



are dated May 7, 2024, May 30, 2024, August 15, 2024, October 28, 2024, November 26, 2024, December 27, 2024, June 24, 2025 and September 25, 2025.

- [3] On May 30, 2024, I issued a consent Order which permitted, *inter alia*, the Defendant to negotiate a bank loan for \$380,000, secured against his principal residence. If the loan was obtained, the Defendant was required to use \$90,000 of the proceeds from that loan to pay his legal fees, and to pay costs of \$60,000 ordered in favour of the Plaintiffs in the *Mareva* injunction.
- [4] The Defendant has had some difficulty finding a lender to agree to that loan while the *Mareva* injunction remained in place. One of the issues on this motion is to find a way to temporarily lift the *Mareva* Injunction to permit a lender to have first priority, while still protecting the Plaintiffs' interests identified in the April 22, 2024 *Mareva* injunction. The parties are pretty close with respect to that issue, and there are only minor disagreements for me to resolve.
- [5] The Defendant has also brought this motion for a further variation of the *Mareva* injunction to access additional funds for ordinary living expenses, debt payments and legal representation. Although the parties agree in principle that this should be permitted, this time the motion is not on consent. The devil is in the details.

### **Mortgage**

- [6] The Defendant's Notice of Motion seeks an order granting leave to the Defendant, Yasser El-Riffaey, and his wife, Ursula El-Riffaey (a non-party) to enter into a loan agreement with Home Equity Bank (HEB) for the principal amount of \$427,890.00 (the "Loan") secured by way of a first charge on property municipally known as 50 West Borough Street, Thornhill, ON (the "Matrimonial Property").
- [7] The funds from that mortgage would be distributed in accordance with my May 30, 2024 Order, except that the amount payable to his former counsel, Blaney McMurtry LLP, would be reduced from \$90,000.00 to \$76,000.00, on consent of the former law firm.
- [8] The Plaintiffs are prepared to agree to the Loan on the following terms:
  - a. advances from the principal of the Loan are only made once Mr. El-Riffaey's life insurance policies have been depleted;
  - b. HEB and/or Mr. El-Riffaey will pay all costs associated with the removal and re-registration of the *Mareva* subsequent to HEB's charge, including the Plaintiffs' reasonable legal costs associated therewith;
  - c. the involved parties' solicitors will enter into a document registration agreement (or equivalent) to ensure that the removal of the *Mareva*, registration of HEB's charge, and re-registration of the *Mareva* happen simultaneously; and

- d. all documents and correspondence related to the Loan will be produced to the Plaintiffs.

[9] The Defendant accepts a) and d).

[10] The Defendant also accepts b), subject to the deletion of the words “including the Plaintiffs’ reasonable legal costs associated therewith”. I agree with the Defendant on this point. At this stage of the proceedings the Plaintiffs remain responsible for their own legal costs associated with all aspects of this litigation, subject to any costs orders following interlocutory or final proceedings. I will not, at this stage, make any order that requires the Defendant to pay “the reasonable legal costs” of the Plaintiffs going forward.

[11] The Defendant also accepts c), but notes that the document registration agreement (or equivalent) must also be subject to the lender’s agreement. The lender is not a party to this motion. The Plaintiffs indicate that the term “the involved parties” was intended to include the lender. It is not anticipated that this requirement will create any obstacle, since a document registration agreement is fairly common when these sorts of issues arise. This will be one of the conditions of the order, and the parties can return to me to speak to this should this term present an obstacle to the loan agreement.

#### **Additional Funds**

[12] The Defendant also seeks leave to access the cash surrender value of two life insurance policies for the payment of Mr. El-Riffaey’s expenses, debts and legal fees in the ordinary course. These life insurance policies have a cash surrender value of \$98,082 and \$118,458 (total: \$216,540).

[13] The Plaintiffs consent to this term, and take the position that the life insurance policies must be depleted before advances are made from the mortgage funds. As indicated above at para. 9, the Defendant consents to such a term.

