

CITATION: Turlo et al. v. 2455655 Ontario Corporation, 2025 ONSC 5634
COURT FILE NO.: CV-25-00738605-0000
DATE: 20251006

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: ROMAN TURLO and 2384419 ONTARIO INC.

Plaintiffs

AND:

2455655 ONTARIO CORPORATION

Defendant

AND RE:

COURT FILE NO.: CV-25-00741228-0000

SOHAIL SHAH, 2413913 ONTARIO LTD., 2421955 ONTARIO
INC. and 2395305 ONTARIO CORPORATION

Plaintiffs

AND:

2455655 ONTARIO CORP.

Defendant

BEFORE: Koehnen J.

COUNSEL: *Peter Smiley, Jesse Watts, and Justin Perry-Daiter* for the Plaintiffs

Eliezer Karp and Taek Soo Shin for the Defendant

HEARD: May 21, 2025 with further written submissions on July 11 and July 25,
2025.

ENDORSEMENT

OVERVIEW

- [1] This is a motion for a Mareva injunction in two proceedings against the Defendant 2455655 Ontario Corporation (“245 Co.”), or in the alternative, a motion to require the solicitor for 245 Co. to pay into Court to the credit of this proceeding, approximately \$6.1 million which he is holding in his trust account, pending the determination of the proceeding or further Order of the Court. At the close of argument, I issued an order that the funds remain in the Defendant’s lawyer’s trust account pending release of these reasons.
- [2] For the reasons set out below, I grant the Mareva injunction and order that the \$6.1 million in settlement funds be paid into court pending resolution of this action or further order of this court.

FACTUAL BACKGROUND

- [3] In or about 2009, Glen Estrabillo, Jonathane Ricci, and Sai Mohammed, among others, formed “1PLUS12” as a vehicle through which to induce others to invest in real estate. The Ontario Securities Commission has noted that the formal structure of 1PLUS12 was not clear, if it had one at all. Estrabillo, Ricci, and Mohammed, are the primary individuals with whom the Plaintiffs had contact in relation to their investments.
- [4] Between 2013 and 2018, 1PLUS12, together with a company known as Curah Capital Corporation (“Curah”), channelled approximately \$8.5 million from

investors into corporations and properties controlled by the now notorious Arash Missaghi (“Missaghi”). Missaghi is an undischarged bankrupt and appears to have defrauded investors of millions of dollars. He was shot and killed by one of his victims in a murder-suicide in June of 2024.

- [5] On the inducement of Estrabillo, Ricci, and Mohammed, Turlo invested \$700,000. The Plaintiff Sohail Shah invested approximately USD \$3.4 million. Turlo has recovered approximately \$400,000. Shah does not appear to have recovered anything.
- [6] On cross-examination, Estrabillo refused to answer whether 1PLUS12 and Curah had directed investor funds into any investments not controlled by Missaghi. I infer from that refusal that investor funds from 1PLUS12 and Curah were put solely into Missaghi-controlled investments.
- [7] Shah and Turlo were instructed to pay their “investments” into the trust account of Jonathane Ricci, an Ontario lawyer. In 2016, the Law Society of Ontario permanently suspended Ricci’s license to practice for professional misconduct after he refused to produce documents to the Law Society in response to an investigation into a fraudulent mortgage transaction involving “a recurring participant in other allegedly fraudulent transactions also under investigation”, whom the Plaintiffs presume is Missaghi. At the moment, Ricci remains an undischarged bankrupt.
- [8] Ricci also acted as the Plaintiffs’ lawyer on their investments.

- [9] Estrabillo purports to be the sole director of 245 Co. The Plaintiffs submit that Ricci is the ultimate controlling party of 245 Co. The sole shareholder of 245 Co. is Curah. When the investments were being made, Estrabillo told the Plaintiffs that Ricci was the sole beneficial owner of Curah. In an email dated September 27, 2019, Estrabillo explained that “the ultimate beneficial owner of Curah Capital Corporation is Jonathane Ricci”.
- [10] As noted, the \$6.1 million in settlement funds were paid to 245 Co. Estrabillo now purports to control the disposition of the settlement funds and claims that \$500,000 of the settlement belongs to 245 Co. and the balance belongs to Curah. The Defendant notes that Turlo settled his claims against Curah in 2022 and submits that Turlo therefore has no claim against the settlement funds. That, however, would not affect Shah’s claim against the funds slated for Curah, nor would it affect Turlo’s claim against funds that, even on the Defendant’s version of events, belong to 245 Co.
- [11] There is no document in the record which explains why the breakdown in the payment of settlement funds is as it purports to be. Nor is there any explanation for why the settlement funds were paid to 245 Co. if the lion’s share of the settlement is to go to Curah.
- [12] Although Estrabillo purports to have authority to divide the settlement funds, on his cross-examination he refused to disclose who currently owns Curah.

