

**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, 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
(*Ex Parte* Motion for *Mareva* Injunction and *Norwich* Order)**

August 1, 2025

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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 a *Mareva* injunction and *Norwich* Order in the form of the proposed draft Order included in the Plaintiff’s Motion Record dated August 1, 2025.

2. To preserve and protect assets that either belong to or are traceable to the Plaintiff or would ultimately be exigible in its favour, the Plaintiff seeks interim and interlocutory *Mareva* injunctive relief as against the Defendants, Behzad Pilehver¹ (“**Pilehver**”), Mahtab Nali² (“**Nali**”) and 2621598 Ontario Inc. doing business as Nali and Associates (“**Nali and Associates**”).

PART II – FACTS

Parties

3. 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*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) (the “**Appointment Order**”).³

¹ Pilehver is also known as Ben Pilehver, Behzad Pilehvar, Ben Pilehvar and Ben Pilevhr.

² Mahtab Nali is also known as Mahtab Nali Pilehvar and Mahtab Pilehvar.

³ Third Report of the Receiver dated August 1, 2025 [Third Report] at paras 1-2, Tab 2 of the Plaintiff’s Motion Record dated August 1, 2025 [Motion Record]. The Receiver’s case website is available at [Clearview Garden Estates](#).

4. The receivership application was brought by Mizue Fukiage, Akiko Kobayashi, Yoshiki Fukiage, Kobayashi Kyohodo Co., Ltd. and Toru Fukiage (collectively, the "**Kobayashi Group**").⁴

5. The Kobayashi Group, other members of their family and numerous other investors (collectively, the "**Co-Owners**") invested funds in certain land banking projects to finance the acquisition of real estate (the "**Land Banking Enterprise**").⁵ Various companies (some of which are defined in the Appointment Order as the "**Nominee Respondents**"), including LV IV, were formed to hold title to various pieces of real estate in Ontario as nominees and bare trustees for the Co-Owners.⁶

6. As a result of concerns regarding, amongst other things, the alleged improper: (i) sale of real estate from the Land Banking Enterprise, including the sale of the LV IV Property effected by Pilehver which was done without notice to or the approval of the requisite percentage of Co-Owners, including the Kobayashi Group; and (ii) distribution of sale proceeds without the knowledge or approval of the Co-Owners,⁷ the Kobayashi Group commenced the receivership application.⁸

7. As part of the Receiver's powers under the Appointment Order, it was authorized to trace and follow the proceeds of any real property previously owned by any of the Nominee Respondents that was sold, transferred, assigned or conveyed on or after October 31, 2024, including in respect of the LV IV Property.⁹

⁴ Third Report, *supra* at para 11.

⁵ Third Report, *supra* at para 15.

⁶ Third Report, *supra* at para 17.

⁷ The Kobayashi Group claims to have invested the aggregate amount of \$3.7 million to acquire an approximately 72% undivided beneficial interest in the LV IV Property. Third Report, *supra* at paras 28-29.

⁸ Third Report, *supra* at paras 31-32.

⁹ Appointment Order at para. 4(t), Appendix A to the Third Report.

8. LV IV is an Ontario corporation, and owned the property municipally known as 6211 Colonel Talbot Road, London, Ontario (the “**LV IV Property**”) until the property was sold and transferred to a third-party purchaser for consideration of \$2 million on February 5, 2025.¹⁰ The transfer occurred prior to the Receiver’s appointment.

9. At the time of the Receiver’s appointment, Pilehver was and remains a director and officer of certain Nominee Respondents in the Land Banking Enterprise, including LV IV of which he is the sole director and President.¹¹ Nali is believed to be Pilehver’s wife, although this has not been confirmed by the Receiver.¹² Nali and Associates is a business name registered by 2621598 Ontario Inc.¹³ Nali is the President and sole director of Nali and Associates. In corporate filings, both Nali and Pilehver list their address for service as 48 Chelford Road, North York, Ontario.

Interests of the Kobayashi Group

10. The Kobayashi Group claims to have invested the aggregate amount of \$3.7 million to acquire an approximately 72% undivided beneficial interest in the LV IV Property.¹⁴ This interest was acquired 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. Each of these sale agreements includes certain co-owner agreements, which require that, amongst other things, net income from the property be paid to Co-Owners and that Co-Owners holding at least 51% of the interests in the property approve any sale.¹⁵

¹⁰ Third Report, *supra* at para 66.

¹¹ Third Report, *supra* at para 18.

¹² Third Report, *supra* at para 106.

¹³ Third Report, *supra* at para 3

¹⁴ Third Report, *supra* at para 28.

¹⁵ Third Report, *supra* at paras 28-29.

11. The foregoing is consistent with affidavit evidence affirmed by Pilehver on January 20, 2025 (the “**Pilehver Affidavit**”) in proceedings under Court File No. CV-24-00087580-0000 (the “**Hamilton Proceedings**”) in support of a motion by TGP Canada Management Inc. (“**TGP Canada**”) for leave to intervene in those proceedings. While the focus of the Pilehver Affidavit does not concern LV IV or the LV Property specifically, he nevertheless confirms as follows with respect to the Land Banking Enterprise¹⁶, which is applicable to LV IV and the LV IV Property:

- (a) as part of the Land Banking Enterprise, the corporate structure of which is set out at paragraph 42 of the Pilehver Affidavit and which includes LV IV, Co-Owners acquired beneficial ownership interests in various Canadian real estate properties for potential rezoning and future development, all for the benefit of the Co-Owners;¹⁷
- (b) the sole assets in the Land Banking Enterprise with any real value are/were the real properties or mortgages (including, in some cases, vendor-takeback mortgages) “*acquired with investor funds and held by the special purpose companies (i.e. the Trustees), in trust, including for the [Co-Owners]*”,¹⁸

¹⁶ “**Land Banking Program**” is defined in Schedule “A” of the Pilehver Affidavit as “the ‘land banking’ investment program operated by the Land Banking Enterprise focused on: (i) investment raising primarily from foreign investors, including the Beneficial Owners; and (ii) acquisition of undeveloped or underdeveloped real property in Canada, including the Properties, by special purpose companies, for potential rezoning and future development, for the benefit of investors, including the Beneficial Owners” (as such capitalised terms are defined in the Pilehver Affidavit). “**Trustees**” is defined in Schedule “A” of the Pilehver Affidavit to mean “collectively, the special purpose companies incorporated to hold, and / or which held, legal title to real properties in trust for investors (including the Beneficial Owners) who participated in [the] Land Banking Program, including the subsidiaries of Land Mutual depicted in the diagram at paragraph 41 [*sic* 42] of this affidavit as “Bare Trust (Project Title Owners)” (as such capitalised terms are defined in the Pilehver Affidavit). Paragraph 42 of the Pilehver Affidavit lists LV IV as one of the Trustees/Bare Trust (Project Title Owners).

¹⁷ Third Report, *supra* at para 28 and Appendix G, sections 6(j), 8(a), 14 and 19 to co-owner agreements; see also Pilehver Affidavit at paras 6-8 and 41-42, Appendix Y to the Third Report.

¹⁸ Pilehver Affidavit at para 43, Appendix Y to the Third Report.

