



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-19-00630908-00CL DATE: August 8, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: ERNST & YOUNG INC., IN ITS CAPACITY AS COURT  
APPOINTED MONITOR OF BONDFIELD CONSTRUCTION  
COMPANY LIMITED v. AQUINO et al  
BEFORE JUSTICE: Justice OSBORNE

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Evan Cobb Alan Merskey	Counsel for Ernst & Young Inc., as Monitor	<a href="mailto:evan.cobb@nortonrosefulbright.com">evan.cobb@nortonrosefulbright.com</a> <a href="mailto:amerskey@cassels.com">amerskey@cassels.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

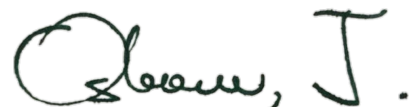
Name of Person Appearing	Name of Party	Contact Info
Terry Corsianos	Counsel for the respondent John Aquino	<a href="mailto:tcorsianos@corsianoslaw.com">tcorsianos@corsianoslaw.com</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
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**ENDORSEMENT OF JUSTICE OSBORNE:**

- [1] John Aquino requested this case conference seeking an order scheduling a proposed motion for an order declaring that the previously granted Mareva injunction merged with the trial judgment in this matter, or, alternatively, an order made *nunc pro tunc* setting aside the Mareva injunction made as of March 19, 2021.
- [2] This application was commenced on November 12, 2019 against Aquino and others. On February 25, 2020, the Monitor obtained a Mareva injunction against Aquino. On March 19, 2021, the applications judge granted judgment in favour of the Monitor against Aquino and others. Aquino appealed, and on March 10, 2022, those appeals were dismissed by the Court of Appeal for Ontario. Aquino and the other Respondents thereafter requested leave to the Supreme Court of Canada. Leave was granted and the appeal was heard by the Supreme Court on December 5, 2023. That judgment remains under reserve.
- [3] Aquino now submits that the Mareva injunction, being an interlocutory order, merged in the trial judgment, and he therefore seeks to bring a motion to have it set aside and vacated. The Monitor opposes.
- [4] In my view, the motion is premature today. The judgment into which Aquino submits the injunction order has merged is the very judgment that is under attack by him at the Supreme Court. He seeks an order in the appeal setting aside that judgment or in the alternative, remitting the matter back to the trial court for the determination of numerous factual issues. The Monitor seeks the dismissal of the appeal.
- [5] In my view, the issue of whether and when a motion to set aside the Mareva order is premature until the Supreme Court decides the issue. Some or all of the relief sought may be moot, but in any event, there are numerous scenarios in which the determination by the Supreme Court will have a very direct effect on the motion now sought to be scheduled.
- [6] Accordingly, such a motion is premature until the Supreme Court renders its decision and, exercising my case management function, I decline to schedule such a motion at this time.

A handwritten signature in black ink, appearing to read "Osborne, J.", is positioned in the lower right area of the page.