#### **Distribution of Funds**

[14] The Defendant seeks an order approving the additional distribution of funds as follows:

- a. a continuing allowance of \$6,487.00 per month to Mr. El-Riffaey to pay for reasonable ordinary monthly living expenses.
- b. \$37,677.00 to pay for outstanding legal fees of counsel for the Defendants, Trung Nguyen, while engaged as a lawyer at the law firm of Spetter Zeitz Klaiman PC (“SZK”) on a limited scope retainer.
- c. \$15,000.00 + HST, to permit Mr. El-Riffaey to retain Mark Kamel as criminal defence counsel for the purpose of representing Mr. El-Riffaey in pre-trial criminal proceedings.

- d. \$100,000.00 + HST (\$113,000) to permit the Defendants to engage Trung Nguyen, now at the law firm of Simpson Wigle Law LLPP (“SW”) on a full scope retainer, to go on the record as lawyers of record for the Defendants and to pay outstanding fees, disbursements and HST up to the date of the hearing of the motion.
- e. payment of interest on credit facilities drawn upon by Mr. El-Riffaey in the amount of \$3,700.00 per month;
- f. payment of tax arrears to the Canada Revenue Agency (“CRA”) in the amount of \$30,654.39.
- g. payment of \$12,204.00 inclusive of HST for accounting fees incurred by the Defendants.
- h. payment of \$3,770.00 and \$3,441.00 for annual premiums for car insurance.
- i. payment of \$4,564.79 for property tax.

[15] The Plaintiffs consent to some of these expenses but argue that others are unreasonable or unsubstantiated and should be reduced. Some of the claimed expenses are Mr. El-Riffaey’s wife’s personal expenses, and either these should not be included, or, if they are included, his wife’s assets should be included in calculating the available funds.

### **Legal Principles**

[16] Before considering each of these claims, it will be helpful to set out the legal principles that apply in these circumstances.

[17] The parties agree that the test for variation of a *Mareva* injunction to pay for legal and living expenses is set out in the decision in *Canadian Imperial Bank of Commerce v. Credit Valley Institute of Business and Technology*, 2003 CanLII 12916 (ON SC), at para. 26, (which was endorsed by the Ontario Court of Appeal in *Waxman v. Waxman*, 2007 ONCA 326, at para. 37).

[18] To meet this test, Mr. El-Riffaey must satisfy the Court of the following criteria:

- a. Mr. El-Riffaey must establish on the evidence that he has no other assets available to pay his expenses other than those frozen by the injunction;
- b. Mr. El-Riffaey must establish on the evidence that there are assets caught by the injunction that are from a source other than the Plaintiffs, i.e. assets that are subject to a *Mareva* injunction, but not a proprietary claim;
- c. Mr. El-Riffaey must exhaust all non-proprietary assets frozen by the *Mareva* to pay his reasonable living expenses, debts, and legal costs, prior to looking to assets subject to a proprietary claim; and

- d. If Mr. El-Riffaey has met the previous three tests and still requires funds for legitimate living expenses and to fund his defence, the Court must balance the competing interests of the Plaintiffs in not permitting the Defendant to use the Plaintiffs' money for his own purposes and of the Defendant in ensuring that he has a proper opportunity to present his defence. In weighing the interests of the parties, it is relevant for the court to consider the strength of the Plaintiffs' case, as well as the extent to which the Defendant has put forward an arguable case to rebut the Plaintiffs' claim.