- (c) each of the properties in the Land Banking Enterprise is held by its respective corporate entity (for example, LV II holds the LV II Property, LV V holds the LV V Property and so on) “*in trust for the [Co-Owners]*”,¹⁹
- (d) TGP Canada, an immediate parent company within the Land Banking Enterprise of which Pilehver is the director, President and principal,²⁰ assumed certain conservatory rights and obligations in respect of the Co-Owners around June 2024, including to act in the best interests of the Co-Owners, to protect and defend their investments and to take all necessary actions to ensure that investment proceeds are delivered or returned to the Co-Owners;²¹ and
- (e) TGP Canada sought to intervene in the Hamilton Proceedings because the Co-Owners of the properties which are the subject of those proceedings were not notified of certain proposed transactions and had not given consent, as is required by the underlying investment documents entered into by the Co-Owners.²²

12. Notably, and as further detailed in the Receiver’s Third Report, on October 31, 2024, the Honourable Justice MacNeil issued an Order in the Hamilton Proceedings (the “**October 31, 2024 Injunction Order**”) which includes at paragraph 5 of the Order certain *Mareva* relief restraining “all persons with notice of the Order” from, without the written consent of the applicants in that proceeding, directly or indirectly, by any means whatsoever.²³

- (a) Selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with their assets, or the assets of any companies which they came

¹⁹ Pilehver Affidavit at para 31, Appendix Y to the Third Report.

²⁰ Third Report, *supra* at para 19(a).

²¹ Pilehver Affidavit at para 13, Appendix Y to the Third Report.

²² Pilehver Affidavit at paras 9, 34 and 39, Appendix Y to the Third Report.

²³ Third Report, *supra* at paras 52-53 and Appendix “SS”.

to control pursuant to the TGP Canada Transaction²⁴, whether solely or jointly owned, wherever situated, including, without limitation, any funds received with respect to same;

- (b) Listing for sale their assets or the assets of any other companies which they came to control in accordance with the terms of the TGP Canada Transaction;

...

13. The October 31, 2024 Injunction Order enjoined any person having notice of the Order from taking the steps outlined in 5(a) and 5(b) of the Order as it concerned LV IV and the LV IV Property. Consistent with the foregoing, paragraph 4(a) of the Appointment Order expressly authorizes the Receiver to trace and follow the proceeds of any real property previously owned by LV IV that was sold, transferred, assigned or conveyed on or after the granting of the October 31, 2024 Injunction Order, including the LV IV Property. It is the Receiver's view that its interpretation of the October 31, 2024 Injunction Order is also supported by the details set out in footnote 24 below.

14. Mr. Pilehver attached the October 31, 2024 Injunction Order at Exhibit N of the Pilehver Affidavit, which was sworn January 20, 2025, in advance of LV IV transferring the LV IV Property on February 5, 2025.²⁵

²⁴ While "TGP Canada Transaction" is not defined in the October 31, 2024 Injunction Order, the Amended Notice of Application appended at Schedule "A" to the October 31, 2024 Injunction Order defined "TGP Canada Transaction" as "In or about June 4, 2024, TGP Canada as vendor and First Global as purchaser entered into a Share Purchase Agreement (the "**TGP Canada Transaction**") dated June 4, 2024 (the "**TGP Canada SPA**")...". The TGP Canada SPA is similarly defined and referenced in paragraph 14 of the affidavit of Randy Hoffner sworn October 18, 2024 (the "**First Hoffner Affidavit**") and filed by the applicants in the Hamilton Proceeding, and is attached at Exhibit 8 to the First Hoffner Affidavit (Appendix Z to the Third Report). The First Hoffner Affidavit states at paragraph 16 that "Pursuant to the terms of the TGP Canada SPA, upon closing the [*sic*] First Global, and by extension Mr. and Mrs. Salvatore, would have direct or indirect control of the real properties owned by the Land Mutual Subsidiary Companies and the Canadian Shield Subsidiary Companies". Paragraph 3 and Exhibit 1 of the First Hoffner Affidavit discuss and append the same corporate organization diagram as is contained at paragraph 42 of the Pilehver Affidavit, and which depicts LV IV as being one of the Land Mutual Subsidiary Companies which is a Special Purpose Corporation Bare Trust (Project Title Owner).

²⁵ Pilehver Affidavit at para 35 and Exhibit N, contained at Appendix Y to the Third Report.

15. Pilehver was repeatedly notified of the October 31, 2024 Injunction Order, both directly and through his counsel.²⁶

16. The Kobayashi Group, as a subset of the Co-Owners of the LV IV Property, filed evidence in support of the Appointment Order that the sale of the LV IV Property on February 5, 2025 was completed without the Kobayashi Group's knowledge or consent.²⁷ Further, the Kobayashi Group asserted that they have not received any net income or other proceeds from LV IV, LV IV Capital Management Inc.²⁸ or any other party in connection with the LV IV Property.²⁹

17. Based on the Receiver's review of various transactions, as further described below, the Receiver has strong reason to believe that \$1,071,551.06 of the proceeds from the sale of the LV IV Property were improperly paid to, or used for the benefit of, Pilehver's spouse, Nali and for the benefit of Pilehver himself.³⁰

Alleged Misappropriation of Funds

18. Despite: (i) Pilehver's clear familiarity with the applicable co-owner agreements and the consent and distribution requirements therein as demonstrated by the previously affirmed Pilehver Affidavit;³¹ (ii) the October 31, 2024 Injunction Order restraining the alienation of, *inter alia*, the LV IV Property;³² and (iii) the pending Receivership Proceedings of which Pilehver was aware,³³ the LV IV Property was sold and transferred on February 5, 2025 for \$2 million while Pilehver

²⁶ Third Report, *supra* at section 2.4 and para 53.

²⁷ Kobayashi Affidavit at paras 14, 71 and 137, Appendix H to the Third Report.

²⁸ LV IV Capital Management Inc. is a named respondent in the Appointment Order.

²⁹ Kobayashi Affidavit at para 72, Appendix H to the Third Report; Third Report, *supra* at para 67.

³⁰ Third Report, *supra* at para 5 and section 4.0.

³¹ Third Report, *supra* at paras 58-62 and Appendix Y.

³² Third Report, *supra* at para 53(c) and Appendix SS.

³³ Third Report, *supra* at section 2.4.

was the sole director of LV IV.³⁴ The Norwich Order obtained as part of the Appointment Order later revealed that: (i) on February 5, 2025, the proceeds from the sale of the LV IV Property were deposited into the trust account (the “**Hundal Account**”) for the lawyer, Parminder Hundal (“**Hundal**”), who acted for LV IV on the sale transaction;³⁵ and (ii) the proceeds were subsequently disbursed by Hundal, at Pilehver’s direction, to the following persons and entities who appear to have no connection to LV IV or the LV IV Property:³⁶

- (a) on February 7, 2025, a payment was made from the Hundal Account to Nali in the amount of \$817,859.49, which payment was made by cheque and deposited into the Nali Bank Account (as defined below).³⁷ Initially, a wire in this amount was evidently sent to “Mahtab Nali” on February 6, 2025 with reference to an account number 1929-5023332 (together with the Nali Bank Account, the “**Nali Bank Accounts**”), but was evidently voided and did not go through.
- (b) on February 18, 2025, a further \$80,800 was paid by cheque from the Hundal Account to Nali and Associates;³⁸
- (c) on February 12, 2025, \$5,000 was wired by Hundal to Bally Hundal/Hundal Law Firm;³⁹
- (d) on February 14, 2025, \$30,000 was wired by Hundal to Stockwoods LLP;⁴⁰
- (e) payments totalling \$103,040.42 were paid to Hundal’s law firm 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;⁴¹ and

³⁴ Third Report, *supra* at para 66.

