treaty Group Inc. v Simpson*, [2001 CarswellOnt 617](#), [2001] O.J. No. 725.
23. *Trez v. Wynford*, [2015 ONSC 2794](#).
24. *Wymor Construction Inc. v Gray*, [2012 ONSC 5022](#).

Certificate of Authenticity

I, Calvin Horsten, am satisfied as to the authenticity of every authority cited in the factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O, 1990, Reg. 194.

November 5, 2025



DATE

Calvin Horsten

**SCHEDULE “B”
TEXT OF STATUTES & REGULATIONS**

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended, Rule 19.01(1), Rule 19.02(1), Rule 19.05, Rule 19.06 and Rule 57.01

Noting Default

Where no Defence Delivered

19.01 (1) Where a defendant fails to deliver a statement of defence within the prescribed time, the plaintiff may, on filing proof of service of the statement of claim, or of deemed service under subrule 16.01 (2), require the registrar to note the defendant in default.

...

Consequences of Noting Default

19.02 (1) A defendant who has been noted in default,

(a) is deemed to admit the truth of all allegations of fact made in the statement of claim; and

(b) shall not deliver a statement of defence or take any other step in the action, other than a motion to set aside the noting of default or any judgment obtained by reason of the default, except with leave of the court or the consent of the plaintiff.

...

By Motion for Judgment

19.05 (1) Where a defendant has been noted in default, the plaintiff may move before a judge for judgment against the defendant on the statement of claim in respect of any claim for which default judgment has not been signed.

(2) A motion for judgment under subrule (1) shall be supported by evidence given by affidavit if the claim is for unliquidated damages.

(3) On a motion for judgment under subrule (1), the judge may grant judgment, dismiss the action or order that the action proceed to trial and that oral evidence be presented.

(4) Where an action proceeds to trial, a motion for judgment on the statement of claim against a defendant noted in default may be made at the trial.

Facts Must Entitle Plaintiff to Judgment

19.06 A plaintiff is not entitled to judgment on a motion for judgment or at trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

...

Factors in Discretion

57.01 (1) In exercising its discretion under [section 131](#) of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

- (0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
- (0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;
- (a) the amount claimed and the amount recovered in the proceeding;
- (b) the apportionment of liability;
- (c) the complexity of the proceeding;
- (d) the importance of the issues;
- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- (f) whether any step in the proceeding was,
 - (i) improper, vexatious or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted;
- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
 - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
 - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;
- (h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under [rule 1.08](#); and
- (i) any other matter relevant to the question of costs.

Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3, as amended, Section 178(1)

Debts not released by order of discharge

178 (1) An order of discharge does not release the bankrupt from

- (a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;
- (a.1) any award of damages by a court in civil proceedings in respect of
 - (i) bodily harm intentionally inflicted, or sexual assault, or
 - (ii) wrongful death resulting therefrom;
- (b) any debt or liability for alimony or alimentary pension;
- (c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;
- (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;
- (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;
- (f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;
- (g) any debt or obligation in respect of a loan made under the Canada Student Loans Act, the Canada Student Financial Assistance Act or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred
 - (i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or
 - (ii) within seven years after the date on which the bankrupt ceased to be a full- or part-time student;
- (g.1) any debt or obligation in respect of a loan made under the Apprentice Loans Act where the date of bankruptcy of the bankrupt occurred
 - (i) before the date on which the bankrupt ceased, under that Act, to be an eligible apprentice within the meaning of that Act, or

(ii) within seven years after the date on which the bankrupt ceased to be an eligible apprentice; or

(h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g.1).

Courts of Justice Act, R.S.O. 1990, c C.43, as amended, Section 131(1)

97 The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed. 1994, c. 12, s. 39; 1996, c. 25, s. 9 (17).

131 (1) Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

**LONDON VALLEY IV INC., by its Court-Appointed Receiver
and Manager, KSV RESTRUCTURING INC.**

- and -

BEHZAD PILEHVER, *et al.*

Plaintiff

Defendants

Court File No. CV-25-00748799-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

FACTUM OF THE PLAINTIFF
(Motion for Default Judgment)

AIRD & BERLIS LLP
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Mark van Zandvoort (LSO No. 59120U)
Email: mvanzandvoort@airdberlis.com

Kyle Plunkett (LSO No. 61044N)
Email: kplunkett@airdberlis.com

Adrienne Ho (LSO No. 68439N)
Email: aho@airdberlis.com

Calvin Horsten (LSO No. 90418I)
Email: chorsten@airdberlis.com

Tel: (416) 863-1500

Lawyers for the Plaintiff