

Court of King's Bench of Alberta

Citation: 1964769 Alberta Ltd. v Eltayeb, 2025 ABKB 173

Date: 20250324
Docket: 2401 05650
Registry: Calgary

Between:

**Brian Hunt, Amir Eltayeb, 1964769 Alberta Ltd., and
1000476282 Ontario Inc.**

Applicants

- and -

Ahmed Eltayeb

Respondent

**Reasons for Judgment
of the
Honourable Justice N.E. Devlin**

Overview

[1] On April 24, 2024, the Applicants came before Armstrong J (the “issuing justice”), on an *ex parte* basis, seeking a *Mareva* injunction freezing the Respondent’s accounts and assets. They told a straightforward story of a relative having wrongfully withdrawn \$390,000 of their business funds from a corporate account. They were granted the order and executed it.

[1] While the *Mareva* itself stayed in place only briefly, prolonged and bitter litigation has followed, in which the parties have told diametrically opposing stories of how they came to be in this situation. One side maintained a narrative in which an outsider brother stole almost nearly \$400,000, without rhyme, reason, or right. The other told a tale of a business relationship gone sour, money taken and held to start a conversation on fair recompense, and a Court Order used for the retaliatory destruction of property and livelihood.

[2] While the cloudy and fraud-tainted dealings of the parties have allowed the Court to gain little clarity, it has been shown that the real situation was different and more nuanced than the issuing justice was told. The duty of full and frank disclosure was not met by the Applicants, and their subsequent conduct raises further concerns of inequity. Conversely, the Respondent has failed to show that his pirating of the funds was anything more than pre-judgment self-help towards a weakly documented and amorphous claim.

[3] In the result, the *Mareva* injunction is set aside *ab initio*, and the disputed funds are ordered to remain in trust pending resolution of the parties' disputes.

The original *ex parte* application

[4] The Applicants are two individuals, Brian Hunt ("Hunt") and Amir Eltayeb ("Amir"), along with two of their personal business corporations. The Respondent, Ahmed Eltayeb ("Ahmed") is Amir's older brother. All of them are involved in the purchase and resale of cars, in Alberta, across Canada, and into the United States.

[5] On April 24, 2024, the Applicants went before the issuing justice seeking a *Mareva* injunction against Ahmed on an urgent basis. They came with two brief and mostly overlapping affidavits which described only the following core facts:

- Hunt is an AMVIC licensed used car dealer and pursues this as his profession, primarily out of Grande Prairie, Alberta, through his company, the Applicant 1964769 Alberta Ltd. ("4769 Alberta").
- Hunt was in an informal partnership with Amir, for the wholesale purchase and resale of vehicles, through Amir's numbered company, the Applicant 1000476282 Ontario Inc ("6282 Ontario").
- On April 11, 2024, Hunt transferred \$390,000 to 6282 Ontario for the purchase of vehicles.
- Soon after the transfer, Ahmed moved the money to another account solely under his control and drew the funds out in a draft to himself. The affidavit contained an image of a TD Bank Draft from and to Ahmed, dated April 11, 2024, in the amount of \$390,246.70 [the "disputed funds"].
- This transfer emptied out 6282 Ontario's bank account.
- Amir had not authorized the withdrawal or taking of the money by Ahmed.
- Ahmed "was not involved in the business operations of the partnership" and had access to the account for "purely administrative purposes".
- Ahmed had signing authority over 6282 Ontario's bank account but was not involved in its business or operations.
- Ahmed had told Amir he took the money because he was upset at Amir for cutting off communication and to "get his attention" and
- Hunt had spoken to Ahmed on several occasions since these events and learned that Ahmed had done this because "he was upset with his brother Amir Eltayeb for cutting off communication".

- Hunt recorded a conversation with Ahmed on April 19th, in which he agreed to return the money if Hunt and Amir would “speak with him about his involvement in the business.” A transcript of the call was attached.
- Ahmed had repeatedly reassured Hunt that he would return the money but had not done so.
- Hunt and Amir believed Ahmed was giving these false assurances “in order to grant himself more time to move the money to other accounts, locally or overseas”.

[6] In the final section of their affidavits, Hunt and Amir provided identical, boiler-plate statements that they believed would be Ahmed’s response to the Court if the application were not being pursued *ex parte*:

- The *Mareva* injunction is overreaching and unnecessary.
- That there is no written agreement pertaining to the money.
- That an order under Section 17 of the *Civil Enforcement Act*, RSAO c C-15 (“CEA”) would be more appropriate.
- The monies are needed by the Respondent to defend himself.

[7] At the hearing of the *ex parte* application, the issuing justice asked a number of pertinent questions. He asked where the money had come from and was told “it came from his [Hunt’s] own personal sources.” He further queried why Ahmed had access to the bank account and was again told “for administrative purposes” and to “cut cheques on behalf of [Amir]”.

[8] In discussing the transcript of the call between Hunt and Ahmed, counsel for the applicants fairly pointed out that Ahmed had said he had no intention of stealing the money and took it only to leverage a discussion. Counsel then told the Court that “but nobody really knows what the discussion [was] that he wants to have...”

[9] The Applicants sought a long review date, but the Court insisted on a timelier return.

[10] It took some time for the *Mareva* to be served on Ahmed. Ultimately, he provided the disputed funds to his lawyer, who in turn conveyed them to the Applicants’ counsel, who holds them pending agreement or further direction from the Court, pursuant to an Order of Ashcroft J. The *Mareva* was lifted by mid-May.

Procedural history

[11] A tortured process of litigation has followed the initial injunction. The matter came before me in Urgent Chambers on an application brought by Ms. Tynes to have funds released from the amounts held in trust for Ahmed’s living and legal expenses, on the governing principles articulated in *Canadian Imperial Bank of Commerce v. Credit Valley Institute of Business and Technology*, 2003 CanLII 12916 (ON SC); adopted in *Pinto Ventures Ltd v Soost*, 2017 ABCA 25 at para 28.

[12] The application raised more questions than it answered. While I was satisfied of Ahmed’s impecuniosity, the fact that the funds appeared proprietary to the Applicants created difficulties. It appeared that some material omissions had been made in the original application, and the *Mareva* was represented to have wrought havoc on Ahmed’s life and financial affairs, potentially

unfairly. Therefore, I released a modest amount to fund his attempts to prove entitlement to more, on an interim, without prejudice basis.

