

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Slave Paunovski )  
 )  
Plaintiff ) J. Anisman, counsel for the Plaintiff  
 )  
– and – )  
 )  
 )  
 )  
Danny Risteski, Mara Risteski, Donco ) Fabian Otto, counsel for the Defendants,  
Investments Ltd. and John Doe ) Donco Investments Ltd. and Agent for  
 ) Danny Risteski and Mara Risteski  
 )  
Defendants )  
 )

HEARD: August 11, 2025

**RULING ON MOTION FOR INTERLOCUTORY MAREVA INJUNCTION**

**THE HONOURABLE JUSTICE SUNIL S. MATHAI**

**Introduction**

[1] The plaintiff, Slave Paunovski, seeks an interlocutory *Mareva* injunction as against the defendants, Danny Risteski, Mara Risteski and Donco Investments Ltd. (“Donco”). The defendants oppose the relief sought.

[2] For the reasons that follow, I grant the interlocutory *Mareva* injunction as against Mr. Risteski and dismiss the motion as it relates to Ms. Risteski and Donco. Mr. Paunovski has not satisfied me that he has a strong *prima facie* case against Ms. Risteski and Donco.

**Background**

[3] Mr. Paunovski brought an *ex parte* motion for a *Mareva* injunction against the defendants. Due to a court error, Mr. Otto received notice of the motion and attended the hearing. I permitted

Mr. Otto to make submissions on behalf of the defendants. On April 7, 2025, I granted an interim *Mareva* injunction as against the Risteskis and dismissed the motion as against Donco (see *Paunovski v. Risteski*, 2025 ONSC 2891) (the “Interim ruling”).

[4] Since the Interim ruling, the interim *Mareva* order was amended to grant the Risteskis access to funds for their ordinary living expenses and legal fees.

[5] The background facts were canvassed in some detail in the Interim ruling. As such, I will only provide a short summary of Mr. Paunovski’s allegations.

[6] Mr. Paunovski seeks damages as against the defendants in the amount of \$359,492.90. The fresh as amended statement of claim pleads that Mr. Risteski induced Mr. Paunovski to invest approximately \$350,000 in what is alleged to be a fraudulent investment scheme.

[7] In his affidavit, Mr. Paunovski alleges that he invested his life savings with Mr. Risteski because the two were very close, like brothers. Mr. Paunovski alleges that Mr. Risteski made the following false representations to induce Mr. Paunovski to invest:

[Mr. Risteski] told me a number of sweet lies in order to manipulate me into giving him money. For example: that this was a favour for me because I was family, that it was risk free, that I would make lots of money to help with my retirement.

[8] Mr. Paunovski’s fresh as amended statement of claim pleads the following additional false representations:

- (a) That while Mr. Risteski could not guarantee an exact return on investment, the return would be a “good amount”;
- (b) Mr. Risteski advised Mr. Paunovski that the expected return on a \$200,000 investment would be \$1,000,000; and
- (c) The investment was “risk free” because Mr. Risteski would return Mr. Paunovski’s money if the investment failed.

[9] The fresh as amended statement of claim pleads that these false representations induced Mr. Paunovski to give \$200,000 to Mr. Risteski in December 2015 (the “2015 investment”). Mr. Paunovski further alleges that Mr. Risteski told him that the 2015 investment would be invested through Donco. Mr. Risteski claims that the 2015 investment was deposited into the Risteskis’ joint account and was then wire transferred to a third party, Mr. Aleksandr Ninosevic, who resides in Europe.

[10] Mr. Paunovski invested an additional \$159,492.90 with Mr. Risteski in 2021 (the “2021 investment”). Mr. Paunovski sent a portion of the 2021 investment to Mr. Ninosevic’s bank account in Europe. The remaining amount was sent to Mr. Risteski’s European bank account.

[11] As against Mr. Risteski, the plaintiff pleads fraud, breach of contract, breach of fiduciary duty, fraudulent misrepresentation and unjust enrichment. With respect to Ms. Risteski and Donco, Mr. Paunovski alleges that these defendants knowingly assisted Mr. Risteski in his fraudulent

endeavours and were in knowing receipt of the fraudulently obtained investment funds. The claim also alleges that the defendants collectively engaged in a conspiracy to misappropriate or convert the plaintiff's funds.

[12] The defendants' statement of defence admits that Mr. Paunovski advanced funds to Mr. Risteski for the purpose of being invested outside of Canada. The defence also admits that these investments did not result in "quick profits" and that the plaintiff's funds were "re-invested" into more profitable investment vehicles. The defendants deny that Ms. Risteski and Donco had any involvement with Mr. Paunovski's investments.

### **Test for an Interlocutory *Mareva* Injunction**

[13] A motion for an interlocutory injunction from a prior motion for interim relief is a hearing *de novo*. The motion is not an appeal from the interim order, which was made on an incomplete evidentiary record (see The Honourable Mr. Justice Robert J. Sharpe, *Injunctions and Specific Performance* (Toronto: Thomson Reuters Canada Ltd., 2025) (loose-leaf 2025-Rel. 1), at § 2:3; *Canpages Inc. v. Quebecor Media Inc.*, 2008 CanLII 26660 (ON SC), at para. 3; *Promo-Ad v. Keller*, 2013 ONSC 1633, at para. 55).

[14] As I explained in the Interim ruling, a *Mareva* injunction is an extraordinary remedy that should be granted sparingly and only in the clearest of cases. The test for obtaining a *Mareva* injunction is more onerous than the test for obtaining an interlocutory injunction (see *Taylor v. Freeman*, 2025 ONSC 3760 (Div. Ct.), at para. 19; *Bradley J. Grant Investments Inc. v. Nestig Inc.*, 2023 ONSC 4373, at para. 37; *1910878 Ontario Inc. v. 2551204 Ontario Inc.*, 2020 ONSC 3415, at para. 15).

[15] The test for granting a *Mareva* injunction was summarized by Perell J. in *O2 Electronics Inc. v. Sualim*, 2014 ONSC 5050, at para. 67:

Because procedural law disfavors pre-judgment execution, to obtain a *Mareva* injunction, a plaintiff must satisfy the normal criteria for an injunction and also several additional criteria. For a *Mareva* injunction, the moving party must establish: (1) a strong *prima facie* case; (2) that the defendant has assets in the jurisdiction; and (3) that there is a serious risk that the defendant will remove property or dissipate assets before the judgment. A *Mareva* injunction should be issued only if it is shown that the defendant's purpose is to remove his or her assets from the jurisdiction to avoid judgment. The moving party must also establish that he or she would suffer irreparable harm if the injunction were not granted and that the balance of convenience favors granting the injunction. Absent unusual circumstances, the plaintiff must provide the undertaking as to damages normally required for any interlocutory injunction.