- [19] “In the normal course, a defendant seeking relief from a *Mareva* injunction is entitled to maintain the same standard of living the family maintained prior to the granting of the injunctions”: *Credit Valley*, at para. 40.
- [20] That said, the Court will review the proposed monthly budget to determine whether the amount claimed is excessive: *Credit Valley*, at para. 40.
- [21] There is no dispute that Mr. El-Riffaey has satisfied the first two branches of the test. This presumptively entitles Mr. El-Riffaey to use his assets to fund his reasonable living expenses, debts and legal costs.
- [22] Although Mr. El-Riffaey has established that he does not have any assets other than those subject to the *Mareva*, Mrs. El-Riffaey does have those assets - an RRSP with a balance of approximately \$104,000 - which the Plaintiffs argue is relevant to the relief sought with respect to her expenses. If Mr. El-Riffaey seeks a variation to pay his wife's personal expenses, then his wife's assets should be included in the analysis. Previous decisions have confirmed that a defendant who is subject to a *Mareva* injunction must be forthcoming about their ability to draw on the assets of friends and family: *Wayne Safety Inc. v Gendelman et al*, 2024 ONSC 1642, at para. 19.
- [23] There is some dispute as to whether the funds derived from the mortgage loan qualify as assets subject to a proprietary claim by the Plaintiffs. The Defendant alleges that the matrimonial home was mortgage free since 2011, before he became involved with the Plaintiffs, and that the Plaintiffs' monies have never been used to pay for the property or any expenses related to the property.
- [24] At the end of the day, given the relief requested by the Defendant, and the Defendant's agreement to exhaust the life insurance funds before accessing the mortgage funds, I do not have to decide whether any of the assets caught by the injunction are proprietary.
- [25] Another important factor in my analysis is the fact that the combined funds from the life insurance proceeds and the mortgage (approximately \$643,000) will not be enough to pay for the nearly \$700,000 alleged to have been misappropriated by the Defendant, particularly after funds for all debts, expenses and legal fees have been distributed. Thus, the Plaintiffs have responded to the Defendant's motion carefully, recognizing that every dollar distributed today will compromise the Plaintiffs' ability to recover the allegedly misappropriated funds.

## Analysis

- [26] The Plaintiffs do not oppose the following distributions:
- a. Distribution of \$76,000 to Blaney McMurtry LLP
  - b. Distribution of \$65,000 to Ross Nasserli LLP
  - c. Distribution of \$37,677.60 to Spetter Zeitz Klaiman PC
  - d. Distribution of \$30,654.39 to Canada Revenue Agency
- [27] The Plaintiffs either oppose or argue for a reduced distribution with respect to the remaining variations. I will deal with each in turn.
- [28] **Distribution of \$100,000 plus HST (\$113,000) to permit the Defendants to engage Trung Nguyen, now at the law firm of Simpson Wigle Law LLPP on a full scope retainer, to go on the record as lawyers of record for the defendants and to pay outstanding fees, disbursements and HST up to the date of the hearing of the motion.**
- [29] The Plaintiffs take the position that it is not reasonable to expect that more than \$100,000 will be needed to get this matter to discoveries, on top of the \$170,000 in fees incurred by the Defendant's previous legal counsel, and the almost \$38,000 in fees that were incurred by SZK PC. The Plaintiffs take the position that this amount for legal fees is disproportionate to the approximately \$700,000 at issue in this case.
- [30] The Plaintiffs are not opposed to a distribution of \$73,450 to Simpson Wigle Law LLP on the condition that Mr. El-Riffaey not be entitled to make a further request for legal fees for his counsel in this matter prior to the completion of discoveries.
- [31] In deciding this issue, I am guided by the decision of Osborne J. In *Wayne Safety*, at para. 36, where he stated:
- I accept that while legal fees for which the release of *Mareva* funds is sought must be reasonable, it is important not to undermine the solicitor client relationship of the defendant and unfairly put a defendant in the position of having their lawyers constantly looking over their shoulders to worry about how much is being spent: *Revenue and Customs Commissioners v. Begum*, [2010] EWHC 2186 at p. 9.
- [32] Given that the parties are only \$25,000 apart on this issue, I will err on the side of caution and authorize the full amount sought by Simpson Wigle Law on the understanding that there will be no further request for legal fees prior to the completion of discoveries.
- [33] **Distribution of \$12,599.50 to Canham Rogers for accounting fees incurred by the Defendants.**