[13] The parties continued their exchange of evidence, including a number of unseemly episodes of discourtesy in questioning, and returned before me for what became a series of lengthy, contentious, case management conferences. At various points the parties also appeared before Ashcroft, Hollins, and Funk JJ of this Court on interlocutory aspects of this matter.

[14] A summary judgement application by the Plaintiffs was added to the mix, and Ahmed continued to grow his list of grievances over alleged misdealing with his property under, and incident to, the *Mareva* Order.

[15] I made a further small interim and without prejudice release of funds for legal fees, and the matter was funnelled towards a substantive hearing on whether the *Mareva* ought to have been granted (the traditional comeback hearing that had not been pursued by the parties before the issuing justice). The pathway to adjudication of the *Mareva*'s initial validity wound its way through a *viva voce* hearing on a collateral issue, discussed in detail below, that proved quite illuminative.

[16] The parties ultimately made comprehensive written submissions on the foundational validity of the *Mareva* injunction, supplemented at their request with oral argument. After some further written exchanges to clarify the contents of the record, these are the Court's reasons.

The parties' positions and the state of the evidence

[17] The general lay of the landscape must be understood before the structured analysis of review is applied. The parties told almost diametrically opposing stories, and neither had much in the way of corroborative documentation to back-up their versions. Despite numerous side-skirmishes, they joined battle principally on two the real nature of the business relationships between them and, to a lesser extent but of equal importances, the whereabouts of the disputed funds prior to the *Mareva* application.

Ahmed's version of reality

[18] Ahmed has been shown to have had employment as a successful salesperson with a Nissan dealership, operated side-businesses, and owned a home in Grande Prairie with a relatively small mortgage on it.

[19] He claimed that he had had a highly successful business with Hunt in used car wholesaling, which he claims to have bankrolled and enjoy substantial equity in. He deposed that Hunt had approached him to enter into a joint venture buying and selling cars, and stated that, over time, he used \$450,000 of his personal funds to buy vehicles on their mutual behalf, and that their arrangements relied on his [Ahmed's] working capital. He also stated that Hunt had matched his original investment.

[20] Photos were introduced of a neat and tidy office, which Ahmed stated was his, located in the Grande Prairie commercial space of Hunt's company, Peace Country Wholesale.

[21] Ahmed further deposed that he trained his brother Amir to join the business, at his parents' request to teach his younger brother a vocation, and that the three men had a handshake

deal on revenue sharing. Ahmed went on to describe how the business operated, and claimed extensive, essential involvement with the enterprise.

[22] He further stated that 6282 Ontario was incorporated to conduct his and Amir's business with Hunt, and that he and Amir had opened that company's bank account together, for the mutual operation of that business. He claims that Amir supplanted his place in the business with Hunt, and that the two proceeded to edge him out of the arrangement, eventually freezing him out totally after a falling out between the brothers in early 2024.

[23] Ahmed described a breakdown in the business relationship with the Applicants, and detailed extensive fraudulent practices that he says Hunt and Amir engaged in, which he said contributed to his diminished role in the business and strained relationship with his former partners. There is evidence that some of the parties' business was based on having Indigenous individuals "string purchase" vehicles with the aid of their tax-exempt status, for a fee, and capturing those tax savings in subsequent resale.

[24] Worse allegations were levied by Ahmed, namely that some of his Indigenous associates had told him that their identifications had been used to purchase vehicles without their involvement or approval. None of that has been proven or is relevant to the present issues.

[25] Ahmed also stated that he has incurred extensive travel, vehicle repair, and other expenses in the course of "business operations", and has not been reimbursed for these.

[26] Somewhat eye-raisingly, Ahmed stated in his initial response affidavit that "my team and I have acquired more than 2,000 vehicles" and that the volume of the business exceeded 100 units monthly.

[27] Ahmed provided banking documents purporting to show five-figure deposits to the business' benefit up to earlier in 2024. These records, a lot of which predate the events in this case by many years, are less than definitive in their meaning.

[28] Ahmed explained his taking of the disputed funds as his attempt to get the Applicants' attention and have them sit down and account to him for his share of the business and what was owed to him. He pegged his initial capital contribution and total entitlement at well above the amount of the disputed funds.

[29] Ahmed eventually came to claim that the disputed funds were held in a draft, which he had entrusted to his parents, with Amir's full knowledge, while they tried to mediate the dispute. He further stated that the call transcript attached to the application was a small and selective portion of a much larger body of conversations between the parties that day, and on other days preceding the application. He consequently argues that there was no risk of dissipation, that the Applicants lack a strong *prima facie* case, and that they massively misled the issuing justice.

[30] He also claimed that, as a result of the *Mareva* issuing against him being sent to the financial institutions he dealt with, he had been 'debanked'. Ahmed has presented evidence that his home went into foreclosure during this time, which he attributes, again less than definitively, to the short-lived *Mareva*. He also claimed that Hunt had cleared out his office, including his records, and had a food truck he owned towed away by a company hostile to him, resulting in thousands in storage costs. Allegations of defamation within their industry have been reciprocally volleyed.

Hunt and Amir's version of reality

[31] The Applicants completely dispute Ahmed's version. They say he had only a marginal involvement in their business affairs, and paint him as a demanding hanger-on. They point to the absence of any contracts or other documents discussing or affirming a business arrangement between them as proof of their position. Hunt and Amir also rely on the fantastical numbers contained in Ahmed's materials, such as the assertion of him having sourced and resold 2,000 cars, which they say manifest Ahmed's delusions about being in business with them. They say he contributed little or nothing financially, and constantly wanted money and cars from them. Amir goes so far as to portray Ahmed as a threatening, intimidating, thieving parasite upon his livelihood.

[32] Hunt and Amir assert that they owe Ahmed nothing, characterizing his withdrawal of the disputed funds as extortive theft. In his reply affidavit, Amir describes Ahmed having made constant financial demands and effectively terrorizing and extorting money from Amir on an ongoing basis. He said that Ahmed, "became like a mafia who would come around at the end of the month for money or what ever else he needed." He accuses Ahmed of drug use and threatening behaviour towards Amir and his family.

[33] Amir explained a \$40,000 transfer from 6282 Ontario to Ahmed in January of 2024 as evidence of his involvement in the business and its indebtedness to him. Amir replied that he had given this money to Ahmed gratuitously, "out of respect and fear" because Ahmed "constantly bullied and threatened me for money."