### **Preliminary Issues**

(i) *Mr. Paunovski set the action down for trial*

[16] On April 22, 2025, Mr. Paunovski served and filed a trial record. The record was prepared on April 16, 2025, the same day that the parties appeared before Lavine J. on the return of the interim *ex parte* motion. Pursuant to r. 48.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, a party who sets an action down for trial is prohibited from initiating or continuing any motion without leave of the court.

[17] Relying on r. 48.04, the defendants argue that Mr. Paunovski should be denied leave because:

- (a) Mr. Paunovski knew that the interlocutory motion was pending at the time the trial record was delivered;
- (b) there has not been an unexpected change in circumstances that warrant granting leave; and
- (c) the defendants would suffer prejudice as the *Mareva* injunction would continue against them. In their factum, at para. 68, the defendants assert that, “the timing of the filing of the trial record indicates mischief and as such the Plaintiffs [*sic*] should not benefit from the same.”

[18] The approach to leave under r. 48.04 was set out by Perell J. in *Fulop v. Corrigan*, 2020 ONSC 1648:

[76] Once a party has set an action down for trial, it is a matter of discretion in the particular circumstances of the case whether the court will grant leave to initiate or continue a motion or form of discovery. However, the setting down for trial is not a mere technicality, and there must be a justification for permitting further discovery or any other interlocutory step such as a substantial or unexpected change in circumstances or the necessity of the step in the interests of justice.

[77] The predominant contemporary approach to whether leave should be granted is a flexible approach that recognizes that there may be no single test for leave to initiate or continue a motion or form of discovery, and the weight to be given the various discretionary factors will depend upon the circumstances of the particular case. In considering whether there is justification for granting leave, the court may consider a variety of factors including: (1) what the party seeking leave knew at the time of the passing of the trial record; (2) whether there has been a substantial or unexpected change [*sic*] in the circumstances since the action was set down for trial; (3) the purpose of the request for leave; (4) the nature of the relief being requested; (5) whether the party opposing the relief would suffer any prejudice; and (6) whether the relief sought would likely be granted if leave were given to bring the motion notwithstanding the filing of the trial record.

[19] The defendants argue that leave should not be granted because no substantial or unexpected change in circumstances has occurred. In making this argument, the defendants take a formalistic approach to r. 48.04, where a “substantial or unexpected change of circumstances” is a prerequisite to granting leave. This is not how r. 48.04 operates.

[20] In *Ginkel v. East Asia*, 2010 ONSC 905, at para. 17, Perell J. summarized the existing case law on r. 48.04 and described the “test” for granting leave as follows:

Once a party has set an action down for trial, it is a matter of discretion in the particular circumstances of the case whether the court will grant leave to initiate or continue a motion or form of discovery. However, the setting down for trial is not a mere technicality and the test for granting leave to permit further discovery or other interlocutory proceedings, is that there must be a substantial or unexpected change in circumstances such that a refusal to grant leave would be manifestly unjust or the interlocutory step must be necessary in the interests of justice

[21] Importantly, Perell J. described a disjunctive test. Leave should be granted where a “substantial or unexpected change in circumstances” has arisen *or* where the motion was necessary in the interests of justice. Perell J.’s decisions in *Ginkel* and *Fulop* confirm that a “substantial or unexpected change in circumstances” is not a necessary precondition for obtaining leave (see also *A.G.C. Mechanical Structural Security Inc. v. Rizzo*, 2013 ONSC 1316, 49 C.P.C. (7th) 174, at para. 24; *Jens Nielsen v. Litwin*, 2012 ONSC 2472, 17 C.L.R. (4th) 1, at para. 13).

[22] I agree with Mr. Otto that there has not been any unexpected change in circumstances that would warrant granting Mr. Paunovski leave to bring the motion. This finding, however, is not determinative. Ultimately, I find that granting leave is in the interests of justice. I come to that conclusion for three reasons.

[23] First, this is not a case in which the plaintiff sought to obtain an advantage by setting the action down for trial or made a tactical decision to set the action down for trial before pursuing an interlocutory motion (see for example, *Meloro Restaurants Ltd. v. Little Caesar of Canada Inc.*, 2012 ONSC 1870; *Hill v. Ortho Pharmaceutical (Canada) Ltd.* (1992), 11 C.P.C. (3d) 236 (Ont. Gen. Div.), at pp. 2–4). Rather, I accept Mr. Anisman’s submission that setting the action down for trial prior to having the interlocutory motion heard was a procedural error. The defendants have not substantiated their bald assertion that the timing of setting the action down demonstrates a “mischief”. Mr. Paunovski obtained no tactical advantage by setting the action down for trial. To the contrary, setting down the action created a procedural disadvantage by requiring Mr. Paunovski to first obtain leave prior to bringing a motion for an interlocutory *Mareva* injunction.

[24] Second, there is no prejudice to the defendants. Granting leave will require the defendants to respond to the motion. This, however, is not the type of prejudice that warrants denying leave. The question is whether granting leave would create an unfairness to the defendants outside of having to respond to the motion at issue. In this case, the defendants knew that the plaintiff intended to seek an interlocutory *Mareva* order after obtaining the interim order. The defendants were not caught off guard by the interlocutory motion.

[25] Third, Mr. Paunovski will suffer significant prejudice if leave is not granted. Mr. Paunovski alleges that there is a strong *prima facie* case against the defendants and that there is evidence that the defendants are dissipating assets. Given that Mr. Paunovski was already successful in obtaining an interim *Mareva* injunction, prohibiting Mr. Paunovski from having his motion heard on its merits due to a “procedural error” would fly in the face of the interests of justice. Indeed, if the defendants are dissipating their assets, refusing to hear this motion on the merits would be

prejudicial to Mr. Paunovski as his ability to recover on a successful judgement would be jeopardized.

**(ii) Full and fair disclosure**

[26] As explained in the Interim ruling, a party that brings an *ex parte* injunction motion has an obligation to make full and fair disclosure to the court. Failure to comply with this obligation is a sufficient ground for setting aside an interim order obtained on a motion (see r. 39.01(6) and *R. A. Fox v. R.S. Fox*, 2014 ONSC 1135 (Div. Ct.), at paras. 11–13).

