



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00731806-00CL

DATE: DECEMBER 2, 2024

NO. ON LIST: 6

TITLE OF PROCEEDING: PRODUCTIVITY MEDIA INCOME FUND I LP, BY ITS GENERAL PARTNER, PRODUCTIVITY MEDIA INC., BY ITS COURT-APPOINTED RECEIVER AND MANAGER, KSV RESTRUCTURING INC. v. SANTOR et al

BEFORE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jordan R.M. Deering	Counsel for the Plaintiff	jordan.deering@dlapiper.com
Regan Christensen		regan.christensen@dlapiper.com
Cristina Fulop		cristina.fulop@dlapiper.com
Edmond Lamek		edmond.lamек@dlapiper.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Bobby Kofman	Receiver, KSV Restructuring Inc.	bkofman@ksv advisory.com
Murtaza Tallat		mtallat@ksv advisory.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] On November 19, 2024, Conway J. appointed KSV as Receiver over the property and assets of the respondents.
- [2] Justice Conway noted in her endorsement from that day that “there are serious allegations of fraud by William Santor, the CEO of PMI.”

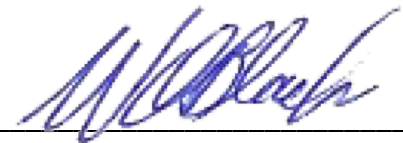
- [3] Her Honour stated that the December 2, 2024 hearing (which date had originally been earmarked for the receivership motion) would now be used for a motion by the Receiver seeking additional relief.
- [4] The Receiver was before me today, ex parte, seeking a worldwide Mareva injunction over the assets of Mr. Santor, his wife Sonja Santor, and the corporate defendants other than the Posapia defendants (collectively, the “Mareva Defendants”), and a Norwich order compelling the Financial Institutions and Corporate Records Offices (the “Third Parties”) to provide information that may assist the plaintiff in acquiring redress against the Mareva Defendants.
- [5] In this endorsement I use a number of terms as defined in the moving party’s extensive materials.
- [6] The plaintiff’s investigation is ongoing, such that the full magnitude of its losses is not yet known, but to this point it has learned that at least approximately \$44,448,871 has been misappropriated by Mr. Santor from Productivity Media Income Fund I LP (“PMI” and the “Fund”).
- [7] It appears evident that starting in 2016, Mr. Santor engaged in a fraudulent scheme to perpetrate and conceal the diversion of the gross amount of \$100,000,000 from the Fund to various Ontario corporations he created and controlled.
- [8] Mr. Santor approached John Hills and Andrew Chang-Sang in early 2012 about creating PMI and the Fund. He represented that he could leverage his entertainment industry knowledge and his connections in Hollywood and throughout the international film industry for this venture.
- [9] In getting into business with Mr. Santor, Mr. Hills and Mr. Chang, neither of whom had past experience in the entertainment industry, relied on Mr. Santor’s assessment of media projects that were presented to the Fund as opportunities, and his recommendations in determining whether or not to authorize loan advances in connection with these media projects.
- [10] More specifically, PMI and the Fund offered production financing to production companies, secured against government tax credits, pre-sales and/or minimum guarantees from sales agents and/or distributors, and revenues from sales in unsold territories.
- [11] PMI and the Fund also offered loans to sales agents and distribution companies for the purpose of allowing them to provide minimum guarantee s to film production companies (“MG Loans”). A minimum guarantee is a commitment by the sales agent or distributor to pay a certain minimum amount to the production company for a media project, regardless of the actual sales generated by that media project. MG Loans are secured against the borrower’s assets. MG Loans were central to the fraudulent scheme.
- [12] From 2016 to 2024, PMI dealt with a number of legitimate and reputable sales agents and distributors who were involved in media projects where PMI provided financing to the productions company. These included Radiant U.S., Dark Star U.S., Concourse U.S. and Joker Films.
- [13] It appears that Mr. Santos selected these particular entities as vehicles through which to perpetrate his fraudulent scheme (each a “Target Corporation”) because they had legitimate business dealings with PMI, they were familiar to the Investment Committee, and they would plausibly require MG Loans on new media projects.
- [14] For each Target Corporation, Mr. Santor either incorporated a similarly named corporation that he controlled – Radiant Canada, Dark Star Canada, and Concourse Canada (each an “Imposter Corporation”)

- or represented in the loan documentation that Mr. Santor's company, 839 Canada, was operating as "Joker Media" which, as Mr. Santor apparently expected would be the case, was understood by others to be Joker Films.