³⁵ Third Report, *supra* at para 74.

³⁶ Third Report, *supra* at paras 75 and 88. While the October 31, 2024 Injunction Order enjoined the distribution of any of the sale proceeds, for the purpose of this factum and the Mareva relief sought, the Receiver has focused on the portion of the proceeds which were dissipated excluding: (i) \$731,331.20 which was paid to Olympia Trust Company to discharge a charge on the LV IV Property for which the Receiver has obtained alternative security in a separate proceeding (CV-25-00740869-00CL) commenced by the Receiver against Randy Hoffner; and (ii) amounts paid to the realtor acting on the sale and to the City of London on account of property taxes: see Third Report, *supra* at para 75 and 82.

³⁷ Third Report, *supra* at para 90 and Appendix “OOO”.

³⁸ Third Report, *supra* at paras 90 and 75(b) and Appendix “TTT”.

³⁹ Third Report, *supra* at paras 90 and 95 and Appendix “PPP”.

⁴⁰ Third Report, *supra* at paras 90 and 95 and Appendix “PPP”.

⁴¹ Third Report, *supra* at paras 90, 112-114 and Appendix “SSS”.

- (f) on March 5, 2025, one day prior to the Appointment Order, \$34,000 was wired by Hundal to a third law firm, Blaney McMurtry LLP.⁴² On March 21, 2025, Blaney McMurtry LLP advised the service list in the Receivership Proceedings that it had been retained by Pilehver in his personal capacity, as well as by 2630306 Ontario Inc. o/a Paybank Financial (“**Paybank**”) and TGP Canada (collectively, the “**Paybank Parties**”).⁴³ Accordingly, the Receiver believes that this payment was improperly made in order to engage Blaney McMurtry LLP for Pilehver’s personal benefit. Pilehver is an officer and director of Paybank and TGP Canada.⁴⁴

19. The Receiver is not aware of any basis upon which the proceeds from the sale of the LV IV Property ought to have been paid to Nali, Nali and Associates or otherwise as listed above.

20. Despite the Receiver’s inquiries of Pilehver and his known lawyers as to what happened to the sale proceeds from the LV IV Property, no explanation or response has been provided by Pilehver.⁴⁵

21. Prior to moving for this *Mareva* order, the Receiver has not inquired with Nali or Nali and Associates or with any of the recipients listed in paragraph 18 above to disclose their position concerning their receipt of the proceeds of the LV IV Property.⁴⁶ In the circumstances, the Receiver was not required to do so.⁴⁷ This Court has held that with misappropriation of public investors’ funds at issue, speed and security are called for, further justifying the decision to move without notice.⁴⁸

⁴² Third Report, *supra* at para 90 and Appendix “QQQ”.

⁴³ Third Report, *supra* at para 122-123 and Appendix “JJJ”.

⁴⁴ Third Report, *supra* at para 19(b).

⁴⁵ Third Report, *supra* at section 4.12.

⁴⁶ Third Report, *supra* at para 12.

⁴⁷ *SolarBlue LLC v Aus*, [2013 ONSC 7638](#) at [para 20](#).

⁴⁸ Endorsement of Justice Myers issued May 17, 2016 in *KSV Kofman Inc. in its capacity as Receiver and Manager of Certain Property of Scollard Development Corporation et al. v. Textbook (256 Rideau Street) Inc.*, Tab 2 of the Plaintiff’s Book of Authorities dated August 1, 2025 [Book of Authorities].

22. There is a strong case that Pilehver, in his capacity as director of LV IV, breached his fiduciary and other legal obligations to LV IV by directing the sale of the LV IV Property without authorization from the Co-Owners, and by directing that a portion of the proceeds of such sale be paid to Nali, Nali and Associates and other third parties as listed above.

23. The transactions described above indicate a strong *prima facie* case that Pilehver misappropriated the proceeds of sale of the LV IV Property.

24. There is no evidence of any consideration nor valid business purpose for the proceeds from the sale of the LV IV Property to have been paid to Nali, Nali and Associates and to the other third parties as listed above. Doing so is in direct contravention of the co-ownership arrangements governing the LV IV Property, of which Pilehver was clearly well aware.

25. Pilehver, Nali and Nali and Associates have been unjustly enriched from the receipt of such funds.

PART III – ISSUE

26. The issues to be decided in this motion are:

- (a) Whether the Court should grant an *ex parte* interim and interlocutory *Mareva* injunction against the Defendants;
- (b) Whether the undertaking requirement of Rule 40.03 ought to be dispensed with given the circumstances of this case, namely, the Receiver's status as a Court-appointed officer; and
- (c) Whether the *Norwich* relief requested ought to be granted.

PART IV – LAW AND ARGUMENT

A. The Plaintiff Satisfies the Test for a Mareva Injunction

27. Rule 40.02 permits an interlocutory injunction to be granted on motion without notice for a period not exceeding ten days.⁴⁹

28. As an equitable remedy, a *Mareva* injunction is dependent on the particular facts and circumstances before the Court.⁵⁰ As Justice Kimmel set out in *Original Traders Energy Ltd., (Re)*, the factors ordinarily to be considered in determining whether to grant *Mareva* relief include whether the moving party has established the following:⁵¹

- (a) a strong *prima facie* case;
- (b) particulars of its claim against the defendant, setting out the grounds of its claim and the amount thereof, and fairly stating the points that could be made against it by the defendant;
- (c) some grounds for believing that the defendant has assets in Ontario (although this requirement has been modified by more recent jurisprudence discussed below, such that it is perhaps better expressed as: some grounds for believing that the defendant has assets within the jurisdiction of the Ontario Court);
- (d) some grounds for believing that there is a serious risk of the defendant's assets being removed from the jurisdiction or dissipated or disposed of before the judgment or award is satisfied;
- (e) proof of irreparable harm if the injunctive relief is not granted;
- (f) the balance of convenience favours the granting of the relief; and
- (g) an undertaking as to damages.

29. While the Court ought to consider these factors, since a *Mareva* injunction is an equitable remedy, ultimately the Court must consider what is just or convenient in all the circumstances.⁵²

⁴⁹ [Rule 40.02\(1\)](#) of the *Rules of Civil Procedure*, R.R.O 1990 Reg. 194.

⁵⁰ *Borrelli, in his Capacity as Trustee of the SFC Litigation Trust v Chan*, [2017 ONSC 1815](#) at [para 29](#).

⁵¹ *Original Traders Energy Ltd., (Re)*, [2024 ONSC 325](#) at [para 17](#).

⁵² *Borrelli, in his Capacity as Trustee of the SFC Litigation Trust v Chan*, [2017 ONSC 1815](#) at [para 36](#).