[27] Material facts are those that the court must be made aware of when making a decision as their non-disclosure may impact the outcome of the motion. Mere imperfections in an affidavit or a failure to disclose inconsequential facts will not be fatal to a motion for an *ex parte* order (see *Chicago Title Insurance Company v. Nova Diamonds Inc. et al.*, 2023 ONSC 6971, 44 C.C.L.I. (6th) 257, at para. 35; *Hazelton Homes Corporation v. Mehta*, 2020 ONSC 849, 63 E.T.R. (4th) 147, at para. 21; *Two-Tyme Recycling Inc. v. Woods*, 2009 CanLII 64803 (ON SC), at para. 21).

[28] The defendants argue that Mr. Paunovski did not provide this court with full and fair disclosure and, as a result, the interim order should be set aside and the plaintiff's request for interlocutory relief should be dismissed. Pursuant to my July 4, 2025, endorsement, the defendants particularized the plaintiff's alleged breach of full and fair disclosure as follows:

- (a) On the *ex parte* motion, Mr. Paunovski did not file the Risteski's affidavits sworn March 7, 2025. The defendants argue that the omitted affidavits would have demonstrated that the defendants complied with Associate Judge Jolly's order; and,
- (b) Mr. Paunovski did not file his own affidavit of documents and other affidavits prepared by the plaintiff or his family. The defendants argue that these affidavits would have demonstrated that Mr. Paunovski knew that he was investing his funds outside of Canada and had, in fact, wire transferred some of the 2021 investment to Mr. Ninosevic directly.

[29] The defendants' factum dedicated one paragraph to this issue:

69. There was a failure of full and frank disclosure at the hearing of the *ex parte* motion. The Plaintiff amongst other things failed to produce the cheque provided and addressed to Danny Risteski alone in 2015. Furthermore, [*sic*] also failed to produce the various affidavits satisfying document disclosure not to mention the previous affidavits sworn by the Plaintiff and related parties in this Action that produced key financial documents showing that they, themselves in 2021 sent funds over to Europe as well and have always been aware that those funds are not in the Jurisdiction of Canada.

[30] The defendants made the same arguments on the *ex parte* motion. At that time, the omissions did not convince me that the plaintiff failed to make full and fair disclosure. My views have not changed.

[31] Mr. Paunovski did not file the Risteskis' March 7, 2025, affidavits on the *ex parte* motion. I noted this deficiency in the Interim ruling (Interim ruling, at para. 32). The omitted March affidavits were intended to explain why the Risteskis were not in possession of some clearly relevant documents.

[32] On the *ex parte* motion, Mr. Paunovski argued that the supplementary affidavits of documents were deficient and did not comply with Associate Judge Jolly's February 5, 2025, order (see Interim ruling, at para. 21). I refused to make such a finding in the absence of the omitted March affidavits (see Interim ruling, at paras. 31 and 41).

[33] Instead, I found that the record on the *ex parte* motion established that the defendants were very reluctant to comply with their production obligations under the *Rules* prior to Associate Judge Jolly's intervention (see Interim ruling, at paras. 41, 51). The omitted March affidavits, which I have now reviewed, do not change my finding. In fact, as explained in greater detail below, Mr. Risteski's March 7, 2025, affidavit causes me additional concerns with respect to the defendants' willingness to adhere to their discovery obligations. As a result, I find that the omission of the March affidavits was not a breach of the plaintiff's obligation to provide full and fair disclosure on the *ex parte* motion.

[34] With respect to the second omission, the plaintiff concedes that the *ex parte* motion record did not include the documents referenced by the defendants. The plaintiff concedes that some of the 2021 investment funds were sent to Mr. Ninosevic directly, with the remaining funds sent to Mr. Risteski. Mr. Paunovski argues that omitting these documents was not a breach of the obligation to raise all material facts with the court. I agree.

[35] At the *ex parte* motion, Mr. Otto advised me that Mr. Paunovski sent some of his investment funds directly to a third party in Europe and I found that the plaintiff's failure to identify this in his motion materials was not an omission of a material fact (see Interim ruling, at paras. 29–30). On the record before me, my finding has not changed. I still find that this was not an omission of material fact.

[36] In the Interim ruling, I found that Mr. Paunovski had established a strong *prima facie* case against Mr. Risteski in civil fraud. This finding was based, in part, on the following:

- (a) Mr. Paunovski's affidavit established that Mr. Risteski made several false statements to Mr. Paunovski that induced him to make investments in Europe;
- (b) Mr. Paunovski received no return on his investments; and
- (c) There were no records demonstrating what was done with Mr. Paunovski's funds (see Interim ruling, at paras. 39–40).

[37] The fact that some of the 2021 investment was sent to Mr. Ninosevic does not alter the key findings that I relied upon to find that Mr. Paunovski had established a strong *prima facie* case against Mr. Risteski. It does, however, play a role in my decision with respect to Ms. Risteski. I will return to this later in these reasons.

[38] In the Interim ruling, I also found that there was a real risk that the defendants were dissipating assets. This finding was based, in part, on the fact that the Risteskis routinely sent money transfers outside of Canada (see Interim ruling, at para. 51). The fact that Mr. Paunovski sent part of the 2021 investment to Mr. Ninosevic does not, however, impact my finding that there was evidence that the Risteskis were dissipating assets. I come to this conclusion for three reasons.

[39] First, at the time of the *ex parte* motion, the primary evidence of a risk of dissipating assets was based on the circumstances of the alleged fraud and the Risteskis' decision to sell their matrimonial home just prior to the motion before Associate Judge Jolly (see Interim ruling, at paras. 48–51). Those findings are not impacted by the fact that some of the 2021 investment funds were sent directly to Mr. Ninosevic.

[40] Second, during the *ex parte* motion, the parties agreed that Mr. Paunovski intended to have his funds invested in Europe.

[41] Third, the Risteskis' bank statements and wire transfer statements clearly establish that they routinely transfer money outside of Canada. Again, these findings are not altered by the fact that Mr. Paunovski sent some of the 2021 investment to Mr. Ninosevic.

[42] Finally, while not raised by the defendants, I am troubled by the fact that the 2023 affidavits sworn by Mr. Paunovski, Christopher Paunovski (Mr. Paunovski's son) and Verica Paunovski (Mr. Paunovski's wife) were not included on the *ex parte* motion record. Those affidavits characterize the 2015 investment and the 2021 investment as "loans" from the Paunovski family to the Risteskis.

