

KSV Kofman Inc. et al. V. John Davies et al.

Court File No.: CV-17-11822-00CL

Endorsement of the Honourable Justice Myers

Date: July 17/17

For Endorsement attached, order to go. Despite the Orders set out in the attached Endorsement, Mrs. Davies is authorized and allowed to access and spend up to an aggregate amount of \$25,000 to retain counsel and sustain herself for the interim period.

The court previously found a sufficiently strong prima facie case exists against the defendants to justify extraordinary pretrial injunctive relief issuing against them. A very substantial amount of money invested by public shareholders appears to have been misappropriated at first blush, whether that conclusion changes as the matter proceeds will be determined at a later date.

The defendants consent to a brief continuation of the Mareva injunction with no admission that it is proper but merely to allow for a scheduled, efficient hearing process for his intended motion to set the injunction aside. The consent therefore is wholly without prejudice to the defendants. It cannot be used to answer any later arguments that they make.

The Receiver asks to extend the order to Judith Davies personally and she and two others as Trustees. The Receiver has demonstrated that funds from the public investors that are subject to plaintiff's claims against the defendants, were given to Mrs. Davies and all 3 Trustees. Among other things, allegedly misappropriated funds are admitted by John Davies to have been used to buy and renovate the home in Arizona that was purchased through the AZ Trust.

The plaintiff has a clear claim under Ontario law to ownership of an interest in property purchased with funds it proves at trial were misappropriated and used in non-arm's length transactions such as funding one's spouse or home.

I am satisfied that despite Mr. Davies undertaking to hold the AZ property, an order should issue as sought by the Receiver. The court cannot protect public investors' interests by accepting the word of someone who is alleged to have misappropriated and hidden millions or tens of millions of investors' money. But in light of the offer of the undertaking, I am satisfied that the balance of convenience supports the order sought. There is a real risk of dissipation of assets by Mrs. Davies and the Trustees. They are all under Mr. Davies control to a greater or lesser extent. Mr. Davies says he has no bank account. His personal expenses come from the corporate defendant or from funds given by that company to Mrs. Davies. She's but a funnel through which investor funds are poured as part of the laundering cycles of corporate entities and trusts lined up to protect and hide potentially ill-gotten funds. Mrs. Davies acted in concert with Mr. Davies in response to their mortgagee's supposed enforcement efforts and re-listed their Toronto home despite this court's order. Mr. Davies says the Receiver is too late as he has no assets left. Perhaps it is not too late to find plaintiff's funds (as proven) with Mrs. Davies and the Trusts to whom they were moved. Mrs. Davies asks how her family is to sustain itself. If this is a reference to funds that originated

with public investors subject to this action, the answer is that the court will respond to reasonable requests for access to funds on Mrs. Davies providing full disclosure. She also may have some personal employment funds that she might be able to show are entirely independent of plaintiff's claims.

This is not a case for an undertaking on damages. Plaintiff acts for public investors whose funds are missing. If defendants left themselves vulnerable to even such extraordinary relief as a Mareva injunction, then they have to bear the risk of costs incurred during the ensuing investigation of the plaintiff's strong prima facie case.

Orders signed as asked. The court respectfully requests the aid and recognition by the State Courts of Arizona and the Federal District Courts in that State as this court stands ready to recognize our neighbour's Orders and procedures.

-Myers J.