[13] Approximately half an hour before oral argument on the motion began, the Defendant produced an email which it says demonstrates that Ricci was the shareholder of Curah until 2024 when Ricci “gave his shares back.” According to Estrabillo, the shares have been cancelled and Curah has no shareholders at this time. This raises several questions. First, Ricci’s alleged return of the Curah shares occurred by way of an email from himself to himself. The email does not actually surrender any shares but states:

“Dear Axiom Members, QIPs, CCPCs, Axiom Group Companies, Curah, Related Parties, Operating Companies, 1PLUS12 and Related/Others:

After much consideration, and the changes within the 1PLUS12 ecosystem, A13MG will no longer be offering (i) managed corporate maintenance, (ii) stealth services, (iii) family office management, (iv) mail services, and (v) any other related or similar services.

...

If I or one of my companies and/or one of my trade names are listed on one of your companies as an officer, director, authorized person, or holding shares in trust, consider this a resignation of such. To this end, please replace me from such effectively immediately.”

[14] It is difficult to understand how an email from Ricci to himself would constitute notice of anything to anyone.

[15] Second, the email has Ricci purporting to “resign” as trustee for shares he holds in trust. The Plaintiffs had, however, been advised that Ricci was the beneficial shareholder of Curah.

- [16] Third, if the shares of Curah were returned and cancelled it is difficult to understand how Estrabillo has any authority to disburse funds on Curah's behalf. Moreover, when Ricci made an assignment in bankruptcy, he did not disclose either a legal or beneficial interest in Curah shares to his trustee in bankruptcy.
- [17] Two months after the hearing, Estrabillo delivered a further affidavit sworn July 25, 2025 stating that he was the sole shareholder of Curah because, after the hearing
- “... it became apparent that no one owned Curah's shares following resignation of Jonathane Ricci. As such, as the sole director, I issued 100 shares in Curah to myself and became the sole shareholder.”
- [18] I decline to give any weight to that evidence. It contradicts Estrabillo's earlier evidence that Ricci was the beneficial shareholder of Curah. Ricci's “resignation” was only with respect to shares held in trust. No evidence has been provided to demonstrate that Ricci holds or held Curah shares in trust and if so, for whom he held those shares.
- [19] At Mr. Estrabillo's cross-examination, the Plaintiffs requested an undertaking for the production of Ricci's trust ledger to investigate determine where Shah's and Turlo's monies went and to determine the source of Curah's funds. That undertaking was refused. Once again, I am left to draw an adverse inference from the refusal. Although Estrabillo may not have had direct access to Ricci's trust ledger, as the sole director of Curah and 245 Co., he had access to information about where the investments funds were coming from and presumably had better

access to Ricci than the Plaintiffs did. He does not appear to have made any effort to obtain the information requested.

[20] If all of that confusion and shifting evidence were not enough, at least a portion of the settlement funds reflect the proceeds of a mortgage on the property at 172 Hymus Road in Toronto, Ontario. That mortgage was held in trust for Mon8ta, one entity into which Turlo's and Shah's money is believed to have been funnelled. It appears that the only reason those funds are not being paid to Mon8ta is the statement of Estrabillo on cross-examination that the trust has been "collapsed".

[21] The Defendant submits that it would be unfair to freeze the settlement funds because they are slated to be paid out to investors in Currah, at least some of whom need the money urgently for their own purposes, including to complete a closing of a real estate transaction. There are serious grounds to doubt this submission.

[22] In support of this submission, the Defendant appends a series of "Acknowledgements For Receipt of Funds" which would appear to have been prepared by Estrabillo in the face of this litigation. The documents have the signatory "investor" acknowledge that:

"...all distributions in favour of [Currah] are decided by Glenn Estrabillo as the sole director of [Currah]";

"...the recovery of the aforementioned funds has been achieved solely through the efforts of Glenn Estrabillo undertaken at significant personal economic, emotional, and psychological cost over a period of 7 years and any future recovery or return of funds depend entirely on him and such efforts are on a best-efforts basis only";

“the Signee acknowledges and understands that at any time recovery efforts could cease if impediments to recovery arise such as further litigations brought by any party and such impediments may result in a cost to all parties.”