[34] In cross-examination, Hunt acknowledged that Ahmed had paid for vehicles purchased by Amir in their triadic relationship. He persistently minimized these amounts when that was not part of the questions put to him.

[35] He also acknowledged that Ahmed had an office in Hunt's facility in Grande Prairie, as confirmed by photos Ahmed had entered into evidence. Hunt tried to explain this by saying that Ahmed had "hard-bodied his way in" to this space.

[36] However, evidence elsewhere in the materials suggest that Hunt had no difficulty clearing Ahmed's belongings and records from that space subsequent to the *Mareva*. Under these circumstances, the lack of an arm's length landlord-tenant relationship in their sharing of office space strengthens rather than weakens the inference of an ongoing business partnership.

[37] Amir similarly, and with equal reluctance, acknowledged that Ahmed had signing authority over the account because "he'd have to cut a draft" to pay for vehicles he was picking up as part of their venture. He also agreed that their original agreement had been a 50/50 arrangement.

[38] Significantly, Amir acknowledged that in his first month working with Ahmed and Hunt they had bought 25-30 cars for Hunt, although it was never clear over what time frame this took place.

[39] Hunt and Amir consistently deny any knowledge that Amir had given the disputed funds to his parents for safekeeping, and point to a long string of attempts they made to have him return the money before resorting to the court intervention.

[40] Amir paints their father as a put-upon old man who was driven into hospital from the stress of the conflict between his sons, implying that the father's subsequent participation in the litigation in support of Ahmed was a continuation of the elder son's bullying.

The Corvette Saga

[41] At a hearing in December 2024, Ms. Tynes repeated a number of particularly trenchant allegations against the Applicants, including that they had put forward forged documents in the questioning process on the *Mareva* review. The Court pressed counsel to substantiate such claims, which ought not be lightly made. In response, Ms. Tynes led the Court to sale and registration documents concerning a blue Corvette ("the Corvette"), which had been ostensibly purchased by Ahmed in the summer of 2023, and subsequently sold by Hunt in 2024, without Ahmed's permission or any proper transfer of title.

[42] The documents identified by Ms. Tynes were, indeed, irreconcilable on their face. This launched a side-process which culminated in the hearing of live evidence from Hunt, Amir and a witness for Ahmed who claimed to have purchased the car. While largely collateral, the Corvette-events offered a microcosmic case-study, which the Court hoped would shed some light on an increasingly impenetrable mass of motions and materials.

[43] A brief précis of the facts which emerged around the Corvette is enlightening. In the summer of 2023, a GMC dealership in the lower mainland area of British Columbia sold a late model Corvette. The Bill of Sale produced in this case listed "AH1" as the buyer. AH1 is an Indigenous woman from the Grande Prairie area. As a status member of a First Nation, she enjoys tax-exempt status. She both offered an affidavit for Ahmed and ultimately travelled from Grande Prairie to testify on his behalf.

[44] AH1 testified that Ahmed had been teaching her the car resale business and had identified the Corvette as a vehicle of interest. She called the dealership, bought the car over the phone, and ultimately resold it to Ahmed for \$1,000 profit. Both the Bill of Sale from the dealership and an Alberta motor vehicle Bill of Sale confirmed this chain of transactions. She agreed that she had never gone to Vancouver and did not provide the money for the purchase but had gotten the paperwork by mail. She said that she did not know Brian or Amir and thought that Ahmed was the source of the funds for the purchase. She did not know how the Corvette got to Alberta but said that Ahmed had given her a ride in it in Grande Prairie. She testified that she sold it to Ahmed, as attested to in a completed Bill of Sale.

[45] Brian Hunt testified about the Corvette as well. He said that he had provided the money for the purchase, which Amir had completed at the dealership in person. Strikingly, he said he believed that a woman name AH2 (same initials but different name than AH1) had purchased the vehicle using AH1's identification. He testified that he knew only of AH1's name as Amir's "string buyer", which he ultimately acknowledged meant she was a fraudulent name used to obtain a tax-free purchase. He did not know who paid the deposit on the vehicle, but ultimately accepted that this had come from Ahmed's credit card.

[46] Hunt testified that he created a Bill of Sale on Peace Country Wholesalers letterhead, dated the same day as the Bill of Sale from the dealership to AH1, appearing to sell the Corvette to Amir. He did so despite the vehicle having been sold to AH1, in order to allow Amir to insure the vehicle, which was subsequently brought to Calgary through a commercial vehicle transport Hunt arranged.

[47] However, Hunt did not know when the vehicle had been registered and could not account for the existence of what appeared to be a valid Alberta Registration in Ahmed's name from August of 2023. He could offer even less of a convincing account for why he was unbothered for months by the fact that a \$128,000 car he had ostensibly paid for was being driven around with a valid registration in Ahmed's name, and felt "no urgency" to deal with this. He insisted that Ahmed had never owned the car but admitted that Ahmed had taken it to Grande Prairie once.

[48] Somewhat astonishingly, Hunt testified that he had re-registered the Corvette in his company's name after the registration in Ahmed's name had been found in the car, did so without any bill of sale or documentation, using the infrastructure available to him as a registered used car dealer. He felt entitled to do this as the real buyer. He then sold the Corvette onwards to a third party sometime in 2024. Based on statements in Amir's cross-examination, it appears this occurred *after* the *Mareva* was issued. This itself would have been a breach of the *Mareva*, though I place no weight on this consideration given the vagueness of the evidence.

[49] Interestingly, when he was cross-examined on his original affidavits, much earlier in these proceedings, Hunt went on a discourse about a white Corvette, leading to the following exchange:

Q: Okay, did you guys [he and Ahmed] ever exchange money with each other in regards to that Corvette?

A: No.

Q: No?

A: You're thinking of the blue one. You have them confused.

[emphasis added]

[50] The most plausible interpretation of this exchange is that Hunt and Ahmed *did* have dealings about the blue Corvette, something that is not reconcilable with his version of the Corvette incident in *viva voce* testimony six months later, unless he was referring only to the deposit. Nevertheless, it is clear that Hunt and Ahmed's business dealings were very much intertwined in the Corvette, with Ahmed fronting the small upfront cost of a deposit.

[51] Amir also took the stand in relation to the Corvette issue. He said he went to the dealership in Vancouver alone. The sale documents had already been signed and he simply arranged for payment to be transferred to the dealership. He testified that the money came from the same account Ahmed was later accused of wrongfully cleaning-out.