[43] Given the allegations pled in the fresh as amended statement of claim, it is certainly odd that these affidavits characterize the investments as "loans".<sup>1</sup> The plaintiff has provided no explanation for this odd characterization. Even though 2023 affidavits were not disclosed on the *ex parte* motion, I find that this does not amount to an omission of material facts. I come to this conclusion because it is accepted by the parties, and admitted in the statement of defence, that Mr. Paunovski's funds were intended to be invested.

### **The *Mareva* test**

#### ***(i) Strong prima facie case - Mr. Risteski***

[44] Strong *prima facie* cases are those that will probably prevail at trial or are likely to succeed at trial (see *Neville v. Sovereign Management Group Corp.*, 2022 ONSC 3466, at para. 33; *Modry v. Alberta Health Services*, 2015 ABCA 265, 606 A.R. 373, at para. 37; *1910878 Ontario Inc.*, at para. 15).

[45] In his factum and oral argument, Mr. Paunovski only addressed the claim of fraud against Mr. Risteski. As such, I will only evaluate whether Mr. Paunovski has established a strong *prima facie* case with respect to fraud.

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<sup>1</sup> The affidavits were executed when Mr. Paunovski was self-represented.

[46] The elements of civil fraud are: (a) the defendant made a false representation; (b) the defendant had some level of knowledge that the representation was false; (c) the false representation caused the plaintiff to act; and (d) the plaintiff's actions resulted in a loss (see *Bruno Appliance and Furniture v. Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, at para. 21; *Costanza v. Desjardins Financial Security Life Assurance Company*, 2023 ONCA 54, 165 O.R. (3d) 621, at para. 68). With respect to the "intent" element, the plaintiff must establish that the defendant knew the falsehood of the representation or was reckless as to the falsehood of the statement (see *Hryniak*, at para. 21; *Costanza*, at para. 68).

[47] Mr. Paunovski's affidavit states that Mr. Risteski induced him to make the 2015 investment on the false promise that the investment would be "risk free" and that Mr. Paunovski would obtain a significant return on his investment. Additionally, Mr. Paunovski's affidavit alleges that Mr. Risteski told him that the 2015 investment was "earning good money" and that the 2015 investment had been reinvested into other projects. Based on these representations, Mr. Paunovski made a further investment in 2021.

[48] Mr. Risteski's evidence paints a different picture.

[49] Mr. Risteski claims that he met Mr. Ninosevic in 2015 while travelling in Macedonia. During that trip, Mr. Ninosevic showed Mr. Risteski an excel spreadsheet that reflected significant returns on an "oil and gas" investment. Upon his return from the trip, Mr. Risteski met Mr. Paunovski and advised him of the opportunity to invest money with Mr. Ninosevic. After hearing of this opportunity, Mr. Risteski alleges that Mr. Paunovski provided him with a cheque for \$200,000 to invest with Mr. Ninosevic. Mr. Risteski denies making any promises to the plaintiff. He claims that he told the plaintiff that it was possible to make a lot of money over a short period of time and that there is always a risk with investing. Mr. Risteski maintains that he deposited the plaintiff's funds into an account he shares with his wife and then wire transferred the funds to Mr. Ninosevic in Europe. Mr. Risteski also claims to have invested approximately \$300,000 of his own money with Mr. Ninosevic.

[50] In 2021, Mr. Risteski alleges that Mr. Paunovski repeatedly requested updates on the status of his investment and asked for its return. Mr. Risteski alleges that he told Mr. Paunovski that, "[the return of the funds] was not possible as [Mr. Risteski] was seeking information from our contact, and apparently, we needed to even inject more funds in order to secure our investment." On the basis of this statement, Mr. Paunovski sent the 2021 investment to Mr. Ninosevic and Mr. Risteski.

[51] With respect to finding a strong *prima facie* case, the central issue is credibility. If I accept Mr. Paunovski's evidence, then there is a strong *prima facie* case of civil fraud. On the other hand, if I accept Mr. Risteski's evidence, then no promises were made to Mr. Paunovski, and it is possible that Mr. Risteski was also the victim of a fraud committed by Mr. Ninosevic.<sup>2</sup> In framing the

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<sup>2</sup> In their statement of defence, the defendants do not plead that they were the victims of a fraud perpetrated by Mr. Ninosevic.

central issue in this way, I recognize that this is not a zero-sum game. I can accept all, some or none of Mr. Risteski's evidence or Mr. Paunovski's evidence.

[52] I have serious concerns with Mr. Risteski's evidence. On key issues, his affidavit evidence is incomplete, inconsistent with his discovery evidence and is at odds with common sense. In addition, Mr. Risteski has not produced relevant documents that are central to his assertion that the 2015 investment was wire transferred to Mr. Ninosevic. The cumulative effect of these concerns causes me to reject much of his evidence.

[53] The following examples best illustrate the issues I have with Mr. Risteski's evidence.

[54] First, Mr. Risteski's affidavit states that, in 2021, he told Mr. Paunovski that his "contact" told him that returning the 2015 investment was not possible and that an additional investment was necessary to ensure a return on that investment. Mr. Risteski's affidavit does not provide any details on who his "contact" was, when he was told this information, how he was told this information or why he had a discussion with his "contact" about the return of the 2015 investment.

[55] In his cross-examination, Mr. Risteski was asked how he would have known that further investments were necessary to secure a return of the 2015 investment. In response, Mr. Risteski testified that Mr. Ninosevic informed him of the need for additional investments. This is inconsistent with Mr. Risteski's discovery evidence.

[56] In examination for discovery, Mr. Risteski testified that Mr. Ninosevic told him that he needed more money to purchase more shares, not to secure the return of the 2015 investment. Mr. Risteski provided no compelling explanation for this inconsistency.

[57] Second, Mr. Risteski's evidence on investing with Mr. Ninosevic is problematic for a variety of reasons. In his affidavit, Mr. Risteski states that he personally invested nearly \$300,000 with Mr. Ninosevic. In cross-examination, Mr. Risteski testified that his investments with Mr. Ninosevic began in or around the same time Mr. Paunovski began investing with Mr. Ninosevic. Again, this evidence is inconsistent with Mr. Risteski's discovery evidence.