- [23] The acknowledgements appear to recognize that any payment to the recipients can be impeded by further litigation, like this action.
- [24] The questionable nature of the settlement is accentuated by the fact that several of the intended recipients appear to be related to Estrabillo. In particular:
- a. Sarah Miskelly, who is to receive USD \$576,897.61 (approximately \$800,000 CAD), is the mother of Mr. Estrabillo’s child.
 - b. Eli Senez, who its to receive \$40,000, is Mr. Estrabillo’s ex-girlfriend.
 - c. 2433424 Ontario Inc., which is to receive \$375,000.00, is a corporation controlled by Estrabillo’s brother Kevin.
 - d. SB Sheppard 3rd Mtg, which is to receive \$187,814.58 is owned by Curah.
- [25] In addition, the proposed distribution of the settlement funds does not appear to be in any way rateable with the amount of the “investment”. By way of example, Sarah Miskelly, the mother of Estrabillo’s child, is expected to receive \$800,000. She invested approximately \$715,000. On the other hand, Greg DeKoker, who invested \$600,000 is slated to receive only \$20,000. There is no explanation for those differences.

- [26] The Plaintiffs say that Estrabillo simply arbitrarily divided investors into three categories: those who are friends, family, and associates, who will receive close to 100% of their investment; a second category of “loyalist close” investors, like Mr. DeKoker, who have not complained and who will receive a minimal amount; and a third category of investors like the Plaintiffs who raised public complaints about the scheme and who will receive nothing. In the absence of an explanation from the Defendant, I have no other theory on which to proceed.
- [27] The Plaintiffs issued summonses to the intended recipients of the settlement funds to attend Rule 39 examinations so that the Plaintiffs could explore the basis of the payments and the nature of the alleged urgency in making those payments. Only one of the intended recipients appeared, Greg DeKoker, but he refused to answer any questions.
- [28] On his cross-examination, Estrabillo refused to provide details of the alleged investments that entitled the recipients to the settlement funds. He did, however, advise that the amount allegedly owing on the investments “well exceeds the amount of recovery realized via the Settlement Funds.” If that is the case, 245 Co. and/or Curah may well be insolvent and cannot pay what they say are their investors. That raises serious preference concerns and requires assurance that all creditors are being considered and that distributions are rateable.
- [29] The Defendants say the Plaintiffs’ money was invested into specific corporate entities and/or mortgages all of which now appear to be without value. At this

stage of the proceedings, I do not accept that this amounts to a reason for declining the relief requested, particularly not where the Defendant refuses to provide relevant information and appears to change its view of events to suit itself.

Legal Analysis

[30] In *Chitel v. Rothbart*¹ the Ontario Court of Appeal confirmed that Mareva injunctions may be granted if the following criteria are met:

- i) The Plaintiff has established a strong prima facie case.
- ii) The Plaintiff has given some grounds for believing the Defendant has assets in the jurisdiction.
- iii) The Plaintiff should give some grounds for believing that there is a risk of the assets being removed before the judgment or award is satisfied. The material must persuade the court that the Defendant is removing or there is a real risk that he is about to remove his assets from the jurisdiction to avoid a judgment or that the Defendant is otherwise disposing of his assets, out of the ordinary course of business, so as to render a future tracing impossible or remote.
- iv) The Plaintiff must satisfy the court that it will suffer irreparable harm if the relief is not granted.
- v) The Plaintiff must show in all circumstances that the balance of convenience favours the granting of the injunction pending trial of the issues between the parties.
- vi) The Plaintiff must give an undertaking as to damages.

¹ *Chitel v. Rothbart* (1983), 1982 CanLII 1956 (ON CA), 39 O. R. (2d) 513.

[31] In my view, the Plaintiffs have established the elements required for a Mareva injunction with respect to the settlement funds.

Strong *Prima Facie* Case

[32] The Plaintiffs have established a strong *prima facie* case that they are the victims of a fraudulent scheme. The directing minds of that scheme appear, at a minimum, to have included Estrabillo and Ricci. Estrabillo, Ricci, 245 Co., and Curah appear to have totally disregarded corporate personality and used funds as they personally saw fit. The documents supporting the proposed distribution of the settlement funds suggest this practice continues.