[52] Amir produced photos of him at the dealership and driving the car with family in the Vancouver area. He testified that he had identified the Corvette and AH2 had done all the legwork and interactions with the dealership. He said he had bought it for resale, and that AH2 usually helps him buy cars. Bizarrely, he said AH2 was *Ahmed's* girlfriend. AH2 was never produced, her name appears nowhere in the paperwork about the Corvette, and her existence remains theoretical, in stark contrast to AH1.

[53] Amir testified he allowed Ahmed to drive the Corvette to Grande Prairie. He said he then saw the registration in Ahmed's name in the car, and thought this was strange, but admitted that Ahmed was part of the business at the time. He did not know how Hunt had ultimately changed title to the vehicle and resold it, and claimed to have no idea how Ahmed had obtained a valid Alberta Registration in his name.

[54] If the reader is left confused and unsatisfied by this clash of alternate and incompatible universes, with a galaxy of impersonation and excise tax fraud at its core, they are not alone. Suffice to say that the Corvette incident permits the Court to find as a fact that Ahmed was much involved in the business dealings of Amir and Hunt than they have revealed or will acknowledge.

[55] Indeed, the Corvette story ends with Hunt having resold a car that Ahmed paid the deposit on, was bought by/with/through one or both of Ahmed's Indigenous protégé or his supposed girlfriend, that was otherwise funded through the money flowing from the disputed account. Notably, repayment of Ahmed's deposit contribution is not accounted for anywhere in the evidence received. I do not find that either side was entirely truthful about the Corvette incident.

[56] Moreover, the casual indifference shown by Hunt and Amir towards fraudulent transactions, and the sometimes-nonsensical contents of their evidence on the Corvette episode, leads the Court to find that their evidence on this entire matter lacks reliability. This is not to say that Ahmed, who wisely avoided the perils of the witness box on the Corvette episode, is immune from the stain of fraud cast over their allegedly shared business endeavours. Indeed, all of the parties should strongly consider whether a court of law, with its inconvenient oaths and taste for corroborative documentary evidence, is their preferred arena of dispute.

Whereabouts of the disputed funds after withdrawal

[57] The issue of what the parties knew of the whereabouts of the disputed funds prior to the *Mareva* application became a matter of significant contention.

[58] In his initial reply affidavit, Ahmed stated that he had deposited the disputed funds he withdrew from 6282's Ontario's account "to an account in Trust, until the matter of monies owed is established and settled." This evidence can only be understood as meaning that Ahmed had deposited the funds.

[59] Amir in his response affidavit stated that he did not know where the disputed funds had been prior to their ultimate return. He went on to describe his state of knowledge concerning the whereabouts of the disputed funds as follows:

The Respondent kept telling our mutual friends, parents, and siblings that he would return money one day, only to move the return date again and again. The Respondent would even argue with and scream at our father (who ended up being hospitalized from the stress few weeks ago) and the rest of our family because they told him he does not have proof to support any claims of anything owing to him.

[60] In cross-examination, a new suggestion as to the state of the disputed funds was put to Amir. Specifically, he was asked whether he knew if his parents were in possession of the bank draft of the disputed funds before making the *Mareva* application. Amir insisted that he was not. That is when things got interesting.

[61] Subsequent to that cross-examination, both of Ahmed and Amir's parents swore affidavits. The mother did not attend for cross-examination, and I do not consider her affidavit as part of the record. However, the father was cross-examined and his Affidavit is part of the record submitted by Ahmed. Its contents are remarkable.

[62] The father describes Ahmed having taken Amir in and trained him in the auto sales business, at the parents' request, confirming Ahmed's evidence that they had a 50/50 handshake deal. He then goes on to state that both sons informed him immediately when the disputed funds were withdrawn. He followed this with the striking allegation that Amir had told Ahmed to take the money and just leave the country:

Initially, Amir told me to tell Ahmed to "take the money and leave, go to Egypt," saying he would deal with Brian. Ahmed refused to leave with the money.

[63] The father then swore the following evidence about the location of the disputed funds:

A week later, I called Amir and told him I had the bank draft and suggested a meeting with him, Ahmed, and Brian to discuss business issues. I assured Amir that I would bring the draft and ensure an amicable discussion, but Amir refused to meet and changed his mind about Ahmed taking the money.

...

Amir knew where the money was and was offered a meeting to discuss it, but he refused. Days later, Ahmed was served with a Mareva Injunction.

[64] While contrary to Ahmed's response affidavit, this evidence had been presaged during Ahmed's first cross-examination, which preceded the swearing of the father's affidavit by a few weeks. After initially suggesting that the Applicants had not asked about the whereabouts of the funds, Ahmed appeared to remember that he had told the Applicants where the draft was, leading to the following exchanges:

Q: You took a bank draft for the funds, right?

A: Yeah.

Q: Did you tell my clients where you kept the bank draft after you had taken the funds from the account?

A: That's, what I'm trying to remember, but I ... Yes, I did, actually. Yes. Yes, I did.

Q: What did you tell them?

A: I told my brother that my mom and dad had it. So Amir - - Amir knew that my mom and dad had the money.

Q: When did you tell Amir? I thought - - I thought there was no communication between you and Amir?

A: No, because Amir - - Amir did call. Remember, he called, and he tried to day, Yeah, well, you can turn around, because I was making my way to Calgary with my - -

Q: I thought - - I thought there was no communication. That's what you told us earlier today.

A: That's - - that's not what my parents are going to say.

...

Q: When did you tell Amir and what exactly did you tell Amir about the bank draft?

A: That it's here, and I want to sit down.

Q: You told Amir that the bank draft was with you, that you need - -

A: No. Mom and Dad.

Q: With your mom and dad. Okay

A: Yes.

[65] While Amir has never substantively responded to this evidence, or Ahmed's assertion that he had been told the draft was with their parents, a passage from Amir's reply affidavit supports significant prior parental involvement in the dispute:

...the Plaintiffs' willingness to negotiate largely stems from their disposition to respect the wishes of the Respondent's parents that the matter be handled out of court and their wanting to avoid further strains to the heightened family tensions caused by the Respondent's actions.

[66] The Court was advised that the father was cross-examined on this affidavit. That evidence, however, was not filed by the Applicants and the Court formally asked the parties to provide their position on the use of the father's evidence. The Applicants confirmed that the transcript was not ordered, and the cross-examination is therefore not being relied upon. That leaves the father's revelations tested but uncontradicted (save, ironically, for the statement in Ahmed's original affidavit).