[58] During his examination for discovery, Mr. Risteski unequivocally stated that he did not invest \$300,000 with Mr. Ninosevic:

Q. Why were you meeting all of these different businessmen, for what purpose?

A. Hopefully, I can make some money.

Q. How were you looking to make money?

A. By investing money. That's the only way you can make money.

Q. But you didn't invest with Mr. Ninosevic.

A. At that point, no.

Q. At any point.

A. No.

Q. You never invested with Mr. Ninosevic.

A. I did not. Ninosevic didn't invest any money.

[59] Later in his discovery, Mr. Risteski testified that he invested more than \$200,000 with Mr. Ninosevic. There is no explanation for why Mr. Risteski's discovery evidence on this point was internally inconsistent.

[60] In cross-examination, Mr. Risteski was confronted with the inconsistency of his evidence on investing with Mr. Ninosevic. Mr. Risteski did not provide any cogent explanation for the inconsistency. Significantly, the Risteskis' statement of assets, prepared in accordance with the interim *Mareva* order, does not list the "investments" with Mr. Ninosevic as an asset. In addition, Mr. Risteski's affidavit does not include exhibits that corroborate these investments. That being said, there is evidence that Mr. Risteski did send Mr. Ninosevic considerable amounts of money.

[61] In a document prepared in response to an undertaking,<sup>3</sup> Mr. Risteski lists several "investments" he made with Mr. Ninosevic from March 2018 to November 2022. The document also includes a line item for "investments" made on "various dates" via Western Union transfer. Mr. Risteski's answers to undertakings also includes a chart entitled, "Western Union Transfers to Andjelko Ninosevic". The chart was provided in response to the plaintiff's request for documents detailing the total value of Mr. Risteski's investments with Mr. Ninosevic. The chart purports to establish that Mr. Risteski made numerous transfers of funds to Mr. Ninosevic from August 2015 to February 2021.

[62] These answers to undertakings support Mr. Risteski's cross-examination evidence that he transferred funds to Mr. Ninosevic and that those transfers began in or around the time when Mr. Paunovski began investing. This evidence also demonstrates a strange "investment" strategy.

[63] By 2021, Mr. Paunovski was insisting on the return of his money. On the evidence of both parties, Mr. Paunovski made the 2021 investment because Mr. Risteski told him that he could not get the 2015 investment back without investing additional funds. Presumably, this is the same reason that Mr. Risteski continued to invest with Mr. Ninosevic for nearly a year after the 2021 investment.

[64] At no time did Mr. Risteski receive any documentation establishing that his funds or Mr. Paunovski's funds were invested. At no time did Mr. Paunovski or Mr. Risteski receive any return on their "investments". And yet, Mr. Risteski continued to make "investments" with Mr. Ninosevic after the 2021 investment. In fact, the largest single "investment" with Mr. Ninosevic occurred on October 20, 2022, and was approximately \$92,000.

[65] There is no commonsense explanation for why Mr. Risteski would continue to invest with Mr. Ninosevic after the 2021 investment. It should have been clear that the "investment" was not

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<sup>3</sup> The document is entitled "Danny Risteski's Investments paid to Ninosevic Andjelko".

working out. In the circumstances, it is more likely that Mr. Risteski was transferring funds to Mr. Ninosevic for an undisclosed reason, and not as an “investment”.

[66] Third, the Risteskis have not produced bank statements showing the transfer of the 2015 investment to Mr. Ninosevic. In Mr. Risteski’s March 7, 2025, affidavit, he states that he requested bank statements for his joint account with Ms. Risteski from the time relevant to the 2015 investment. Mr. Risteski claims that a bank official told him that it would take time to obtain these bank statements.

[67] The March 7, 2025, affidavit does not indicate when this exchange occurred. Obviously, it occurred prior to March 7, 2025. At the time of oral argument on this motion, these highly relevant bank records had not been produced. As a result, there is no evidence that corroborates Mr. Risteski’s evidence that he transferred the 2015 investment to Mr. Ninosevic shortly after it was deposited into the Risteskis’ joint account. Similarly, there are no wire transfer records that corroborate Mr. Risteski’s evidence that he wired the 2015 investment to Mr. Ninosevic. There is a wire transfer record from January 2016, but that record relates to a transfer of approximately €19,000. There is no evidence before me that establishes that this wire transfer was sent to Mr. Ninosevic or that the €19,000 was a small part of Mr. Paunovski’s 2015 investment.

[68] Fourth, Mr. Risteski’s affidavit states that Mr. Paunovski had Mr. Ninosevic’s contact information and bank information at the time of the 2021 investment. Mr. Risteski argues that this demonstrates that Mr. Paunovski sent the 2021 investment to Mr. Ninosevic on his own accord and without direction from Mr. Risteski. Again, Mr. Risteski’s affidavit is inconsistent with his discovery evidence.

[69] In his examination for discovery, Mr. Risteski gave the following evidence:

Q. How did Mr. Paunovski come to learn to send money to Mr. Ninosevic?

A. I really don’t know on that.

Q. You were the only one with his contact information.

A. Yes.

Q. So did you provide contact information to Mr. Paunovski?

A. I don’t remember at that time.

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Q. How is it that Mr. Paunovski got a [sic] the account number for Mr. Ninosevic?

A. I don’t know.

Q. Did you give it to him?

A. I don’t know.

Q. Did you ever give Mr. Paunovski contact information for Mr. Ninosevic?

A. I only told him the name

[70] In cross-examination, Mr. Risteski was confronted with the inconsistency between his affidavit evidence and his discovery evidence. In response, Mr. Risteski testified that Mr. Paunovski contacted Mr. Ninosevic in 2015 and was sending wire transfers directly to Mr. Ninosevic. This is inconsistent with Mr. Risteski's evidence that the 2015 investment was deposited into the Risteskis' joint account and that Mr. Risteski wired the funds to Mr. Ninosevic. When asked again about this inconsistency, the following exchange occurred:

Q. But I asked you a different question. I said:

“Did you ever give Mr. Paunovski contact information for Mr. Ninosevic?”

And your answer was, “I only told him the name.”

So I'd ask you again, how is it that you believe Mr. Paunovski had Mr. Ninosevic's contact information when you were the only one who knew it, according to you, and you only ever told Mr. Paunovski his name?

A. You can ask Mr. Slave Paunovski how he got it, sir.

[71] Mr. Risteski's answer, in the face of an obvious inconsistency, demonstrates his unwillingness to answer questions truthfully.