[33] 245 Co. argues that there is no strong *prima facie* case because the Plaintiffs have not established a linear connection between their funds and 245 Co. Estrabillo himself, however, admitted that Missaghi and his group conveyed assets between corporations as if they were a single entity. The Plaintiffs' inability to demonstrate a linear connection at this early stage is the product of the complex, opaque practices of 245 Co. and its associates, Estrabillo, Ricci, and Curah. I draw adverse inferences from the continued refusal to produce trust ledgers relating to 245 Co., Curah, and Ricci, as well as the refusal to produce adequate ownership information about Curah. Although the burden of proof remains with the Plaintiff, that does not mean that Defendants are permitted to hide behind their own obfuscation.

[34] The Plaintiffs, in part, plead their case on the basis of the tort of knowing assistance.

[35] The tort of knowing assistance requires a plaintiff to establish:

- i. There was a fiduciary duty.
- ii. The fiduciary breached that duty fraudulently and dishonestly.
- iii. The stranger to the fiduciary relationship had knowledge of the fiduciary relationship and of the fiduciary's fraudulent and dishonest conduct.
- iv. The stranger must have participated in or assisted the fiduciary's fraudulent and dishonest conduct. The knowledge requirement for knowing assistance includes reckless and wilful blindness.²

[36] The "stranger" in this case is 245 Co. As set out above, however, 245 Co. is not a true stranger but is owned and controlled by Ricci. 245 Co.'s knowledge of the fiduciary relationship and breach thereof stems from Ricci's ownership. At this point, there is a strong *prima facie* case that 245 Co. is using itself as a means of shielding the settlement funds from the Plaintiffs.

[37] As the ultimate beneficial shareholder and directing mind of 245 Co., Ricci owed fiduciary duties to Shah and Turlo. He and his associates breached that fiduciary duty by misappropriating and laundering funds through a complex Ponzi scheme and by refusing to produce Ricci's trust ledger to demonstrate where the funds went.

² *Harris v. Leikin Group Inc.*, 2011 ONCA 790, para. 8.

[38] The Plaintiffs also plead knowing receipt.

[39] The test for knowing receipt is essentially whether a defendant is in possession of trust funds belonging to the plaintiff. The difference between knowing assistance and knowing receipt was summarized by the Supreme Court of Canada in *Gold v. Rosenberg*:

Tracing claims and cases of “knowing receipt” are both concerned with rights of priority in relation to property taken by a legal owner for his own benefit; cases of “knowing assistance” are concerned with the furtherance of fraud.³

[40] The Plaintiffs requested that the Defendant produce Ricci’s trust ledger so that the funds paid by Shah and Turlo could be traced. The request was refused. The Defendant does not even appear to have made the effort to obtain that trust ledger or excerpts of it. Once again, at this stage I am left to draw an adverse inference and conclude that the Plaintiffs have established a strong *prima facie* case that the funds 245 Co. holds include the money Shah and Turlo paid to Ricci in trust.

[41] The Defendant submits that it would be unfair to a grant a Mareva injunction because Ricci is not a shareholder of Curah and has no beneficial ownership in Curah or 245 Co. That submission would have more force if Estrabillo had provided more consistent and persuasive evidence about the beneficial shareholders of Curah and 245 Co.

³ *Gold v. Rosenberg*, 1997 CanLII 333 (SCC), [1997] 3 SCR 767, para. 41.

- [42] The Defendant further submits that the funds do not belong to 245 Co. but belong to Curah. That submission would also have more force if the Defendant had explained why the funds were paid to 245 Co.
- [43] The Defendant further pleads that there is no strong *prima facie* case because the Plaintiffs' claims are time-barred. The Plaintiffs did not, however, learn of the payment of 245 Co. until March 2025. The *Limitations Act* provides that a claim is discoverable on "the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters".⁴ The Plaintiffs could not have known of a claim against 245 Co. until they learned that it had received funds connected to Curah, Ricci and Estrabillo.

Assets in the Jurisdiction

- [44] 245 Co. clearly has assets in the jurisdiction in the way of the settlement funds.

Risk of Dissipation

- [45] The Plaintiff has established grounds for believing that the settlement funds will be removed before a judgment or award is satisfied. Some of those funds are clearly proposed to be distributed to non-residents of Ontario. Others will be distributed in a way that makes recovery down the road even more difficult than it already is.

⁴ *Limitations Act 2002*, S.O. 2002, c. 24, Sched. B, s. 5 (b).