[67] Like virtually every part of this case, the evidence concerning the whereabouts of the disputed funds and/or the draft is most unsatisfactory. Amir denies any knowledge as to where the money was, consistent with Ahmed's first affidavit, Ahmed contradicts himself under oath, the father then gives stunning evidence supporting Ahmed's later, more helpful statement, casting dramatic allegations against Amir, Amir never responds or is cross-examined on those assertions, the father *is* cross-examined, but no one relies on that evidence.

[68] Ahmed's evidence is suspect because he never mentioned the very helpful facts stated in his father's affidavit in his initial response, and in fact gave incompatible evidence as to what he had done with the draft. Amir's evidence is suspect because it is clear that the parents were more involved than first disclosed and he has chosen to leave out the father's cross-examination.

Findings of fact on credibility and reliability

[69] Eleven months and hundreds of pages of evidence in, this Court is left with a very low degree of confidence that it has a true picture of the affairs between these parties. For his part, Ahmed was unable to provide anything resembling documentation of a large-scale business relationship with the Applicants. The records he did provide were mostly old, free of context, and not supportive of his position even if taken at their highest. His statement that he had resold over 2,000 cars is intuitively unrealistic, bordering on fantastical. Ahmed also admitted in cross-examination that, as of that time (July 2024) he had not been part of the business [with Brian and Amir] "for a very long time."

[70] I find Ahmed's description of his business activities, especially the magnitude of them, both suspect and largely unsupported by the documentary evidence one would expect.

[71] Also, as discussed above, Ahmed changed his evidence about the whereabouts of the disputed funds. This was highly suspect given that it involved such a key piece of evidence. This undermined his credibility substantially.

[72] Conversely, Amir seemed unable in cross-examination to put much substance on the claims of threats and intimidation, leading to the following curious exchange in his cross-examination, where he claimed he could not remember whether he had threatened to kill Ahmed

Q: The day before Mr. Ahmed Eltayeb allegedly came and sat in your driveway in a threatening manner, did you threaten to pay all the money that you had to have Mr. Ahmed Eltayeb killed?

A: Killed? I don't remember.

Q: I'm just -- I'm asking did you make a threat to Mr. Ahmed Eltayeb to spend all the money that you had to pay someone to have him killed?

A: I don't remember. I remember words were exchanged, but I never said -- I don't think I said that, no.

Q: You don't think you said that?

A: I don't remember. But words were exchanged because he said some disrespectful things towards me and my wife, right.

Q: Was it possible that you made that threat?

A: I don't remember.

[73] Amir either has a very poor memory, or remembers perfectly well but wishes to avoid providing the Court with unhelpful evidence. This, combined with his testimony in relation to the Corvette, lead me to find that Amir's evidence lacks both reliability and credibility, and I give it almost no weight on disputed points.

[74] I also find Amir and Hunt's laments that they were merely acquiescing to Ahmed's baseless demands to be strange and unrealistic. These are grown men, running their own businesses, unafraid to consort with fraud-committing elements, and with ready access to muscle to serve documents and tow vehicles. Their pleas of helplessness towards Ahmed ring false.

[75] The only real evidence before the Court substantiating thuggish or intimidating behaviour are the materials suggesting that the Applicants seized and destroyed Ahmed's property that was located on Hunt's premises subsequent to the injunction being granted. While the details remain to be proven at a damages trial, were one to be held, there is *prima facie* evidence that the Applicants maliciously had Ahmed's truck towed by a hostile individual and subjected to extortionate storage fees, dismantled his office and put his records beyond his reach, and did something with a container of goods Ahmed kept at that location.

[76] These factors, combined with the reliability dumpster-fire of the Corvette incident, lead the Court to find that all three principal actors in this case have grave reliability problems and little or no credibility. What follows is the Court's best attempt at unpacking this affair on this unsatisfactory record and providing a principled outcome.

Governing legal principles

[77] The legal principles governing issuance and review of a *Mareva* injunction are not at issue in this case.

Requirements to obtain the injunction

[78] Obtaining this exceptional form of prejudgment relief requires that the Applicant satisfy the Court on six elements. These were aptly summarized by Romaine J. in *Henenghaixin Corp v Deng*, 2021 ABQB 168 at para 6, and derived from *Chitel v Rothbart* (1982), 1982 CanLII 1956 (ON CA), adopted in *Cho v Twin Cities Power-Canada ULC*, 2012 ABCA 47; *Secure 2013 Group Inc v Tiger Calcium Services Inc Services Inc*, 2017 ABCA 316 at paras 65-67:

- (i) The applicant must establish that it has a strong prima facie case on the merits by making full and frank disclosure of all material facts within its knowledge, including providing particulars of the claim against the defendant, the grounds of its claim and the amount, and fairly stating the points that would be made against it by the defendant.
- (ii) The applicant should give some grounds for believing the defendant has assets in the jurisdiction. As much precision as possible regarding those assets is required so that the injunction can be directed towards a specific asset.
- (iii) The applicant should give some grounds for believing that there is a risk of the assets being removed before the judgement or award is satisfied. The evidence must persuade the Court that the defendant is removing or that there is a real risk that it is about to remove its assets from the jurisdiction to avoid a judgement or that the defendant is otherwise disposing of its assets out of the ordinary course of business, so as to render a future tracing impossible or remote.
- (iv) The applicant must satisfy the Court that it will suffer irreparable harm if the relief is not granted.
- (v) The applicant must show that in all circumstances the balance of convenience favours the granting of the injunction pending trial of the issue between the parties.
- (vi) The applicant must give an undertaking as to damages.

Disclosure requirements when proceeding *ex parte*

[79] When sought *ex parte*, *Mareva* applications demand the utmost good faith from the applicants in making full and frank disclosure: *United States of America v. Friedland*, [1996] O.J. No. 4399 (Gen. Div.), at paras. 26-28 per Sharpe J (as he then was); *Guillevin International Co v Barry*, 2022 ABCA 144 at para 17. Our Court of Appeal summed up this obligation in *Tiger Calcium* at paras 44-46:

An applicant proceeding without notice to the opposing party is required to act with the utmost good faith and make full, fair and candid disclosure of the facts

and this disclosure must include facts which would militate against the application.

...