[72] As the above examples demonstrate, Mr. Risteski's evidence suffers from significant credibility issues. As a result, I cannot accept Mr. Risteski's evidence that:

- (a) he did not make “any statements” to induce Mr. Paunovski to make the 2015 investment;
- (b) Mr. Ninosevic told him that additional investments were necessary to secure the 2015 investment;
- (c) Mr. Paunovski wire transferred some of the 2021 investment to Mr. Ninosevic on his own accord;
- (d) he invested money with Mr. Ninosevic<sup>4</sup>; and
- (e) Mr. Paunovski's money was invested or that he believed that Mr. Paunovski's money was actually being invested.

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<sup>4</sup> To be clear, I accept that Mr. Risteski made numerous money transfers to Mr. Ninosevic. I do not accept that these transfers were for investments.

[73] Instead, I accept Mr. Paunovski's evidence that Mr. Risteski induced him to make the 2015 investment on the promise of returns and the promise that the funds would, in fact, be invested.<sup>5</sup>

[74] Despite the conflict between Mr. Risteski and Mr. Paunovski's evidence, there is one thing that they both agree on: Mr. Risteski told Mr. Paunovski that his funds would be invested. However, there is no evidence that corroborates Mr. Risteski's evidence that Mr. Paunovski's funds were, in fact, invested. Similarly, there is no evidence that corroborates Mr. Risteski's evidence that the 2015 investment was transferred to Mr. Ninosevic. I recognize that corroborative evidence is not necessary to accepting a witness's evidence. However, in light of Mr. Risteski's significant credibility issues, I cannot accept his evidence without corroborative evidence.

[75] Contrary to the defendants' submission, Mr. Paunovski's claim is not limited to the fact that he received *no return* on his investment. The claim is broader. Mr. Paunovski's claim includes an allegation that his funds were not actually invested. On the record before me, I find that the plaintiff has established a strong *prima facie* case that neither the 2015 investment nor the 2021 investment was actually invested.

[76] This finding alone does not establish a strong *prima facie* case in fraud. Mr. Paunovski must also establish a strong *prima facie* case that Mr. Risteski knew or was reckless to the fact that Mr. Paunovski's funds were not invested. I find that Mr. Paunovski has satisfied this burden. I come to this conclusion based on the following:

- (a) Mr. Risteski's March 7, 2025, affidavit states, "[w]ith respect to the Investments and re-investments, I have never had documents in my possession. I have requested them from Aleksandar Ninosevic". This is an admission that Mr. Risteski never saw any documentation demonstrating that his or Mr. Paunovski's funds were actually invested;
- (b) Mr. Paunovski repeatedly questioned Mr. Risteski on the lack of return on the 2015 investment. Taken together with the lack of documentation on the investment, Mr. Paunovski's concerns should have alerted Mr. Risteski to the very real risk that Mr. Paunovski's funds were not being invested; and
- (c) Mr. Risteski does not claim that there was any return on the 2015 investment or the 2021 investment. Mr. Risteski does not claim that he received any return on his "investments".

[77] As noted above, I have rejected Mr. Risteski's evidence that Mr. Ninosevic told him that a further investment was required to secure the 2015 investment. However, I do accept Mr. Risteski's evidence that he told Mr. Paunovski that the 2021 investment was necessary to secure the 2015 investment. I accept this part of Mr. Risteski's evidence because it is consistent with Mr. Paunovski's evidence.

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<sup>5</sup> Mr. Paunovski's affidavit does not include evidence on all the false statements alleged in the fresh as amended statement of claim. Allegations in pleadings are not evidence and cannot be relied upon to establish the truth of the statement therein.

[78] In relying on Mr. Paunovski's evidence, I note that Mr. Paunovski's affidavit evidence regarding the 2021 investment is, in part, inconsistent with his evidence in cross-examination. In his affidavit, Mr. Paunovski states:

Once he had my initial investment, he told me continuously "not to worry", that I was earning good money, that he had reinvested the money into other projects, and that I could trust him, so to extract additional money from me.

[79] In cross-examination, however, Mr. Paunovski's evidence was different:

Q. Okay. But in 2021, you, oddly enough, decided to send more money to Europe about -- I don't know the exact fee, but approximately 125,000?

A. 159,000.

Q. 159,000. Thank you for that. Why did you send this money to Europe; yet, you're yet to receive your original investment?

A. Okay. That -- that -- the money I sent it to Danny to Europe because the previously investment, he said it didn't go well, and he said he has to reinvest to get the money -- another investment to get the money back, and he can repay me with no problem because this is the better investment. And he says, Do not worry about it, and I start sending him money. Every time he call me, I send him the money to recover the -- the money was reinvested.

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Q. So I'll break it down. So Danny had already told you, this \$200,000 that was investment [*sic*], that has gone wrong basically?

A. Yes.

Q. Something happened to that money?

A. Yes. He said he'd invest it.

Q. Okay. And now he asked you for more money --

A. Yes.

Q. -- by 2021?

A. Yes, he did.

Q. Now, unless I'm wrong, isn't it your evidence in this matter that you had always been asking him, after the six-month period when you were meant to receive your money initially 2015, you were always asking him to pay you back your money; is that correct?

A. Yes, sir. Yes, sir.

[80] Mr. Paunovski was not asked to explain the inconsistency between his affidavit and his testimony on cross-examination. While this inconsistency does cause me some concern, I accept Mr. Paunovski's evidence that Mr. Risteski told him that the 2021 investment was necessary to secure the 2015 investment. I also accept Mr. Paunovski's explanation for why he made the 2021 investment despite not seeing any return on the 2015 investment: he trusted his "brother". I strongly suspect that Mr. Paunovski's trust in Mr. Risteski was misplaced.

[81] On Mr. Risteski's own evidence, his statement was meant to induce Mr. Paunovski to provide additional funds. The question is whether there is a strong *prima facie* case that this statement was false, and that Mr. Risteski knew or was reckless to the fact that the statement was false.

[82] I find that there is a strong *prima facie* case that Mr. Risteski's statement that the 2021 investment was necessary to secure the 2015 investment was false in two ways: (1) Mr. Risteski was not told that a further investment was necessary to secure the 2015 investment; and (2) the 2021 investment, like the 2015 investment, was not actually invested. For the reasons identified in paragraph 76 above, I find that there is a strong *prima facie* case that Mr. Risteski knew or was reckless to the fact that the 2021 investment was not actually invested.