- [34] The Plaintiffs dispute that Mr. El-Riffaey is entitled to funds to pay Canham Rogers' accounting fees. The Plaintiffs take no issue with the payment of professional fees, but do not view it as reasonable that Mr. and Mrs. El-Riffaey's personal tax returns costs over \$6,000 per year to finalize. That is especially true in years where Mr. El-Riffaey did not draw a salary and, later, was subject to the *Mareva* and without an income.
- [35] While I understand the Plaintiffs' scepticism in relation to the quantum of these fees, there is no dispute that these fees were actually incurred. In my view, the Defendant should be permitted to pay these fees.
- [36] **Distribution of \$3,770.00 and \$3,441.00 for annual premiums for car insurance.**
- [37] **Payment of \$4,564.79 for property tax.**
- [38] The Plaintiffs dispute that Mr. El-Riffaey is entitled to reimbursement for car insurance and property tax payments. The Plaintiffs take the position that these are not expenses that are outstanding; rather, they are expenses that have already been paid.
- [39] As I understand the Defendant's motion, these are annual expenses that need to be paid each year. I agree that the Defendant cannot be reimbursed for payments already made from funds received from prior variation orders, but the Defendant will have to pay these expenses every year, and (subject to the exception below) these are reasonable expenses as they arise each year.
- [40] The one exception is the car insurance premiums for Mrs. El-Riffaey's car. For the reasons set out below with respect to the car lease and maintenance, expenses related to Mrs. El-Riffaey's car must be paid for by Mrs. El-Riffaey out of her own assets.
- [41] **Monthly distributions of \$6,487 per month for living expenses.**
- [42] The Plaintiffs take the position that Mr. El-Riffaey's reasonable and legitimate monthly living expenses should be covered by his and his wife's combined and Canada Pension Plan and Old Age Security (CPP/OAS) payments, which he estimated at \$3,000 per month, and that he does not require more than this amount.
- [43] Mr. El-Riffaey did not include his CPP/OAS payments in his calculations for his monthly living expenses.
- [44] Mr. El-Riffaey seeks \$874.20 per month for his own BMW and \$730.95 for his wife's Mini Cooper on the basis that these lease payments are consistent with the lease payments made before the *Mareva* injunction was granted.
- [45] The Plaintiffs argue that neither Mr. nor Mrs. El-Riffaey is employed and that there is no compelling reason why the couple needs two "luxury" vehicles. If Mrs. El-Riffaey wishes to drive her own vehicle, she should be required to use the funds in her RRSP to do so. The Plaintiffs further argue that Mr. El-Riffaey does not need to drive a BMW, and that he should be entitled to no more than \$500 per month for one vehicle lease.