- [46] The Defendant points to case law that requires the risk of dissipation be due to conduct that is motivated by an intention to defeat creditors.⁵ The Defendant submits there is no evidence of intention to defeat creditors, but rather only an intention to pay out the proceeds of settlement as required.
- [47] The Court may infer the risk that assets will be dissipated where the moving parties put forth strong *prima facie* evidence of fraud.⁶ As Strathy J (as he then was) noted in *Sibley & Associates LP v. Ross*,⁷ 2011 ONSC 2951:

[62] From *Chitel v. Rothbart* to the present day, the law has sought to draw a fair balance between leaving the Plaintiff with a "paper judgment" and the entitlement of the Defendant to deal [page511] with his or her property until judgment has issued after a trial. In my respectful view, a plaintiff with a strong *prima facie* case of fraud should be in no more favoured position than, say, a plaintiff with a claim for libel, battery or spousal support. On the other hand, there may be circumstances of a particular fraud that give rise to a reasonable inference that the perpetrator will attempt to perfect the deception by making it impossible for the Plaintiff to trace or recover the embezzled property. To this extent, it seems to me that cases of fraud may merit the special treatment they have received in the case law.

[63] Rather than carve out an "exception" for fraud, however, it seems to me that in cases of fraud, as in any case, the *Mareva* requirement that there be risk of removal or dissipation can be established by inference, as opposed to direct evidence, and that inference can arise from the circumstances of the fraud itself, taken in the context of all the surrounding circumstances. It is not necessary to show that the Defendant has bought an air ticket to Switzerland,

⁵ See for example: *Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2024 ONSC 2430.

⁶ *2092280 Ontario Inc. v. Voralto Group Inc.*, 2018 ONSC 2305 at paras 22-23, citing *Sibley & Associates LP v. Ross*, 2011 ONSC 2951.

⁷ *Sibley & Associates LP v. Ross*, 2011 ONSC 2951.

has sold his house and has cleared out his bank accounts. It should be sufficient to show that all the circumstances, including the circumstances of the fraud itself, demonstrate a serious risk that the Defendant will attempt to dissipate assets or put them beyond the reach of the Plaintiff.

[48] Here, there is sufficient evidence of fraud to allow me to infer an intention to dissipate assets in order to defeat claims of creditors other than those whom Estrabillo has chosen to compensate. The evidence in this regard includes: the refusal to provide trust ledgers; the refusal to explain the flow of funds from the Plaintiffs into investments; the refusal to explain the flow of funds from settlement proceeds to their intended beneficiaries; and the corporate irregularities sound surrounding the status of 245 Co. and Curah; the manner in which Ricci is purported to have given up control of Curah (and therefore 245 Co.) by writing an email to himself in which he does not even surrender his shares as Estrabillo claims he does.

Irreparable Harm

[49] I am satisfied that the Plaintiffs will suffer irreparable harm in that they will lose access to an asset which is clearly sufficient to satisfy their claims.

[50] It is characteristic of most frauds that they make funds difficult to trace. Although the question of whether the transactions at issue here are fraudulent will be left for trial, there is sufficient opacity in the fund flows and ownership of corporate entities to create irreparable harm for the Plaintiffs if funds are not preserved. This will be

all the more so if funds are moved offshore as is the plan for at least some of the distribution of settlement funds.

Balance of Convenience

- [51] In my view, the balance of convenience clearly favours the Plaintiffs.
- [52] Although 245 Co. insisted through counsel that it urgently needed to distribute the settlement funds to prevent a house closing from being derailed, 245 Co. failed or refused to advise: (1) what party required the funds to complete the closing; (2) what the address of the property was; (3) how much was required to complete the closing; and (4) what the closing date was.
- [53] 245 Co. and its associates, including the intended beneficiaries of the settlement funds, have been given the opportunity to demonstrate specifically where the Plaintiffs' funds flowed to, explain the source of settlement funds; explain the basis of the entitlement of the intended beneficiaries of those funds; and explain any urgency associated with the distribution of those funds. They have failed to do so. In those circumstances, the balance is somewhat one sided and favours the Plaintiffs.
- [54] The Plaintiffs have provided an undertaking in damages.

Post Hearing Issues

[55] Approximately six weeks after oral argument concluded, both sides brought further motions. The Plaintiffs brought a motion to extend the Mareva injunction to a property municipally known as 5780 Sheppard Avenue East in Toronto, Ontario, the registered owner of which is Curah. The Defendant resists that motion and brings its own motion to recover past costs of \$150,000 and future costs of \$100,000 from the settlement funds that are being held in the trust account of the Defendant's lawyer.