30. The exceptional nature of the *Mareva* injunction remedy – and the reasons why it must remain an exception – were addressed by the Supreme court of Canada in *Aetna Financial Services v. Feigelman*, 1985 CanLII 55 (SCC).⁵³

31. *Mareva* injunctions have been granted by Ontario courts in respect of assets outside Ontario on the basis that the Court has unlimited jurisdiction *in personam* against any person connected to the jurisdiction.⁵⁴ Canadian courts have awarded *Mareva* injunctions to restrain a party who is properly subject to the jurisdiction of the Court from transferring or dealing with assets, including assets *ex juris*.⁵⁵ *Mareva* injunctions have been granted on a worldwide basis with increasing frequency given the global economy.⁵⁶

32. Numerous indicia make clear that this Court can assert *in personam* jurisdiction against the Defendants with respect to their assets wherever located,⁵⁷ including that both Pilehver and Nali are resident in Ontario, and that Nali and Associates is incorporated in Ontario; both Pilehver and Nali chose to be directors of corporations registered and carrying on business in Ontario; and that Pilehver retained counsel personally in the Receivership Proceedings and on behalf of TGP Canada in the Hamilton Proceedings and thereby attorned to the jurisdiction of Ontario.

33. Furthermore, Ontario courts have held that the Court has authority to grant an injunction even with no evidence of Ontario assets. For example, in *Original Traders Energy Ltd. (Re)*, Justice Osborne stated as follows:

⁵³ *Aetna Financial Services v Feigelman*, [1985] 1 SCR 2 at para 43.

⁵⁴ *Borrelli, in his Capacity as Trustee of the SFC Litigation Trust v Chan*, 2017 ONSC 1815 at paras 27-31 and 42; *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at para 38.

⁵⁵ *Borrelli, in his Capacity as Trustee of the SFC Litigation Trust v Chan*, 2017 ONSC 1815 at para 42; *Mooney v Orr*, 33 CPC (3d) 31, [1994] BCJ No 2652 (QL) at paras 6-10; *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at para 38.

⁵⁶ *Borrelli, in his Capacity as Trustee of the SFC Litigation Trust v Chan*, 2017 ONSC 1815 at para 38.

⁵⁷ *Borrelli, in his Capacity as Trustee of the SFC Litigation Trust v Chan*, 2017 ONSC 1815 at para 42.

Moreover, the earlier requirement that a moving party establish that a respondent have assets in Ontario before Mareva relief could be granted (whether restricted to Ontario or beyond) no longer exists. Rather, this Court has discretionary jurisdiction to grant a Mareva injunction where circumstances merit, even absent any evidence of assets in Ontario: *Associated Foreign Exchange Inc. et al v MBM Trading*, [2020 ONSC 4188](#) at [para 54](#).⁵⁸

34. Nevertheless, and as outlined in more detail below, it is believed that the Defendants do have assets in Ontario, including, without limitation, shares in several Ontario corporations and a bank account at The Toronto-Dominion Bank with account number 1929-6177612 in the name of “NALI M” (the “**Nali Bank Account**”) and a bank account, possibly in the name of Mahtab Nali, bearing account number 1929-5023332 (together, the “**Nali Bank Accounts**”).

35. In this case, the Plaintiff satisfies the test for a *Mareva* injunction.

1. A Strong *Prima Facie* Case

36. A strong *prima facie* case does not require the plaintiff to prove its case. Rather, the court must be satisfied that “upon a preliminary review of the case, the application judge must be satisfied that there is a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice.”⁵⁹

37. Here, there is a strong *prima facie* case of fraud, breach of fiduciary duty, conversion, unjust enrichment, knowing assistance and knowing receipt as against the Defendants or any of them. The Plaintiff need only demonstrate a strong *prima facie* case against each Defendant in respect of one of the foregoing causes of action.⁶⁰

⁵⁸ *Original Traders Energy Ltd. (Re)*, [2023 ONSC 1887](#) at [para 39](#).

⁵⁹ *R v Canadian Broadcasting Corp.*, [2018 SCC 5](#) at [para 17](#).

⁶⁰ *Original Traders Energy Ltd., (Re)*, [2024 ONSC 325](#) at [para 49](#).

(a) There is a Strong *Prima Facie* Case of Fraud Against Pilehver

38. To establish the tort of civil fraud in Ontario, a party must satisfy the following elements:⁶¹

- (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;
- (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.

39. The evidence set out above demonstrates a strong *prima facie* case that Pilehver fraudulently directed the sale of the LV IV Property and transfer of the proceeds therefrom, and that Nali and Nali and Associates were either active or passive accomplices in the fraud.⁶² The evidence shows that Pilehver:

- (a) falsely and knowingly represented to the Plaintiff 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;
- (b) directed, caused and/or facilitated prohibited payments to be made by LV IV to a related, non-arm's length party, for which no goods or services, or no good or service or any material value, was provided to LV IV;
- (c) diverted funds from LV IV, including to obtain improper benefits for himself and Nali; and
- (d) knowingly received, retained and used funds which rightfully belonged to LV IV, and as a direct result of which LV IV suffered a loss.

40. All of the above conduct severely harmed LV IV and its underlying investors.

⁶¹ *Paulus v. Fleury*, [2018 ONCA 1072](#) at [paras 8-9](#).

⁶² *Sibley & Associates LP v Ross*, [2011 ONSC 2951](#) at [paras 9-10](#); *1999269 Ontario Limited et al v. Aguiar et al*, [2023 ONSC 787](#) at [para 49](#).

(b) There is a Strong *Prima Facie* Case Against Pilehver for Breach of Fiduciary Duty

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

- (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.⁶³

42. There is no credible dispute that Pilehver owed a fiduciary duty to LV IV, as the sole director thereof. By engaging in his fraudulent or improper transfer of funds – misappropriating company funds to benefit the Defendants – Pilehver breached that fiduciary duty. Moreover, he did so deceitfully and dishonestly by failing to make proper disclosure to LV IV's stakeholders.

(c) There is a Strong *Prima Facie* Case against all of the Defendants for Unjust Enrichment and Conversion

43. 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.⁶⁴

⁶³ *Hodgkinson v Simms*, [1994] 3 SCR 377 at paras 16, 30, 44, 58, 79-80 and 108.

⁶⁴ *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.

44. In cases where an employee has fraudulently misappropriated company funds to be deposited into the account of a family member, courts have granted *Mareva* relief freezing the accounts of both the employee and the family member on the basis that a strong *prima facie* case in fraud and conversion had been made out.⁶⁵

45. 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.*”⁶⁶

46. Furthermore, in *SolarBlue LLC v Aus*, the defendant denied any knowledge or suspicion of her common-law spouse's fraudulent conduct, and testified that she committed no fraud, and at no time knew or suspected that the husband's funds were illegitimate. Justice MacKinnon found that the plaintiff had made out a strong *prima facie* case of unjust enrichment, ordered the continuation of the *Mareva* injunction until trial, and wrote that the wife's “*knowledge or lack of it is immaterial.*”⁶⁷

47. Finally, in *Carbone v Boccia*, Justice Morgan wrote as follows:

“[the defendant's] professed ignorance of the scheme that she facilitated is not a response that assists her in a motion such as the one before me. A fraud has allegedly been perpetrated by a company for which she signs and through accounts for which she is the signing officer. If anyone has information that will assist the Plaintiffs and the court in tracing the funds and piecing together the fraudulent scheme, she does; and that is the case even if she does

⁶⁵ *Sibley & Associates LP v Ross*, [2011 ONSC 2951](#) at paras 9-10.

⁶⁶ *Wymor Construction Inc. v Gray*, [2012 ONSC 5022](#) at paras 18-19.