- [15] Mr. Santor opened bank accounts at National Bank of Canada ("National Bank") in each of the Imposter Corporations' names, over which he had sole control.
- [16] For each Imposter Corporation, Mr. Santor also registered a fake domain name (an "Imposter Domain Name") similar to and which imitated the legitimate domain name of its corresponding Target Corporation, and used the Imposter Domain Names to create fake email accounts ("Imposter Email Accounts") similar to legitimate email accounts used by the principals of the Target Corporations.
- [17] After selecting Target Media Projects, Mr. Santor appears to have prepared and presented to the Investment Committee for approval an advance request package of the approval of an MG Loan.
- [18] Once the MG Loan was approved by the Investment Committee, Mr. Santor, Mr. Chang-Sang or Mr. Hills directed Apex Group Ltd. ("Apex"), the Fund's administrator, to wire the requested MG Loan amount, less PMI and the Fund's closing fees, to the Imposter Corporation or 839 Canada's bank account as identified in the Advance Request Certificate.
- [19] From March 2016 to November 2021, Mr. Santor caused approximately \$98,214,094 CAD to be improperly diverted from the Fund to accounts at National Bank held by the Imposter Corporations and 839 Canada.
- [20] Once an MG Loan was deposited into an Imposter Corporation's or 839 Canada's bank account, the funds were not held in a Growth Account or otherwise used to support the minimum guarantee for a Target Media Project as was expected and as Mr. Santor represented. Instead, Mr. Santor used the funds for other purposes.
- [21] From 2017 to 2023, Mr. Santor arranged for occasional repayments to the Fund of earlier MG Loans using what appears to be money from later MG Loans in an apparent attempt to conceal the fraudulent scheme.
- [22] Mr. Santor also provided various false explanations in response to questions from his co-investors and others from time to time about certain irregularities that inevitably arose relative to the fraudulent scheme. He also arranged for a fraudulent regimen of audit inquiry responses over the years, again to cover the fraudulent scheme.
- [23] In terms of Mr. Santor's use of the diverted funds, according to a net worth statement which appears to have been prepared on September 15, 2023, Mr. Santor owns numerous real and personal assets valued at approximately \$52,000,000.
- [24] The investigation undertaken to date reveals numerous connections between the funds misappropriated by Mr. Santor in the course of the fraudulent scheme and at least three real properties (and other assets) included in Mr. Santor's purported net worth statement.
- [25] The three real properties to which clear connections are evident have a collective value of several million dollars. One property alone, the Vista Del Mar property, has an estimated market value, once its construction is completed, of over USD \$10 million.

