

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ZHIYUAN XIAO, YUPEI WANG, and 1000715652 ONTARIO INC., Plaintiffs

AND:

QIANG HE, Defendant

BEFORE: The Hon. Mr. Justice R.E. Charney

COUNSEL: Ran He, Counsel for the Plaintiffs

Rebecca Huang, Counsel for the Defendant

HEARD: In Writing

COSTS ENDORSEMENT

- [1] On July 29, 2025, I granted the Plaintiffs’ motion for an order extending the *Mareva* injunction issued on an *ex parte* basis by Lack J. on April 23, 2025. I also dismissed the Defendant’s cross-motion to discharge the *Mareva* injunction: *Xiao v. He*, 2025 ONSC 4418.
- [2] The parties were not able to agree on costs and have now made costs submissions.
- [3] The Plaintiffs request costs on a substantial indemnity basis (80%) in the amount of \$60,374.66. In the alternative, the Plaintiffs request costs on a partial indemnity basis (60%) in the amount of \$46,459.84.
- [4] The Plaintiffs submit that they are entitled to costs on a substantial indemnity basis “because there has been a finding of fraud against the Defendant”.
- [5] The Plaintiffs also assert that the amount of costs claimed is reasonable. The Plaintiffs note that the Defendant’s cost outline in the amount of \$102,096.71 (partial indemnity) and \$146,656.57 (substantial indemnity), are both substantially higher (indeed, more than double) than the Plaintiffs’. It is reasonable to conclude that the amount of costs requested by the Plaintiffs was reasonably expected by the Defendant, who expended significantly more on the motion.
- [6] Finally, the Plaintiffs claim \$1.8 million in this action, and the motion concerned the important issue of asset preservation.

- [7] The Defendant’s lawyer has approximately \$500,000 currently held in her trust account in accordance with the terms of the *Mareva* injunction. The Plaintiffs submit that the costs ordered should be paid from those sums.
- [8] The Defendant argues that costs should be awarded in the cause, and cites a series of authorities that have followed this practice in motions for interlocutory injunctions.
- [9] The law relating to costs for interlocutory injunctions was recently reviewed by Callaghan J. in *Hao Chen et al. v. Masih Moazen-Safaei*, 2025 ONSC 4576, at paras. 6 – 7:

In the circumstance, I am of the view that it is premature to set any cost award. Justice Robert Sharpe writing extra-judicially in *Injunctions and Specific Performance*, 2nd ed. (looseleaf), at pp. 2-91, made the following observation:

...On the other hand, it would be unusual to award costs of an interlocutory injunction motion of the successful plaintiff prior to trial. As there has been no final determination of the rights of the parties, but rather an order to protect the plaintiff’s position pending trial, the preferable course is to reserve the question of costs to the trial judge. (emphasis added).

The above observation has been adopted by a number of courts: *Quizno's Canada Restaurant Corp. v. 1450987 Ontario Corp.*, 2009 CanLII 31599 (ON SC), at para. 9; *The Matter Corporation v. Southside Construction Management Limited*, 2025 ONSC 590 (CanLII), at para. 16; *Earhart v. Bath Institution (Warden)*, 2017 ONSC 6489 (CanLII), at para. 4; *Capital SCL v. Spotless Consultancy*, 2022 ONSC 4192 (CanLII), at para. 4, *Wang v. Kesarwani*, 2017 ONSC 6821 (CanLII), at para. 129. The observations of Justice Sharpe apply equally in this case. Indeed, in this case, the plaintiffs provided an undertaking in damages in the event that the interlocutory orders were not warranted, reflecting that any award at this stage may be found to be unwarranted based on a full trial record. A costs award at this stage when the matter is going to require a determination on the merits is not only premature but may ultimately be unwound.

- [10] See also *Mondee, Inc. et al. v. Voyzant Inc et al*, 2025 ONSC 3133, at paras. 9 – 11, where Papageorgiou J. reviewed a number of cases and also ordered costs in the cause:

However, there is compelling caselaw that holds that when considering costs for a successful injunction, “in the usual case where a trial is a virtual certainty, the award of costs should be reserved to the trial judge”: *Intercontinental Forest Products SA v. Rugo*, 2004 CanLII 33353 (ON SCDC), at para 5.

In *Quizno’s Canada Restaurant Corp. v. 1450987 Ontario Corp.*, 2009 CanLII 31599(Ont SC), at para 10, Perell J. observed that an order of costs

in the cause in interlocutory injunctions “allows the court to have the benefit of hindsight and to avoid the possible injustice of awarding costs to a plaintiff for having succeeded in obtaining an order to protect his or her position pending trial when the outcome of the trial reveals that the plaintiff’s position was not worthy of having been protected.”

In *TDL Group Ltd. v. 1060284 Ontario Ltd.*, 2000 CanLII 22736(Ont SC), at para 41, Nordheimer J. held that costs in the cause are appropriate since “a considerable portion of the costs associated with the injunction motion will benefit the parties in terms of the overall proceeding.”

- [11] In *Capital SCL v. Spotless Consultancy*, 2022 ONSC 4192, Morgan J. granted and then extended a world-wide *Mareva* injunction against the defendants based on allegations that the defendant participated in a \$2.8 million fraud of the plaintiff. Justice Morgan found that the *Mareva* had not put an end to the proceedings or the issues in the action with finality. Morgan J. observed that the defendant’s assets were now subject to the *Mareva* injunction until trial, which protected the plaintiffs if they were ultimately successful at trial. In those circumstances, Morgan J. ordered that the costs of the motion be in the cause.
- [12] This approach was also followed by Centa J. in *Parkland Corporation v. 2615669 Ontario Inc.*, 2024 ONSC 3724, at paras. 46 – 49. He lists a number of other authorities at para. 49.
- [13] Although I will follow this same approach, I am in a better position to fix the costs of this motion than the trial judge. Accordingly, I will fix the quantum of costs now so that the trial judge does not have to recreate what happened at this motion and the parties do not have to reargue the issue of costs. These costs will be awarded to whichever party is successful at trial.
- [14] In my view, whichever party is successful at trial, this is not a motion in which substantial indemnity costs should be awarded. Although I found that the Plaintiffs presented a strong *prima facie* case, I did not make a “finding” of fraud. That finding will have to wait until trial.
- [15] I accept the Plaintiffs’ claim for partial indemnity costs - \$ 46,459.84 – as the appropriate costs award in this case. The Plaintiffs had to gather the relevant information to prove that they had a strong *prima facie* case. Much of the Defendant’s evidence related to allegations that the Plaintiffs had failed to make full and fair disclosure at the *ex parte* motion, and I rejected this argument.
- [16] Accordingly, costs are fixed on a partial indemnity basis in the amount of \$46,459.84, payable to the successful party in the cause.

Justice R.E. Charney

Date: September 22, 2025