⁶⁷ *SolarBlue LLC v Aus*, [2013 ONSC 7638](#) at paras 15 and 20.

not realize it. ... Her accounts and records are bound to be enlightening.”⁶⁸

48. In the present case, whether or not Nali knew about Pilehver’s fraudulent activities is immaterial. The mere fact that she 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.

49. By virtue of the facts set out above, 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.

50. Given the Plaintiff’s clear 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, a strong *prima facie* case as against each of the Defendants for conversion and unjust enrichment has been demonstrated. An award of punitive damages is also appropriate.⁶⁹

51. In light of the foregoing, the Plaintiff seeks a declaration, if necessary, that it is entitled to a constructive trust over the misappropriated funds and an order for equitable tracing.⁷⁰ The trust nature of this property is confirmed by the Pilehver Affidavit as outlined above, 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.⁷¹

⁶⁸ *Carbone v Boccia*, [2022 ONSC 6528](#) at [paras 15-16](#).

⁶⁹ *Carbone v. Boccia*, [2025 ONSC 1966](#) at [paras 10-14](#).

⁷⁰ *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.

⁷¹ Third Report, *supra* at para 28, and Appendix G, sections 6(j), 8(a), 14 and 19 of co-owner agreements, and declarations of trust.

(d) There is a Strong *Prima Facie* Case of Knowing Receipt against Nali and Nali and Associates

52. There is a strong *prima facie* case against Nali and Nali and Associates for knowing receipt.

53. At this stage, the Plaintiff is not yet in a position to demonstrate actual knowledge on the part of Nali that Pilehver 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.

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.⁷²

55. Constructive knowledge is “knowledge of facts sufficient to put a reasonable person on notice or inquiry.”⁷³ A typical line of consideration for making out constructive knowledge in knowing receipt is whether the recipient of the benefit of misappropriated funds ought to have known that such funds (or the resultant impact on the recipient’s lifestyle) were inconsistent with their income and wealth.⁷⁴ The Receiver is not currently apprised of the particulars of Nali’s lifestyle, income or wealth. Nevertheless, the Receiver submits that the circumstances surrounding the payments made to Nali and Nali and Associates were sufficient to put a reasonable person on notice or inquiry.

⁷² *DBDC Spadina Ltd. v Walton*, [2018 ONCA 60](#) at [para 37](#).

⁷³ *Citadel General Assurance Co. v Lloyds Bank Canada*, [1997 CanLII 334](#) (SCC), [1997] 3 SCR 805 at [para 48](#).

⁷⁴ See, for example, *Original Traders Energy Ltd., (Re)*, [2024 ONSC 325](#) at [para 55](#).

56. Nali and Nali and Associates collectively received \$898,659.49 of funds misappropriated by Pilehver from LV IV by way of cheques from the trust account of LV IV's lawyer (as well as a failed wire transfer). The two lump sum payments comprising this amount, in the absence of any documentation, consideration or business purpose, ought to have put Nali and Nali and Associates on notice or inquiry. The Receiver is not currently aware and has not been provided with any evidence to substantiate these payments to Nali and Nali and Associates as salary and/or fees for service based on company records.⁷⁵ Furthermore, the method of payment alone ought to have put Nali and Nali and Associates on notice or inquiry; an out-of-the-ordinary-course wire transfer or cheque from a lawyer's trust account would put a reasonable person on notice or inquiry. Indeed, a reasonable person in that position would have asked why they were receiving the funds and where the funds were coming from.

57. Based on the evidence, a strong *prima facie* case of fraud, breach of fiduciary duty, unjust enrichment and conversion is made out as against Pilehver, and a strong *prima facie* case of unjust enrichment, conversion, and knowing receipt is made out as against Nali and Nali and Associates.

2. Location of Assets

58. As detailed above, it is not required that the Defendants have assets in Ontario for a *Mareva* injunction to be granted. In truth, the Plaintiff does not have extensive knowledge of the Defendants' assets whether in Ontario or otherwise, though the evidence shows that Pilehver and Nali are each directors of several Ontario corporations (and other corporations worldwide). Furthermore, Pilehver and Nali each have multiple addresses for service in their capacities as directors of these Ontario corporations, as follows:

⁷⁵ *Original Traders Energy Ltd., (Re)*, [2024 ONSC 325](#) at [para 59](#).

Entity	Company Address(es) (Registered Owner)	Pilehver Address for Service (Registered Owner)	Nali Address for Service (Registered Owner)
LV IV (see Appendix "B")	Attention/Care of Behzad Pilehver, 50 West Wilmont Street, Suite 100, Richmond Hill, Ontario, L4B 1M5 (Registered Owner 50 West Wilmot Inc.) (" 50 West Wilmot ") (see Appendix "YYY")	50 West Wilmot (see Appendix "YYY")	
Titan Shield Inc. (see Appendix "V")	Attention/Care of Behzad Pilehver, 50 West Wilmot (see Appendix "YYY")	50 West Wilmot (see Appendix "YYY")	
TGP Canada (see Appendix "C")	25 Mallard Road, Unit 100, North York, Ontario, M3B 1S4 (Registered Owner St. George and St. Rueiss Coptic Orthodox Church, Toronto) (" Mallard Road ") (see Appendix "NNNN")	Attention/Care of Behzad Pilehver, Mallard Road (see Appendix "NNNN")	
Nali and Associates (see Appendix "VVV")	Registered Office: Attention/Care of MAHTAB NALI, 48 Chelford Road, Toronto, Ontario, M3B 2E5 (Registered Owner Yuzhen Li) (" 48 Chelford ") (see Appendix "ZZZ") Principal Place of Business (as set out in Business Names Registration): 70 Harrison Road, Toronto, Ontario, M2L 1V8, Canada (Registered Owner Jie Dai) (" 70 Harrison Road ") (see Appendix "AAAA")		48 Chelford (see Appendix "ZZZ")
Paybank (see Appendix "D")	Attention/Care of Behzad Pilehver, 50 West Wilmot (see Appendix "YYY")	335 Parkview Avenue, Toronto, Ontario, M2N 3Z6, Canada (Registered Owner Morkos Investments Limited) (" 335 Parkview Avenue ") (see Appendix "BBBB")	
Global Petroleum Investment Corporation (see Appendix "CCCC")	Attention/Care of MAHTAB NALI, 335 Parkview Avenue (see Appendix "BBBB")		70 Harrison Road (see Appendix "AAAA")
Sand Gecko Inc. (see Appendix "WWW")	27 Rean Drive, Ph 703, Toronto, Ontario, M2K 0A6 (Registered Owners John Craven and Carolyn Craven) (" Rean Drive ") (see Appendix "DDDD")	3275 Sheppard Avenue East, Toronto, Ontario, M1T 3P1, Canada (Registered Owner 1430730 Ontario Limited) (" 3275 ")	

		Sheppard Ave. East") (see Appendix "EEEE")	
Sand Gecko Ltd. [UK] (see Appendix "XXX")		Merci, PH 703, 27 Rean Drive, Toronto, Ontario, M2K 0A6 (see Appendix "DDDD")	Merci, PH 703, 27 Rean Drive, Toronto, Ontario, M2K 0A6 (see Appendix "DDDD")
Rozhina Development Group Inc. (see Appendix "Q")	Attention/Care of Behzad Pilhver, 50 West Wilmot (see Appendix "YYY")	50 West Wilmot (see Appendix "YYY")	
Golden Griddle Inc. (see Appendix "FFFF")	Attention/Care of HAROLD MCDONNELL, 10551 Highway 12, Port Perry, Ontario, L9L 1B3 (Registered Owner 1000900173 Ontario Inc.) (see Appendix "GGGG")	100 Harrison Garden Boulevard, 1515, Toronto, Ontario, M2N 0C1 (Registered Owners Tae Sup Shim and In Young Park) (see Appendix "HHHH")	