- [26] The Investigation revealed numerous transactions in the period from December 2018 to October 2023 related to the Vista Del Mar Property. The total net payments from the Fund to the Imposter Corporations during this time period was \$18,346,063.90 CAD.
- [27] In April of 2024, in the context of a discussion between PMI's General Counsel and the principal of Radiant U.S. relative to the audit confirmation process, it emerged that the legitimate U.S. corporations with which the Fund ostensibly had legitimate relationships, did not in fact have Canadian entities or use the email addresses created by Mr. Santor. These discussions led to the commencement of the internal investigation. In August of 2024, PMI received the Whistleblower Report that alleged, among other things, over \$100M in "fraudulent movie films". At that stage PMI engaged PWC to conduct a forensic investigation.
- [28] I am satisfied that this motion is appropriately brought on an ex parte basis, in order to minimize the risk of dissipation of the assets at issue. This is particularly so given the extensive evidence in the record that Mr. Santor has transferred assets outside of Canada since about 2019, and has acquired assets of substantial value in the Cayman Islands and elsewhere.
- [29] In terms of the test for a Mareva injunction, I am satisfied, first, that the moving party has established a strong prima facie case. The evidence before me shows that Mr. Santor created an elaborate scheme to misappropriate funds from the Fund, and knowingly used his position of trust at PMI and the Fund to facilitate payments based on fictitious loans to artificial companies established for the purpose of carrying out the fraudulent scheme. It is clear that Mr. Santor used these misappropriated funds for his own benefit.
- [30] I find that these facts provide the basis for a strong prima facie case of civil fraud, and fraudulent misrepresentation. It also appears clear that Mr. Santor breached his fiduciary duties to PMI and the Fund, thereby enriching himself and the other Mareva Defendants.
- [31] There is also evidence before me showing the some of the Mareva Defendants, including Mr. Santor, have assets in Ontario, including various bank accounts and investment accounts, at National Bank, the Bank of Montreal, The Toronto-Dominion Bank, an investment account at Questrade Inc., and valuable film equipment at PMI's offices in Burlington, Ontario.
- [32] The PWC affidavit before me also confirms that Mr. Santor owns or controls the Imposter Corporations, each of which also has an account at National Bank in Toronto. 839 Canada also holds an account at the Bank of Montreal in Toronto.
- [33] As noted above, particularly in that there is substantial evidence of Mr. Santor moving assets outside of Canada, the record demonstrates a serious risk that the defendants will dissipate assets or endeavor to put them out of reach of the plaintiffs. There is also evidence showing that Mr. Santor is taking steps to encumber his assets, for example recently obtaining a mortgage for the property in Studio City and making inquiries about a secured loan against the Vista Del Mar Property.
- [34] I note also that the value of the Defendants' assets in Ontario appear highly unlikely to meet the value of a judgment in this case. To illustrate this point, the plaintiff's claim for damages here currently exceeds \$44 million CAD, and the value of known assets in Ontario is considerably less than that amount.

- [35] With respect to irreparable harm, as Penny J. noted in *East Guardian SPC v. Mazur*, 2014 ONSC 6403, “the normal basis for irreparable harm in cases of this kind is that, if the respondent’s assets are not secured, there will be no way for the applicant to collect on a money judgment.”
- [36] I find that to be the case here; PMI’s investigation to date shows that Mr. and Mrs. Santor have frivolously squandered large sums on luxury items including wine and vehicles, and as noted have acquired substantial property in other jurisdictions.
- [37] I also find that the balance of convenience overwhelmingly favours granting the injunction. As noted, if Mr. and Mrs. Santor’s assets are not frozen, it is highly unlikely that the plaintiff will be unable to collect on a judgment. There is no evidence of “inconvenience” to the Santors that cannot be addressed by the standard provision of a Mareva Order permitting access to funds for living expenses and legal expenses.
- [38] I am also prepared to waive, as requested by the Receiver, the normal undertaking required under Rule 40.03. The Court of Appeal for Ontario, for example in *Business Development Bank of Canada v. Aventura II Properties Inc.*, 2016 ONCA 300, has confirmed that a Receiver is not a self-interested party, but rather an officer of the court with a duty to act honestly and in the best interests of all parties, and that as such, a Receiver is not required to provide an undertaking as to damages.
- [39] The plaintiff seeks, and I am granting, an order requiring each of the Mareva Defendants to provide, within seven days of the date of service of the Order, an affidavit describing the nature, value and location of their respective assets, and to attend for examinations on their affidavits and assets. I am satisfied that this provision is necessary to locate all assets of the Mareva Defendants and to guard against further dissipation.
- [40] I also find that the circumstances as I have summarized them justify the granting of the Norwich Order sought, and that this order is necessary to identify, trace and preserve assets. I find that the evidence before me easily meets the test set out, among other cases, in *Bell ExpressVu Ltd. Partnership v. Rodgers (Tomico Industries)*, 2007 CanLII 50595 (ON SC) and *Alberta Treasury Branches v. Leahy*, 2000 ABQB 575.
- [41] Accordingly, in the circumstances before me, I have seen fit to sign and release the order sought by the Receiver.
- [42] I confirmed in releasing that order, and confirm again here, that the Receiver may use, for purposes of service of materials and communication with Mr. Santor the email address: William.Santor@Erbcap.com, which the evidence indicates is an email address at which Mr. Santor is in fact receiving communications.
- [43] The required 10-day comeback hearing in this matter has been scheduled before me on December 12, 2024, at 10:00 a.m.



W.D. BLACK J.

DATE: DECEMBER 2, 2024