This obligation applies to applicants and their counsel who have “an obligation to make full, fair and candid disclosure of all non-confidential, non-privileged material facts known to the lawyer, including those which are adverse to his position”....Said another way, “counsel in *ex parte* applications bear a heavy obligation to ensure that appropriate safeguards are in place to protect the integrity of the legal system”

[80] *Mareva* injunctions, and most other pre-judgment civil remedies, are equitable in nature. Therefore, the conduct of all the parties within “the circle of behaviour related to the relief sought” is relevant to the Court’s discretionary decision making: *Wang v Wang*, 2020 BCCA 15 at para 46; *McBride v Bacovsky*, 2024 ABCA 61 at para 45, citing *Hrvoic v Hrvoic*, 2023 ONCA 508 at para 18.

The review process

[81] It is well settled that the review process constitutes a *de novo* hearing in which the parties may exchange and examine-upon all relevant evidence. That said, whereas the defendant has an unlimited opportunity to introduce new evidence on review, the applicant cannot leverage the *de novo* nature of the proceeding to excuse or patch-up non-disclosure at the initial *ex parte* application: *Guillevin* at paras 16-17; *Bank of Nova Scotia v Five Star Motor Group Ltd*, 2020 ABCA 244 at para 33; *MacLachlan v. Nadeau*, 2017 BCCA 326 at para 37.

Consequences of failures to make full disclosure

[82] Failure to comply with these obligations may result in an *ex parte* order being set aside: *Tiger Calcium* para 47. This was the case in *Duke Energy Corp v Duke/Louis Dreyfus Canada Corp*, 1998 ABCA 196, where the Court held, at para 4 that:

It is trite law that a party applying to the court *ex parte* has a duty of disclosure; it is sometimes said to be a duty of the utmost good faith. He or she must disclose to the court all facts material to the motion in question. It is also settled law in Alberta (and elsewhere) that the court is not always compelled to set aside an order for breach of that duty, but that the court will sometimes set it aside on that ground alone. We will not attempt to define the precise circumstances in which the order will or will not be set aside for non-disclosure. But obviously a very relevant factor is how important was the evidence not disclosed to the court on the *ex parte* application.

[83] While non-disclosure is always a matter of concern, the Court will not set aside an otherwise valid and justified restraint order on the basis of minor inaccuracies or the omission of related but non-material facts: *Duke Energy* at para 4. Materiality in this context encompasses information that is “relevant and material to the discretion to be exercised by the court” in the sense of bearing some significance to the outcome: *Boal v. International Capital Management Inc.*, 2018 ONSC 2275, at para. 61.

[84] Much as with affidavits in support of *ex parte* judicial authorizations for searches and seizures under the *Criminal Code*, affidavits in support of *Mareva* injunctions and similar restrains should be concise, and need not be, “as lengthy as *À la recherche du temps perdu*”, so long as they establish the facts relevant for and against issuance: **R v Araujo**, 2000 SCC 65 at para 46. What matters is how important the wrong/omitted facts were. If the truth would have undermined issuance, non-disclosure will militate in favour of quashing the *ex parte* order. However, misconduct in the application will not warrant unjustly setting aside an order for which a very strong foundation remains once any errors and omission are corrected: **Nexen Energy ULC v ITP SA**, 2020 ABQB 83 at paras 148-150; **Adderley v 1400467 Alberta Ltd**, 2012 ABCA 216 at para 5.

[85] With these principles in my, I turn to the review of the *Mareva* injunction’s issuance.

Application of the principles

Strong prima facie case

[86] In this case, both the original materials before the issuing justice and the expanded record on review establish that the plaintiffs have a strong *prima facie* case against Ahmed in conversion. Ahmed took money that was not his. This establishes the tort: **Boma Manufacturing Ltd v Canadian Imperial Bank of Commerce**, 1996 SCC 149 at para 31.

[87] Access to the 6286 Ontario account did not give Ahmed legal *carte blanche* to use those funds: **Tran v Chung** 2016 ONCA 378. The disputed funds did not originate from him, were not governed by any contract in his favour, and were taken to leverage negotiations around a business relationship breakdown. The mere assertion of a debt does not entitle one to take another’s money. The law frowns on such extra-judicial self-help steps: see **Ice District Development Partnership v Hahn**, 2020 ABQB 786 at paras 19-40.

[88] The records Ahmed produced to buttress his claim do not resemble what such business records should look like, particularly for the scale of business he describes. I cannot find on a balance of probabilities that Ahmed was owed any specific amount, or indeed any amount at all.

[89] Ahmed wears ought not have taken the funds. His wrongful actions precipitated this disaster. I find that the Applicants continue to have a strong *prima facie* case on review.

Real risk of asset dissipation

[90] The purpose of strong equitable remedies, such as the *Mareva* injunction, is to preserve property so that a likely future judgment is not rendered hollow. Therefore, to overcome the strong presumption against prejudgment remedies, the applicant must establish a real risk that the respondents will dissipate the contested assets, or whatever assets they may have to satisfy a claim at the end of the legal process: **Otal v. Azure Foods Inc.**, 2017 BCSC 1655 at paras 14-16.

[91] While the circumstances of this case do not rise to the level of obvious fraud, I am satisfied that some risk of dissipation could be inferred from the large, unauthorized taking, coupled with the evidence of animus between the parties: **Toronto Dominion Bank v. Jaikaran**, 2004 ABQB 297 at para 12; **First Majestic Silver Corp. v. Santos** 2009 BCCA 71 at para 20.

[92] That said, the record does raise serious questions as to how real the risk was in this case, and indeed whether Amir advocated in favour of dissipation. On the other hand, if what his father deposed to was true, there is no logical reason that Ahmed would not have been crowing about this in his initial response. The state of affairs described by the father was not only helpful, but dispositive on the risk of dissipation, and in particular the need to proceed *ex parte*. Ahmed's failure to present that information to the Court initially creates a strong adverse inference against its veracity.

[93] The state of the evidence is such that I can make no real determination as to where the draft was and who knew about it. I find that the frailty of Amir and Ahmed's evidence essentially cancel one another out, leaving an effective net-zero of reliable information. Amir and his company bear the burden of proving the risk of dissipation, and have failed.

[94] This leaves Hunt's affidavit evidence that he did not know where the money was, believed it to remain with Ahmed, leading him to try and talk Ahmed into returning it.