59. In addition, the evidence reflects that the cheque paid to Nali in the amount of \$817,859.49 was deposited into an account in the name of "NALI M" bearing Account No. 6177612 at The Toronto-Dominion Bank.⁷⁶

60. In light of the foregoing, it is reasonably believed that Pilehver and Nali are resident and have assets in Ontario.

3. Risk of Imminent Dissipation or Movement of Assets Amounting to Irreparable Harm

61. The Plaintiff must persuade the Court that there are some grounds for believing that there is a serious risk of the Defendants' assets being moved or dissipated or disposed of before the judgment or award is satisfied. In other words, unless the order is issued, the applicant may lose an ability to execute an eventual judgment. This is a form of irreparable harm.⁷⁷

⁷⁶ Third Report, *supra* at para 101(b) and Appendix OOO.

⁷⁷ *Carbone v Boccia*, [2022 ONSC 6528](#) at [para 10](#).

62. Both irreparable harm and balance of convenience can be determined in light of a finding that there is a serious risk the responding party will dissipate assets. Here, there is a real risk that the Plaintiff will forever lose \$1,071,551.06 of the sale proceeds if an injunction freezing the Defendants' accounts and assets is not granted.⁷⁸

63. The Court can infer from a Defendant's fraudulent conduct a sufficient risk of dissipation of assets to render the possibility of future tracing of assets remote and that the Defendant will thereby frustrate the enforcement of any judgment the moving party may obtain.⁷⁹ In this regard, a defendant's prior fraudulent activities and improper conduct and the circumstances of the fraud itself including concealment, deception, evasion, and clandestine behaviour may support an inference that the defendant will remove or dispose of property.⁸⁰

64. The inference of a sufficient risk of asset dissipation can reasonably be inferred by the court from the evidence of the material facts here, including:

- (a) the fact that Pilehver directed the sale of the LV IV Property and the distribution of sale proceeds therefrom despite having prior notice of the pending Receivership Proceedings concerning the LV IV Property⁸¹ and the October 31, 2024 Injunction Order restraining dealings with the LV IV Property,⁸² and despite being well aware of the consent and distribution requirements established by the relevant co-owner agreements (which requirements had not been complied with);⁸³

⁷⁸ *Carbone v Boccia*, [2022 ONSC 6528](#) at [para 11](#).

⁷⁹ *Sibley & Associates LP v Ross*, [2011 ONSC 2951](#) at [paras 65-67](#); *663309 Ontario Inc. v Bauman*, [\[2000\] OJ No 2674](#) at [para 41](#); *OPFFA v Paul Atkinson et al*, [2019 ONSC 3877](#) at [para 24](#).

⁸⁰ *Carbone v Boccia*, [2022 ONSC 6528](#) at [para 12](#).

⁸¹ Third Report, *supra* at section 2.4

⁸² Third Report, *supra* at section 2.4 and para 53.

⁸³ Third Report, *supra* at paras 58-62 and Appendix Y.

- (b) the strong *prima facie* case that the Defendants caused and/or facilitated the misappropriation of LV IV Property sale proceeds as evidenced by, *inter alia*, (i) the payment of such proceeds to Nali, Nali and Associates and other third parties; and (ii) written directions signed by Pilehver authorizing such payments without compliance with the requirements of the co-owner agreements;⁸⁴
- (c) repeated requests to Pilehver and his counsel to provide information and documentation regarding the distribution of the LV IV Property sale proceeds, which requests have gone unanswered;⁸⁵
- (d) the only precise asset of which the Receiver presently has knowledge is the Nali Bank Accounts which are liquid, easily transferable and difficult to trace once transferred;⁸⁶ and
- (e) the belief that the Defendants habitually rent their properties such that the Receiver is not aware of any real property directly owned by the Defendants, which is reasonably thought to be an effort by the Defendants to insulate themselves against judgment and/or creditors.⁸⁷

65. The Court can look to the evidence as a whole relating to the fraudulent and/or dishonest conduct of the Defendants, which conduct itself can suggest a real risk that the Defendants may dissipate or dispose of their assets in a manner clearly distinct from the ordinary course of business,

⁸⁴ Third Report, *supra* at paras 88-90.

⁸⁵ Third Report, *supra* at section 4.12.

⁸⁶ Third Report, *supra* at para 90; *Sibley & Associates LP v Ross*, [2011 ONSC 2951](#) at [paras 65-68](#).

⁸⁷ Third Report, *supra* at paras 106-108.

such as to render the possibility of making it impossible, or at least significantly more difficult, to trace and realize upon such assets in enforcing any judgment in favour of the moving party.⁸⁸

66. In the present case, there is strong evidence of fraudulent and dishonest conduct, which gives rise to an inference that the Defendants may attempt to move, dissipate or hide their assets to put them beyond the reach of LV IV.

67. Moreover, there is direct evidence of attempts to move, dissipate, or hide assets already by the fact that LV IV, at the direction of Pilehver, was made to pay \$1,071,551.06 to Nali, Nali and Associates and other third parties for the personal benefit of Pilehver and Nali.

68. LV IV stakeholders will suffer irreparable harm, and will be prevented from recovering their misappropriated funds and assets, and assets traceable thereto, or other exigible assets, if the Defendants are not prevented from further moving, dissipating or otherwise attempting to put their assets beyond the reach of LV IV and its stakeholders. Indeed, “the probability of irreparable harm increases as the probability of recovering damages decreases”.⁸⁹

4. Balance of Convenience and Irreparable Harm

69. The Court must weigh the consequences which will flow to each party should the injunction be granted or refused and come to a conclusion as to where the balance of convenience lies. Here, the balance of convenience favours the Plaintiff. If the Plaintiff is correct, and there was a fraudulent misappropriation of the proceeds of sale of the LV IV Property, only the Plaintiff has a right to them. The Defendants will have suffered no harm, since they would have no right

⁸⁸ *Bank of Montreal v Misir*, [2004 CanLII 48172](#) (ON SC (Commercial List)) at [para 38](#).

⁸⁹ *Original Traders Energy Ltd. (Re)*, [2023 ONSC 1887](#) at [para 49](#), citing *Christian-Philip v Rajalingam*, [2020 ONSC 1925](#) at para [33](#).

to such funds. Conversely, if no injunction is granted, and the Defendants dissipate their assets and the Plaintiff succeeds at trial, the Plaintiff will be left with a hollow judgment which is itself irreparable harm.⁹⁰ The risk of dissipation of assets therefore shifts the balance of convenience in favour of the Plaintiff.⁹¹ Furthermore, given that Pilehver has to date failed to provide information requested by the Receiver, any inconvenience to him associated with a *Mareva* injunction is entirely of his own making.⁹²

5. Disclosure of Information and *Norwich* Relief

70. The proposed *Mareva* order stipulates that the Defendants each prepare and provide a sworn affidavit or statement with respect to their worldwide assets within three (3) days of service of the Order, and submit to examinations under oath within fifteen (15) days of delivery of that affidavit or statement.