- [46] Mr. El-Riffaey seeks \$692 for gas and maintenance for both vehicles, including \$346 for Mrs. El-Riffaey's Mini Cooper. The Plaintiffs argue that Mrs. El-Riffaey has the funds in her RRSP to maintain her own vehicle and that Mr. El-Riffaey should be entitled to no more than \$346 per month for gasoline and maintenance for a single vehicle.
- [47] Mr. El-Riffaey seeks a combined \$600/month for Bell (\$200) and Rogers (\$400) expenses, including cable, home phone, cell phones, two separate internet services (one by Bell and one by Rogers), and a fax line. The Plaintiffs argue that there is no legitimate reason to maintain two internet services and a fax line, or pay for his wife's cell phone, and that this amount should be reduced to \$400 per month.
- [48] Mr. El-Riffaey seeks \$1,100 per month for groceries, plus \$380 per month for restaurants, plus an additional \$380 per month for miscellaneous expenses for both him and his wife. He seeks \$777 per month for household utilities, \$911.19 per month for insurance, and \$40 for medications, to benefit both him and his wife. The Plaintiffs take the position that Mr. El-Riffaey should be entitled to no more than half of these amounts, or \$1,794.10.
- [49] I agree with the Plaintiffs that Mr. El-Riffaey's CPP/OAS must be included in his monthly income and deducted from any payments. I was not able to find the precise amount of CPP and OAS benefits to which Mr. El-Riffaey and his wife were entitled in any of his affidavit material or anywhere else in the record, but his counsel advised that the combined total for these payments was \$2,887<sup>1</sup> per month. For reasons that I will explain momentarily, I will deduct ½ of these monthly benefits (\$1,443) from the proposed monthly distribution. This is an estimate, because I do not know the precise breakdown of these benefits between Mr. El-Riffaey and his wife, and my intention is to deduct only Mr. El-Riffaey's share of these benefits.
- [50] I agree with the Plaintiffs, that Mr. El-Riffaey's wife should be responsible for her own car and gasoline/maintenance. Rather than adding her RRSP and CPP/OAS benefits to Mr. El-Riffaey's assets, it makes more sense for Mrs. El-Riffaey to be responsible for her own discretionary living expenses from her own assets. If she is of the opinion that she requires her own car, she has her own assets to pay for it without compromising those assets subject to a *Mareva* injunction.
- [51] This will reduce the monthly living expenses by \$1,077 (\$730.95 + \$346).
- [52] Given that Mr. El-Riffaey had leased a BMW prior to the *Mareva* injunction, I will not interfere with this monthly expense.
- [53] I agree with the Plaintiffs that the combined \$600 per month packages for Bell and Rogers is unreasonable, and this amount should be reduced to \$400 per month.

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<sup>1</sup> Canada Revenue Agency is currently making deductions from the CPP/OAS payments to pay for taxes owed. But the parties agree that these taxes (\$30,654.39) should be paid from the life insurance assets released under this variation order. Once the taxes owed are paid, deductions will no longer be made by CRA.

- [54] While I might quibble with some of the other expenses, they are not clearly excessive and appear to “maintain the same standard of living the family maintained prior to the granting of the injunctions”. It is not possible to parse most of these expenses as between Mr. El-Riffaey and his wife, and they appear to be legitimate family expenses.
- [55] In conclusion, I will reduce the monthly distributions for living expenses to \$3,767 (\$6,487 - \$1,443 - \$1,077 - \$200).
- [56] **Monthly distributions of \$3,700 per month to service credit facilities.**
- [57] The Plaintiffs take the position that only \$3,000 of this amount has been substantiated. There is approximately \$700 in alleged debt payments that are not substantiated, as follows:
- a. a TD line of credit for which he claims the minimum monthly payment is \$350, despite the statement itself showing a minimum monthly payment of \$330.18;
  - b. Mrs. El-Riffaey’s TD Aeroplan Visa Platinum card, for which he is seeking \$56.36 per month;
  - c. a BMO personal line of credit (ending in 448) for which no supporting documentation is provided, for which he is seeking \$536.84 per month;
  - d. a BMO Mastercard (ending in 3680) for which no supporting documentation has been provided, for which he is seeking \$76 per month; and
  - e. a RBC Visa card (ending in 7881) for which no supporting documentation has been provided, for which he is seeking \$19 per month.
- [58] Each of the above items is either unsubstantiated or belongs to Mrs. El-Riffaey. For the reasons set out above, I am not including Mrs. El-Riffaey’s assets in this analysis, but that means that Mrs. El-Riffaey is responsible for her own debt from her own assets and cannot access the funds subject to the *Mareva* injunction for this purpose. Once these specific items are backed out, the Plaintiffs do not oppose Mr. El-Riffaey’s entitlement to \$3,000 per month to cover the minimum payments on his own personal credit cards and lines of credit, and I accept that position.