[56] I note that Curah is not a Defendant in this proceeding. As noted earlier, Turlo settled his claims against Curah. Although Shah has not settled any claims against Curah and Plaintiffs' counsel advises that Shah has an outstanding action against Curah, I have no information about that action before me. As a result, on the record before me, I decline to extend the injunction to the Sheppard Avenue property.

Defendant's Request for Costs

[57] As noted above, in post hearing submissions, the Defendant asked for the ability to pay to its counsel \$250,000 on account of past and future legal fees from the \$6.1 Million that its counsel currently holds in trust. The test to allow a Defendant to pay legal fees in the face of a Mareva or a proprietary injunction requires the Defendant to establish:

- (1) that they have no other assets available to pay their expenses other than the assets frozen by the injunction;

(2) that there are assets caught by the injunction that are from a source other than the Plaintiff, i.e. assets that are subject to a Mareva injunction, but not a proprietary claim;

(3) that the Defendant is entitled to the use of the non-proprietary assets frozen by the Mareva injunction to pay his reasonable living expenses, debts and legal costs (those assets must be exhausted before the Defendant is entitled to look to the assets subject to the proprietary claim); and

(4) if the Defendant has met the first three tests and still requires funds for legitimate living expenses and to fund his defence, the court must balance the competing interests of the Plaintiff in not permitting the Defendant to use the Plaintiff's money for his own purposes and of the Defendant in ensuring that he has a proper opportunity to present his defence before assets in his name are removed from him without a trial. In weighing the interests of the parties, the court may consider the strength of the Plaintiff's case, as well as the extent to which the Defendant has put forward an arguable case to rebut the Plaintiff's claim.⁸

[58] In considering this test, I conclude that it would be appropriate to allow defence counsel a total of one \$250,000 from the Defendant's assets to pay for past and future legal expenses relating to this matter.

[59] Given that I have granted the Mareva injunction, there are no assets of 245 Co. other than those frozen by the injunction. It is unclear at this stage whether the assets of 245 Co. stem from the Plaintiffs. Any such assets that do not stem from the Plaintiffs would be non-proprietary sources at least as considered from the

⁸ *Mining Technologies International, Inc. v. Krako Inc.*, 2013 ONSC 7280 at para. 211 citing *Waxman v. Waxman* (2007), 42 C.P.C. (6th) 37, 223 O.A.C. 375, 157 A.C.W.S. (3d) 72, 2007 ONCA 326 (C.A.); *Innovative Marketing, Inc. v. D'Souza* (2008), 65 C.P.C. (6th) 234, 169 A.C.W.S. (3d) 188 (S.C.J.); *Canadian Imperial Bank of Commerce v. Credit Valley Institute of Business and Technology* (2003), 119 A.C.W.S. (3d) 826, [2003] O.J. No. 40 (QL) (S.C.J.).

perspective of the Plaintiffs, although they may be proprietary sources from the perspective of other claimants. This raises the issue of whether the Defendant is entitled to use any of the settlement funds to pay for its legal expenses, especially given that the Defendant has said that the funds are slated for distribution to investors. In allowing the Defendant to use up to \$250,000 of *its* assets to pay for legal fees, I am not saying that it has the right to use any of the \$6.1 million for that purpose. An order to that effect would require notice to those parties claiming entitlement to the \$6.1 million. I will leave it to the Defendant to decide whether any of the \$6.1 million constitute *its* assets; or in the alternative, whether its arrangements with the intended beneficiaries of the \$6.1 million entitle the Defendant to use some of those proceeds for legal expenses.

[60] In other words, the Defendant is free to take \$250,000 from the settlement funds if those \$250,000 amount to assets of the Defendant or if its contractual arrangements with the owners of the \$250,000 entitle the Defendant to use them for legal fees. The Defendant cannot, however, rely on this endorsement as a shield against others who challenge the use of those funds for legal fees (other than the Plaintiffs).

[61] In balancing the interests of the Plaintiffs and the Defendant, it is my view that the Defendant should be entitled to use \$250,000 of its assets to fund *its* legal defence. Although the Plaintiffs have made out a strong *prima facie* case for fraud, that is not the same as saying they have actually made out a case of fraud. That will depend on the result at trial. Among the issues related to the fraud allegation

against the Defendant are the extent to which the Plaintiffs' funds flowed into the Defendant and the extent to which the Defendant should have principles like knowing assistance, knowing receipt or piercing the corporate veil imposed on it. Those concepts are nuanced and not capable of final determination on an interlocutory motion. The Defendant should at least have the opportunity and the resources to advance defences to them.

Date: October 6, 2025

Koehnen J.