71. Such relief is part of the Ontario model *Mareva* order as it is necessary to give effect to the purpose of a *Mareva* injunction, and has been ordered in other cases alongside a *Mareva* order.⁹³ It is all the more necessary here, where (a) no records exist to substantiate any reason why Nali, Nali and Associates and the other third party recipients of LV IV Property sale proceeds may have received such payments and (b) the Plaintiff has no information on the extent, location and other details of the Defendants' assets.

72. *Norwich* orders stem from the inherent and equitable jurisdiction of the Court.⁹⁴

⁹⁰ *Atlas v Hillier*, [2011 ONSC 2277](#) at [paras 47, 52](#) and [56-57](#); *Noreast Electronics Co. Ltd. v Danis*, [2018 ONSC 879](#) at para [37](#).

⁹¹ *Carbone v Boccia*, [2022 ONSC 6528](#) at [para 11](#) citing *OPFFA v Paul Atkinson et al*, [2019 ONSC 3877](#) at [para 19](#).

⁹² *Chu de Québec-Université Laval v. Tree of Knowledge International Corp.*, [2020 ONSC 8188](#) at [para 45](#).

⁹³ See, for example, *Sakab Saudi Holding Company v Al Jabri*, [2021 ONSC 3909](#) at [para 26](#); *First Majestic Silver Corp. v Santos*, [2014 BCSC 1564](#) at [para 68](#), and *Original Traders Energy Ltd., (Re)*, [2024 ONSC 325](#) at [para 114](#).

⁹⁴ CJA [s 96](#).

73. Canadian Courts have recognized that *Norwich* Orders may be used to: (a) identify wrongdoers; (b) find and preserve evidence of a wrongdoing or even to determine whether an action exists; and (c) trace and preserve assets.⁹⁵

74. The Supreme Court of Canada has confirmed the elements of the test for obtaining a *Norwich* Order:⁹⁶

(a) a *bona fide* claim against the unknown alleged wrongdoer;

(b) the person from whom discovery is sought must be in some way involved in the matter under dispute, he must be more than an innocent bystander;

(c) the person from whom discovery is sought must be the only practical source of information available to the applicants;

(d) the person from whom discovery is sought must be reasonably compensated for his expenses arising out of compliance with the discovery order; and

(e) the public interests in favour of disclosure must outweigh the legitimate privacy concerns.

75. These elements are satisfied on the facts of the present case where a *bona fide* claim has been made out as against each of the Defendants.

⁹⁵ *Alberta Treasury Branches v. Leahy*, [2000 ABQB 575](#) at paras [73](#) and [106](#), aff'd [2002 ABCA 101](#), leave to appeal to SCC ref'd.

⁹⁶ *Rogers Communications v. Voltage Pictures, LLC*, [2018 SCC 38](#) at [para 18](#).

76. Additionally, the financial institutions in respect of which the *Norwich* relief is sought have a connection to the wrong at issue beyond being a witness to it. The information required to identify further wrongdoers and trace the stolen funds resides with these institutions and they serve as the only practical source of these details, especially given the non-responsiveness by Pilehver to the Receiver's requests for information.⁹⁷

77. The public interest in uncovering and remedying the fraud clearly outweighs any privacy interest the Defendants may assert. Courts have emphasized that financial institutions are "innocently involved" third parties from whom *Norwich* relief is regularly sought in fraud cases.⁹⁸ Records at such financial institutions are necessary in order to trace the funds obtained by the Defendants and identify any others involved in the scheme; the Ontario Court of Appeal has found the need to identify and trace to be legitimate objectives on which a *Norwich* order can be based.⁹⁹

78. The need to identify and trace is, under the circumstances, a "legitimate objective" on which a *Norwich* order can be based, and is appropriately in the interests of justice.¹⁰⁰

79. Paragraph 4(a) of the Appointment Order expressly authorizes the Receiver to trace and follow the proceeds of any real property previously owned by LV IV that was sold, transferred, assigned or conveyed on or after the granting of the October 31, 2024 Injunction Order, including the LV IV Property.

80. Accordingly, the *Norwich* relief should also be granted.

⁹⁷ *1999269 Ontario Limited et al v. Aguiar et al*, [2023 ONSC 787](#) at [para 54](#).

⁹⁸ *Carbone v. Boccia*, [2022 ONSC 6528](#) at [para 20](#).

⁹⁹ *Carbone v Boccia*, [2022 ONSC 6528](#) at [para 17](#).

¹⁰⁰ *GEA Group AG v. Flex-N-Gate Corporation*, [2009 ONCA 619](#) at [para 91](#).

6. An Undertaking as to Damages Ought Not to be Required

81. Given the particular circumstances of this case, including the strength of the moving party's case and in particular the Receiver's status as a Court officer in respect of LV IV, an undertaking as to damages should not be required.

82. In *Business Development Bank of Canada v Aventura II Properties Inc.*, [2016 ONCA 300](#), the Ontario Court of Appeal rejected that the court-appointed officer (a receiver) should be required to provide an undertaking as to damages in similar circumstances:

As for the failure to require the Receiver to provide an undertaking as to damages, the motion judge rejected this argument, on the basis that the order was made in a court-appointed receivership. The purpose of such an undertaking is "to protect the defendant from the risk of granting a remedy before the substantive rights of the parties have been determined": Robert J. Sharpe, *Injunctions and Specific Performance*, loose-leaf (2015-Rel. 24), 4th ed. (Toronto, Canada Law Book, 2012), at para. 2.470. The Receiver is not a self-interested party. A receiver is an officer of the court with a fiduciary duty to comply with the powers granted in the receivership order and to act honestly and in the best interests of all parties, including the debtor: *Toronto Dominion Bank v. Usarco Ltd.* (2001), 2001 CanLII 24004 (ON CA), 196 D.L.R. (4th) 448 (Ont. C.A.), at para. 30, leave to appeal refused, [2001] S.C.C.A. No. 217. The Receiver has a duty to recover the property of the Debtors, including the HST Refund, and the order sought was in aid of powers granted to the Receiver by court order. The motion judge, under r. 40.03, was entitled to grant the Mareva Order without requiring an undertaking as to damages, and he did so for good reason in this case.¹⁰¹

83. Furthermore and/or in the alternative, the Plaintiff's *prima facie* case is strong, and LV IV is insolvent and in receivership. In these circumstances, this Court has found it appropriate to dispense with the requirement for an undertaking as to damages.¹⁰²

¹⁰¹ *Business Development Bank of Canada v Aventura II Properties Inc.*, [2016 ONCA 300](#) at [para 25](#), upholding Justice Hainey's decision in *Business Development Bank of Canada v Aventura II Properties Inc.*, [2016 ONSC 1545](#).

¹⁰² *Original Traders Energy Ltd. (Re)*, [2023 ONSC 1887](#) at [para 51](#); *Original Traders Energy Ltd., (Re)*, [2024 ONSC 325](#) at [paras 110-113](#).

84. The Plaintiff, by its Receiver, should therefore be relieved of the requirement to provide an undertaking as to damages pursuant to Rule 40.03.

7. The Receiver Has Made Full and Fair Disclosure of all Material Facts

85. The Receiver is of the view that it has made full and fair disclosure of all material facts and with respect to the law, including raising points which might be raised by the Defendants had they received notice of the within motion.