### Summary of Conclusions

- [59] The Defendant, Yasser El-Riffaey may access the cash surrender value of his two life insurance policies for the payment of Mr. El-Riffaey’s expenses, debts and legal fees as set out below.
- [60] Yasser El-Riffaey, and his wife, Ursula El-Riffaey (a non-party) may enter into a loan agreement with Home Equity Bank (HEB) for the principal amount of \$427,890.00 (the “Loan”) secured by way of a first charge on property municipally known as 50 West Borough Street, Thornhill, ON subject to the following conditions:

- a. Advances from the principal of the Loan are only made once Mr. El-Riffaey's life insurance policies have been depleted;
- b. HEB and/or Mr. El-Riffaey will pay all costs associated with the removal and re-registration of the *Mareva* subsequent to HEB's charge;
- c. the involved parties' solicitors will enter into a document registration agreement (or equivalent) to ensure that the removal of the *Mareva*, registration of HEB's charge, and re-registration of the *Mareva* happen simultaneously; and
- d. all documents and correspondence related to the Loan will be produced to the Plaintiffs.

[61] The funds from this mortgage shall be distributed in accordance with the terms of the May 30, 2024 Order, except that the amount payable to his former counsel, Blaney McMurtry LLP, are reduced from \$90,000.00 to \$76,000.00, on consent of the former law firm.

[62] An Order is granted approving distributions as follows:

- (i) a continuing allowance of \$3,767 per month to Mr. El-Riffaey to pay for reasonable ordinary monthly living expenses;
- (ii) \$37,677.00 to pay for outstanding legal fees of counsel for the Defendants, Trung Nguyen, while engaged as a lawyer at the law firm of Spetter Zeitz Klaiman PC ("SZK") on a limited scope retainer;
- (iii) \$15,000.00 + HST, to permit Mr. El-Riffaey to retain Mark Kamel as criminal defence counsel for the purpose of representing Mr. El-Riffaey in pre-trial criminal proceedings;
- (iv) \$100,000.00 + HST to permit the Defendants to engage Trung Nguyen, now at the law firm of Simpson Wigle Law LLPP ("SW") on a full scope retainer, to go on the record as lawyers of record for the defendants and to pay outstanding fees, disbursements and HST up to the date of the hearing of the motion, there will be no further request for legal fees prior to the completion of discoveries;
- (v) payment of interest on credit facilities drawn upon by Mr. El-Riffaey in the amount of \$3,000.00 per month;
- (vi) payment of tax arrears to the Canada Revenue Agency ("CRA") in the amount of \$30,654.39;
- (vii) payment of \$12,204.00 inclusive of HST to Canham Rogers for accounting fees incurred by the Defendants;
- (viii) payment of \$3,770.00 for annual premiums for car insurance;

(ix) payment of \$4,564.79 for property tax.

**Costs**

- [63] The parties were able to resolve most issues before the motion was heard and have had divided success on the issues that remained in dispute. Unless there were settlement offers, my inclination, subject to hearing submissions, would be to order no costs for this motion.
- [64] That said, if the parties are not able to agree on costs, the Defendant may serve and file costs submissions of up to 3 pages, plus costs outline and any offers to settle, within 25 days of the release of these Reasons, and the Plaintiffs may serve and file responding submissions on the same terms within a further 25 days. Cost submissions should be uploaded to Case Center and emailed to my Judicial Assistant at [Robyn.Pope@Ontario.ca](mailto:Robyn.Pope@Ontario.ca).

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Justice R.E. Charney

**Released:** November 27, 2025

**CITATION:** Kiosk Design Inc. v. El-Riffaey, 2025 ONSC 6651

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

KIOSK DESIGN INC., SQUADRAPIU INC. O/A  
POLIFORM TORONTO, and ROBERT SIDI

Plaintiffs

– and –

AHMED YASSER EL-RIFFAEY and TRUSTEX  
CURRENCY TRADING CORPORATION

Defendants

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**REASONS FOR DECISION**

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Justice R.E. Charney

**Released:** November 27, 2025