[95] The only sensible unpacking one can make of this situation is that deeply complex intra-familial politics are at play in the Eltayeb household, to which only those inside are privy. This is consistent with Amir having made the statements attributed to him by his father, and more conversations having happened inside the family, but Hunt not knowing about it.

[96] I find, by the narrowest margin, that Hunt and his company have satisfied me that they did not know of the whereabouts of the disputed funds when they came before the issuing justice. This much is borne out by the recorded conversation tendered before the issuing justice. In it, there was no mention of the whereabouts of the disputed funds, only Ahmed saying he was not (in slang) trying to steal, and Hunt directly appealing to him to return it. On this basis, the Applicants (at least Hunt and 4769 Alberta) have narrowly satisfied the crucial element or risk of dissipation, tilting the balance of convenience towards issuance of the *Mareva*.

Full and frank disclosure

[97] The heart of the dispute lies in whether the Applicants were sufficiently honest and forthright with the issuing justice, as is often the case in *Mareva* disputes. In this case, Ahmed asserts that there were multiple, significant misrepresentations and omissions in the initial application, that should lead to a declaration quashing the original *Mareva* injunction *ab initio*.

a. Where the disputed funds came from

[98] In a September affidavit, Hunt clarified that the disputed funds had been transferred into the 6282 Ontario account from his brother's numbered Ontario corporation, and not directly from him. Ahmed claims this it was a significant misrepresentation from Hunt to not disclose that the disputed funds had actually entered the 6282 Ontario account from his brother's numbered company's account and not from his "own" source of funds.

[99] While it would certainly have been preferable for Hunt to have been more specific about the source of the funds, I am not sure this matters enough to undermine issuance. His amplified evidence is effectively that his brother loaned or invested the money into a specific series of car purchases for a share of any ultimate profit. This gave Hunt an equitable interest in the funds, and make his original evidence on its provenance purposely vague but not false. He is clearly accountable for those funds to his brother, and thus the money was "his" enough for him and his

company to be a party to the *Mareva* application. Nothing turned on this issue at the initial hearing, and the same holds true now.

b. Whereabouts of the disputed funds

[100] Based on the father's evidence in particular, Ahmed argues that the issuing justice was misled about the present risk of dissipation. I have already dealt with this issue above. Additionally, Ahmed's initial sworn response that the disputed funds, initially taken on April 11, were "deposited on April 11th, 2024 to an account in Trust" precludes him from credibly saying otherwise now.

[101] No misrepresentation on this point is proven.

c. Extent of pre-Mareva communications

[102] I find that the parents were involved in attempting to mediate the crisis over the withdrawal of the disputed funds, and that a much more extensive network of communications took place than was disclosed in the initial affidavits. It is somewhat unusual that parties in a dispute over allegedly stolen money have had repeated discussions about the return of those funds with the taker. Hearing that would likely have led to questions about why the 'victims' were talking with the 'thief', who purportedly had no colour of right to his taking of the money. In this case, those questions would likely have revealed the existence of the underlying relationships, grievances, and claims.

[103] For this reason, that information was material, and its omission was a breach of the obligation of full and frank disclosure.

d. The real nature of the relationship between the parties

[104] The Applicants' greatest difficulty in this case is that nothing in the original affidavits would have alerted the issuing justice to the existence and nature of any previous business or other relationship whatsoever between the parties, beyond Ahmed being Amir's brother. While Ahmed has certainly not proven the extent of the business dealings he claims to have had with the Applicants, I have no difficulty finding that it exceeded what was disclosed, which was nothing.

[105] On the shambles of an evidentiary record before the Court, I can only conclude that there was, at some point, a business relationship between the three men of significantly greater substance than Hunt and Amir will admit, and significantly less and more dated substance than Ahmed claims.

[106] Indeed, in their Response Affidavits, both Hunt and Amir felt the need to qualify their original description of Ahmed's non-involvement with their business affairs, saying this:

In my affidavit sworn on April 23, 2024 and filed on April 24, 2024, I indicated that the Respondent was not involved in the business operations of the partnership. However, my intent was to say that the Respondent was not involved in the Plaintiffs' Business Relationship as alleged.

[107] This is exactly the sort of after-the-fact elucidation that is discouraged in the *ex parte* realm. While I cannot determine the full nature and extent of the trio's relationship(s), I have no

difficulty finding as a fact that the Applicants deliberately and materially underinformed the issuing justice in order to avoid more challenging questions.

[108] While both Hunt and Amir continued to insist that Ahmed was a marginal player in their dealings, the record demonstrates that the three men had a somewhat intertwined relationship up until two months before the application. In terms of the fuller picture of the underlying relationships, I can make the following findings:

- Amir had lived in Ahmed's home for a period of years and was the newcomer to the car wholesaling business;
- the brothers seemed to interchange vehicles for one another, and had common access to at least one corporate bank account;
- significant monies had moved to and from Ahmed at times, in a manner that appears commercial in nature;
- Ahmed had bought cars for and with Hunt and Amir;
- Ahmed had access to 6268 Ontario's account for this purpose;
- the trio concluded more than 25 vehicle purchases in their first month of work together;
- Hunt and Ahmed corresponded as colleagues about Ahmed's problems with his bank over insufficient business records, and Hunt gave Ahmed advice on how to deal with that;
- those discussions repeatedly referred to Hunt and Ahmed as "we" when formulating a plan of action;
- Hunt had lent Ahmed a high-value vehicle for personal use, relatively recently;
- Ahmed had contributed the deposit on the Corvette, and either his girlfriend, or his contact AH1, had been instrumental in arranging the sale;
- Hunt and Amir were largely unbothered by a \$128,000 vehicle they had mostly paid for being in Ahmed's name for some period of time;
- Ahmed had maintained a very professional-appearing office in Hunt's business premises, without having to pay rent; and
- Ahmed had stored at least some of his other vehicles on Hunt's premises, also for free.

[109] I find that these facts were omitted because they would have granted credence to the presence of a commercial relationship between the parties, at odds with the image the original affidavits sought to portray of Ahmed as a stranger to 6286 Ontario's affairs.

[110] I find that the Applicants' representation to the issuing justice that Ahmed had signing authority over 6286 Ontario's account "for administrative purposes" was a material misrepresentation, done to avoid complicating questions about Ahmed's interest in the business and potential entitlement to funds.

e. What Ahmed would have said if the Application were on notice

[111] As is customary, the Applicants included sections in their original affidavits addressing what the respondent would likely say in resistance to the *Mareva* if they were before the Court on notice. Those sections are identical boilerplate in both Amir and Hunt's affidavits, and are materially misleading.