86. The Receiver has not inquired with the recipients of the LV IV Property sale proceeds listed in paragraph 18 above as to why they received such proceeds. It is the Receiver's position that it is not required to have made such inquiries. Despite the Receiver's inquiries of Pilehver and his known lawyers as to what happened to the sale proceeds from the LV IV Property, no explanation or response was provided by Pilehver, and upon receiving documentation from Hundal's LawPro counsel as to where the proceeds were disbursed, the Receiver commenced this action and motion to secure the misappropriated public investors' funds at issue.

87. To the Receiver's knowledge, Pilehver and the Paybank Parties have at all times taken the position that they have acted in the best interests of the Co-Owners, with requisite authority of the Co-Owners, including as was detailed in the Pilehver Affidavit in the Hamilton Proceedings.

88. As indicated, the Hamilton Proceedings were commenced by and against certain parties to transactions which took place in 2024 concerning the Land Banking, and which transactions are referred to in the Third Report as the Enterprise Transaction. The underlying transactions and validity of them which took place in 2024 as part of the Enterprise Transaction are not yet fully understood by the Receiver, and Pilehver may have an explanation for his conduct as pleaded herein. However, based on the Receiver's review of the Pilehver Affidavit, the underlying

investment documentation concerning the Kobayashi Group's beneficial interest as Co-Owners in the LV IV Property and the October 31, 2024 Injunction Order issued in the Hamilton Proceedings, there is a strong *prima facie* case that there was no justification for Pilehver's marketing and sale of the LV IV Property and his subsequent directions to Hundal with respect to the distribution of the sale proceeds.

PART V – RELIEF REQUESTED

89. Accordingly, the Plaintiff seeks and interim *Mareva* Order in the form of the proposed draft Order in the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of August, 2025.



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**SCHEDULE “A”
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8. *Borrelli, in his Capacity as Trustee of the SFC Litigation Trust v Chan*, [2017 ONSC 1815](#).
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10. *Business Development Bank of Canada v Aventura II Properties Inc.*, [2016 ONSC 1545](#).
11. *Carbone v Boccia*, [2022 ONSC 6528](#).
12. *Carbone v. Boccia*, [2025 ONSC 1966](#).
13. *Christian-Philip v Rajalingam*, [2020 ONSC 1925](#).
14. *Chu de Québec-Université Laval v. Tree of Knowledge International Corp.*, [2020 ONSC 8188](#).
15. *Citadel General Assurance Co. v Lloyds Bank Canada*, [1997 CanLII 334](#) (SCC), [1997] 3 SCR 805.
16. *DBDC Spadina Ltd. v Walton*, [2018 ONCA 60](#).
17. Endorsement of Justice Myers issued May 17, 2016 in *KSV Kofman Inc. in its capacity as Receiver and Manager of Certain Property of Scollard Development Corporation et al. v. Textbook (256 Rideau Street) Inc.*
18. *First Majestic Silver Corp. v Santos*, [2014 BCSC 1564](#).
19. *GEA Group AG v. Flex-N-Gate Corporation*, [2009 ONCA 619](#).

20. *Google Inc. v Equustek Solutions Inc.*, [2017 SCC 34](#).
21. *Hodgkinson v Simms*, [\[1994\] 3 SCR 377](#).
22. *Kerr v Baranow*, [2011 SCC 10](#).
23. *Mooney v Orr*, [33 CPC \(3d\) 31](#), [\[1994\] BCJ No 2652 \(QL\)](#).
24. *Moore v Sweet*, [2018 SCC 52](#).
25. *Noreast Electronics Co. Ltd. v Danis*, [2018 ONSC 879](#).
26. *OPFFA v Paul Atkinson et al*, [2019 ONSC 3877](#).
27. *Original Traders Energy Ltd. (Re)*, [2023 ONSC 1887](#).
28. *Original Traders Energy Ltd., (Re)*, [2024 ONSC 325](#).
29. *Paulus v Fleury*, [2018 ONCA 1072](#).
30. *R v Canadian Broadcasting Corp.*, [2018 SCC 5](#).
31. *Rogers Communications v. Voltage Pictures, LLC*, [2018 SCC 38](#).
32. *Sakab Saudi Holding Company v Al Jabri*, [2021 ONSC 3909](#).
33. *Sharbern Holding Inc. v Vancouver Airport Centre Ltd.*, [2011 SCC 23](#).
34. *Sibley & Associates LP v Ross*, [2011 ONSC 2951](#).
35. *Sirius Concrete Inc. (Re)*, [2022 ONCA 524](#).
36. *SolarBlue LLC v Aus*, [2013 ONSC 7638](#).
37. *Soulos v Korkontzilas*, [\[1997\] 2 SCR 217](#).
38. *Treaty Group Inc. v Simpson*, [2001 CarswellOnt 617](#), [2001] O.J. No. 725.
39. *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.

August 1, 2025



DATE

Calvin Horsten

SCHEDULE “B”
TEXT OF STATUTES & REGULATIONS

Courts of Justice Act, R.S.O. 1990, c. C.43, Section 101

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended, Rule 39.01, Rule 40.02 and Rule 40.03

Evidence by Affidavit

Generally

39.01 (1) Evidence on a motion or application may be given by affidavit unless a statute or these rules provide otherwise.

Service and Filing

(2) Where a motion or application is made on notice, the affidavits on which the motion or application is founded shall be served with the notice of motion or notice of application and shall be filed with proof of service in the court office where the motion or application is to be heard at least seven days before the hearing.

(3) All affidavits to be used at the hearing in opposition to a motion or application or in reply shall be served and filed with proof of service in the court office where the motion or application is to be heard at least four days before the hearing.

Contents — Motions

(4) An affidavit for use on a motion may contain statements of the deponent’s information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

Contents — Applications

(5) An affidavit for use on an application may contain statements of the deponent’s information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit.

Full and Fair Disclosure on Motion or Application Without Notice

(6) Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application.

Expert Witness Evidence

(7) Opinion evidence provided by an expert witness for the purposes of a motion or application shall include the information listed under [subrule 53.03 \(2.1\)](#).

...

Where Motion Made without Notice***Maximum Duration***

[40.02](#) (1) An interlocutory injunction or mandatory order may be granted on motion without notice for a period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 (1).

Extension

(2) Where an interlocutory injunction or mandatory order is granted on a motion without notice, a motion to extend the injunction or mandatory order may be made only on notice to every party affected by the order, unless the judge is satisfied that because a party has been evading service or because there are other exceptional circumstances, the injunction or mandatory order ought to be extended without notice to the party. R.R.O. 1990, Reg. 194, r. 40.02 (2).

(3) An extension may be granted on a motion without notice for a further period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 (3).

Labour Injunctions Excepted

(4) Subrules (1) to (3) do not apply to a motion for an injunction in a labour dispute under section 102 of the *Courts of Justice Act*. R.R.O. 1990, Reg. 194, r. 40.02 (4).

Undertaking

[40.03](#) On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party. R.R.O. 1990, Reg. 194, r. 40.03.

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

- and -

**BEHZAD PILEHVER also known as BEN PILEHVER also known as
BEHZAD PILEHVAR also known as BEN PILEHVAR, MAHTAB
NALI also known as MAHTAB NALI PILEHVAR also known as
MAHTAB PILEHVAR and NALI AND ASSOCIATES**

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 *ex parte* Mareva Injunction and Norwich
Order)

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