**(ii) Strong prima facie case - Ms. Risteski and Donco**

[83] In his factum and oral argument, the plaintiff only addressed the claim of knowing receipt as against Ms. Risteski and Donco. As such, I will evaluate whether the plaintiff has established a strong *prima facie* case in knowing receipt against these defendants.

[84] A recipient of defrauded funds may be liable to return them under the doctrine of knowing receipt where he or she receives the funds for their own benefit, has actual or constructive knowledge of facts which would put a reasonable person on inquiry, but fails to inquire as to the possible fraudulent misappropriation of the funds. Liability for knowing receipt is restitution-based and is concerned with correcting the unjust enrichment of one party to the detriment of another (see *Citadel General Assurance Co. v. Lloyds Bank Canada*, [1997] 3 SCR 805, at paras. 48–49).

[85] The parties agree that the 2015 investment was deposited into the Risteskis' joint account. It is also common ground that the Risteskis have not provided bank records from their joint account for the period of time relevant to the 2015 investment.

[86] Ms. Risteski is the sole director and shareholder of Donco. In her affidavit, she confirms that, in or around 2015, Mr. Paunovski gave her husband \$200,000 to "place an investment for [the plaintiff] as [the plaintiff] directed". Ms. Risteski goes on to state that for many years, she has been completely unaware of the nature and scope of business dealings that are now being litigated. In 2021, Ms. Risteski knew that Mr. Paunovski asked Mr. Risteski to deliver an investment to Europe.

[87] Mr. Risteski's affidavit states that he did not tell his wife about the investments and that he believes that his wife only uses their joint account for the purpose of daily expenses. Mr. Risteski

claims that he wire transferred the 2015 investment shortly after it was deposited in the joint account. The defendants have not provided wire transfer documentation establishing that Mr. Risteski transferred the 2015 investment to Mr. Ninosevic.

[88] Mr. Paunovski has no direct evidence that Ms. Risteski was in any way involved in the 2015 investment. In cross-examination, the plaintiff admitted that he only engaged Ms. Risteski in 2021 when he was seeking a return of his 2015 investment and before he made the 2021 investment. Mr. Paunovski's evidence clearly establishes that Ms. Risteski was not involved in the discussions that led to the 2015 investment.

[89] In the Interim ruling, I made the following finding with respect to Ms. Risteski:

Again, the plaintiff's factum provides little assistance in evaluating the strength of his claim against Ms. Risteski or Donco. The plaintiff's affidavit does not state that his funds were deposited into the Risteskis' joint account even though it is asserted in the factum with no citation and is pleaded in the Fresh as Amended Statement of Claim. That said, it is not contested that the plaintiff deposited approximately \$350,000 into the Risteskis' joint account. Based on the uncontested nature of this assertion, I am satisfied that Ms. Risteski received the funds for her and her husband's benefit. Based on the quantum received, I find that the plaintiff will likely succeed in establishing that Ms. Risteski should have made inquires about the deposits. I infer that Ms. Risteski did not make those inquires because no money was returned to the plaintiff.

[90] On the basis of a full record, it is clear that: (a) not all of Mr. Paunovski's funds were deposited into the Risteskis' joint account; (b) that Ms. Risteski knew that the plaintiff was providing Mr. Risteski with the 2015 investment; and (c) Ms. Risteski did not know about any of the representations made by Mr. Risteski to Mr. Paunovski.

[91] In these circumstances, I find that Mr. Paunovski has not established a strong *prima facie* case against Ms. Risteski. While I accept that Ms. Risteski knew that the 2015 investment was deposited into the joint account, I do not believe that this, on its own, establishes a strong *prima facie* case that she was willfully blind or reckless to the fact that 2015 investment was fraudulently obtained. Ms. Risteski knew that the plaintiff was sending money to Mr. Risteski for the purpose of investing the money abroad. Given this knowledge, I do not believe the Mr. Paunovski has established a strong *prima facie* case that Mrs. Risteski ought to have made further inquiries about whether those funds were obtained by the alleged fraud.

[92] In the Interim ruling, I made the following finding with respect to Donco:

On the record before me, I do not find that the plaintiff is likely to succeed in a knowing receipt claim against Donco. There is no evidence that any of the plaintiff's investments were deposited into Donco's bank account nor is there any evidence that the Risteskis transferred the plaintiff's funds to Donco. The only evidence of Donco's involvement is the plaintiff's bare assertion, contained in his affidavit, that Mr. Risteski told the plaintiff that the plaintiff's investments would be made through Donco. This evidence is not enough to establish that Donco was

in knowing receipt of fraudulent funds or that it knowingly assisted the fraud. While I appreciate that the litigation is still in the early stages, this does not alleviate the plaintiff from its burden of establishing a strong *prima facie* case against Donco. It has not. As a result, the plaintiff's motion for a *Mareva* order against Donco is dismissed.

[93] With respect to Donco, the record has not changed. As such, I find that the plaintiff has not established a strong *prima facie* case of knowing receipt against Donco. While the plaintiff was told that his money would be invested through Donco, the evidence on this motion does not establish that any of the plaintiff's funds were invested or deposited with Donco.

[94] The parties agree that the 2015 investment was deposited into the Risteski's joint account. In fact, Mr. Paunovski made the cheque for the 2015 investment payable to Mr. Risteski. It was not made payable to Donco. Further, the 2021 investment was sent to Mr. Risteski's account in Europe and to Mr. Ninosevic. There is simply no evidence that any of the plaintiff's funds were deposited with Donco or transferred to Donco.

[95] To be clear, I am concerned that there are clearly relevant bank statements and wire transfer records that have not yet been produced. I have relied on this, in part, to support a finding that Mr. Paunovski has established a strong *prima facie* case that the 2015 investment was not actually invested and may not have been sent to Mr. Ninosevic as claimed by Mr. Risteski. However, in the face of the evidence noted above, I am not able to draw an inference that the 2015 investment was deposited with Donco.

[96] If the missing documents become available, through motions or otherwise, then Mr. Paunovski can renew his request for relief against Ms. Risteski and Donco.

***(iii) Assets in the jurisdiction***

[97] Mr. Risteski's assets are minimal, but the parties agree that they exist. As such, the plaintiff has established this element of the *Mareva* test.