[112] Both Hunt and Amir knew that Ahmed would have told the Court something along the lines of what he has said in the review process, namely that he had been in business with the Applicants, and they owed him a lot of money. The latter part of that assertion may well be untrue, and is at this point unproven, but that is not for decision before me.

[113] What matters is that the issuing justice should have been alerted that there was a live claim of reciprocal debt and entitlement being advanced by Ahmed. He ought to have been told as much, if only to enable him to ask the right follow-on questions about the history, nature, and alleged endpoint of that relationship.

[114] I appreciate that the transcript of the call between Hunt and Ahmed attached to the original affidavits contained a reference by Ahmed to getting what was due to him. However, I am satisfied that the Applicants purposely avoided shining light on this reality, through intentional omissions under this head of the affidavits, and also in their overall omission of any reference to Ahmed having been, or at least believing he had been, in business with them.

[115] I have carefully considered the possibility that Ahmed is, in fact, so deluded or mired in deception that the Applicants could not have reasonably foreseen that he would have concocted a story of mutual involvement in the business when really there was none. However, I cannot conclude that is the case. This is especially so because it was admitted that Ahmed and the Applicants had purchased quite a few vehicles in common cause. On a balance of probabilities, I find that there was a conscious decision to downplay any suggestion to the issuing justice that Ahmed had had a business relationship of any sort with them. This was a material non-disclosure.

Other misrepresentations and inequitable conduct

[116] While numerous other allegations of misrepresentation were advanced by Ms. Tynes, most of these require positive findings accepting Ahmed's evidence which I am not prepared to make, or involve disputes over the legal significance of the facts. None are material to the question of original issuance.

[117] Ahmed has, however, satisfied me, albeit narrowly, that the Applicants behaved in a high-handed manner towards his property when armed with the *Mareva*, in particular vis-à-vis his office space and records, and the van referred to as the "food truck". This is inequitable conduct, that has the scent of 'pay back' for the trouble Ahmed caused, and the Court may take account of this in considering discretionary remedies.

Remedy

[118] The ultimate question in this case is whether the extent of the misrepresentations and non-disclosure requires or justifies declaring that the *Mareva* injunction ought not to have issued in the first place.

[119] On the one hand, non-disclosure of all material facts allows the Court to set aside an *ex parte* order without regard to the merits of the application: ***Gulf Islands Navigation Ltd. v. Seafarers' International Union (1959)***, 1959 CanLII 291 (BC SC), aff'd 1959 CanLII 272 (BC CA). Conversely, “[t]here is a discretion available to maintain [an] *ex parte* injunction notwithstanding non-disclosure”: ***Thow (Re)***, 2009 BCSC 1190 at para 18.

[120] Alternatively, the judge has a discretion to grant a new injunction on a *de novo* hearing following a material non-disclosure which justifies or requires the discharge of the *ex parte* injunction, though courts should be cautious in sanctioning the misuses of *ex parte* proceedings in this way: ***MacLachlan v Nadeau***, 2017 BCCA 326 at para 32; Sharpe, *Injunctions and Specific Performance*, 4th ed. (2012) Canada Law Book at para. 2.45, cited in ***Univalor Trust S: A. v Link Resource Partners et al***, 2012 ONSC 6034 at para 4.

[121] This middle ground was perhaps best expressed by the English Court of Appeal in ***Brinks-MAT Ltd. v. Elcombe***, [1988] 3 All E.R. 188 (C.A.) at 192, where it was held that:

... when the whole of the facts, including that of the original non-disclosure, are before it, [the court] may well grant such a second injunction if the original non-disclosure was innocent and if an injunction could properly be granted even had the facts been disclosed.’

[122] This approach has been widely endorsed across Canada: ***Pulse Microsystems Ltd. v Safesoft Systems Inc.***, 1996 CanLII 7295 (MB CA); ***Marciano (Séquestre de)***, 2012 QCCA 1881 at para 56; ***TMR Energy Ltd. v State Property Fund of Ukraine***, (F.C.A.), 2005 FCA 28 (CanLII), [2005] 3 FCR 111.

[123] In this case, there continues to be a strong *prima facie* case upon the full *de novo* record. The disputed funds did not, and never have, belonged to Ahmed. His claim to them, even by way of an alleged equitable interest, is weak. They should not be returned to him in any event. The Applicants have also, by the narrowest margin, maintained their case on risk of dissipation. That said, I have found significant material non-disclosure, which I believe to have been advertent.

Conclusion

[124] I find there was material non-disclosure to an extent that undermined the integrity of the *ex parte* proceeding, notwithstanding the continued existence of grounds for the order’s issuance. The *Mareva* injunction of April 24, 2024, is quashed *ab initio*.

[125] That leaves the questions of what should happen with the disputed funds now held in trust. They cannot be released to Ahmed, as he has no proprietary interest in them. Equally, the Applicants may have to answer further in costs and damages. Therefore, the funds will remain in trust pending further Order of the Court, on the existing terms of Ashcroft J.’s Order of May 15th.

Concluding comments

[126] This entire fiasco should never have occurred. Ahmed should not have taken the money. The Applicants should not have come before the Court on an *ex parte* basis without a fuller picture of the underlying relationships.

[127] The parties should cut their losses and come to a pragmatic agreement. Further litigation on the still-multiplying heads of this dispute will rapidly exceed the value of the funds

remaining. None of the parties hold trump, and none of them should be enthusiastic about further in-court cross-examination or credibility findings. This caution extends to Ahmed, whose assertions of rights in this case appear to overdrive the headlights of his evidence.

[128] If the matter is not resolved, the parties may speak to costs. The defendant, as the somewhat more successful party may submit up to 3 pages within 30 days. The Plaintiffs have 30 days thereafter to provide a reply, again not exceeding 3 pages.

Heard September 5, October 9, December 17, 2024, February 3, February 4th and March 6, 2025.

Date at Calgary, this 24th day of March, 2025.

N.E. Devlin, JCKBA

Appearances:

Charles Osuji and Imtiaz Hafiz
for the Applicants Brian Hunt, Amir Eltayeb,
1964769 Alberta Ltd., and 1000476282 Ontario Inc.

Jacques Tynes
for Respondent Ahmed Eltayeb