***(iv) Risk of dissipation of assets***

[98] To satisfy the dissipation of assets element, a plaintiff is not required to adduce direct evidence showing that the defendants are actively dissipating their assets or removing assets from the jurisdiction. A serious risk may be inferred by the surrounding circumstances of the fraud (see 2092280 *Ontario Inc. v. Voralto Group Inc.*, 2018 ONSC 2305 (Div. Ct.), at para. 23). Importantly, the plaintiff must establish, by direct or circumstantial evidence, that the responding party is attempting to defeat creditors or avoid judgment (see *The Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2024 ONSC 2430, at para. 92; *Ghaeinizadeh v. Ku De Ta Capital Inc.*, 2010 ONSC 4169, at para. 51; *10390160 Canada Ltd. et al. v. Casey et al.*, 2022 ONSC 628, at para. 43; *RBC Dexia Investor Services Trust v. Goran Capital Inc.*, 2016 ONSC 1138, at paras. 11(b), 52).

[99] The plaintiff points to the following transactions as establishing a risk of dissipation of assets:

- (a) The defendants sold real property that they owned to their daughter and son-in-law in 2019;
- (b) In March 2022, the defendants borrowed \$58,300 at 12% interest and then, a few months later in October 2022, transferred \$92,232.05 to Mr. Ninosevic;
- (c) The defendants sold their matrimonial home in 2025 shortly before the motion before Associate Judge Jolly, and used the majority of the proceeds from that sale (i.e., their personal funds) to pay off a Donco debt;
- (d) The defendants have recently taken out very high interest loans for, inter alia, “emergency funds,” and to apparently repay a loan from another individual; and
- (e) The defendants have borrowed heavily on their lines of credit and credit cards.

[100] For the purpose of this motion, I will only address the transfer of funds to Mr. Ninosevic, the sale of the matrimonial home (i.e., the Greenwood Avenue property) and the high interest loan. All three transactions demonstrate an intention to dissipate assets available for judgment.

[101] As noted above, Mr. Risteski prepared a list of “investments” made to Mr. Ninosevic. The total amount of these investments is \$467,981.05. A significant amount of funds was transferred after the commencement of this action in August 2022.

[102] These “investments” make no sense in the context of: (a) Mr. Risteski’s evidence that he invested nearly \$300,000 with Mr. Ninosevic and began investing around the same time that Mr. Paunovski made his 2015 investment; (b) neither Mr. Paunovski nor Mr. Risteski received any return on the investments; and (c) Mr. Risteski never received any documentation establishing that his or Mr. Paunovski’s investments were actually being invested. Mr. Risteski has offered no explanation for why he continued “investing” with Mr. Ninosevic in these odd circumstances. As a result, I find that these transfers are evidence of a dissipation of assets intended to defeat the plaintiff’s ability to recover on a judgment.

[103] On January 16, 2025, the Risteskis sold their home at 1025 Greenwood Avenue, Toronto, for \$1,060,000 and, thereafter, moved into a property purchased by their son and daughter-in-law. From the proceeds of the sale of that property, Mr. and Ms. Risteski directed \$95,068.21 to be paid to Donco to pay off a second mortgage registered against land it owned.

[104] The transfer of the Risteski’s personal funds to Donco was not included in Mr. Risteski’s affidavit sworn after the Interim ruling. In cross-examination, Mr. Risteski refused to answer how this transfer of money was accounted for in Donco’s records and the Risteskis have not disclosed a shareholder loan or other amounts owing to them from Donco. The Risteskis have provided no explanation for why their personal funds were used to pay off Donco’s loan. In the circumstances, I find that the transfer of approximately \$95,000 to Donco to be evidence of a dissipation of assets. The Risteskis are trying to keep funds out of the plaintiff’s reach.

[105] Finally, on April 14, 2025, the Risteskis borrowed \$25,000 at 34.6% interest. At the time of taking out the loan, the Risteskis were aware of my Interim ruling but still took out the high interest loan. In cross-examination, Mr. Risteski could not recall what was done with the \$25,000.

The cross-examination occurred on June 23, 2025, just over two months after the loan was obtained.

[106] In answers to undertakings, Mr. Risteski advised that the \$25,000 was spent as follows: (a) \$9,000 for legal fees; (b) \$6,000 to satisfy costs awards; (d) \$3,500 cash held back in case of emergencies; (d) \$6,350 repaid back to Nicola Duric for a personal loan obtained in December 2023; and (e) \$150 for service fees. No supporting documents were provided with respect to the loan with Ms. Duric.

[107] The Risteskis have not explained why they took out this very high interest loan instead of immediately moving to obtain access to the frozen funds to pay their outstanding legal bills, to satisfy the outstanding cost award or to discharge the loan with Mr. Duric. In the face of the Interim ruling, which froze the Risteskis' assets,<sup>6</sup> an explanation should have been provided. In the absence of an explanation, I find that this transaction also demonstrates an intention to dissipate the Risteskis' limited assets to ensure that they are not available to the plaintiff if he is successful in obtaining a judgment against the defendants.

[108] These three transactions establish a real risk that Mr. Risteski will dissipate his assets if they are not subject to a *Mareva* injunction. In coming to this conclusion, I have also relied upon: (a) my findings with respect to the strong *prima facie* case in fraud; and (b) the fact that important documents have not yet been produced despite this litigation beginning in 2022.

**(v) Irreparable harm and balance of convenience**

[109] Unless an interlocutory *Mareva* injunction is granted against Mr. Risteski, I find that there is a real risk that he will dissipate his limited assets, and the plaintiff will not be able to satisfy a likely judgment as against Mr. Risteski. As a result, I find that Mr. Paunovski will be irreparably harmed if the injunction is not granted.

[110] With respect to the balance of convenience, I accept that an interlocutory injunction will have a significant effect on Mr. Risteski. He has large debts and limited income. That said, the impact of the *Mareva* injunction against him is somewhat dulled by the fact that Mr. Risteski is entitled to access his funds for ordinary living expenses and legal fees. On the other side of the balancing scale, the plaintiff is unlikely to recoup any damages against Mr. Risteski without the *Mareva* order. As a result, the balance of convenience favours granting the *Mareva* injunction.

[111] In his factum, the defendants rely on Kimmel J.'s decision in *Khan v. Coloma*, 2019 ONSC 7202, to argue that a plaintiff having to pursue the normal means of enforcing a judgement is not irreparable harm for the purpose of granting an interlocutory injunction (see *Khan*, at para. 22). The defendants' reliance on *Khan* is misplaced. In *Khan*, Kimmel J. refused to grant a *Mareva* injunction because the plaintiff had not established that defendants were dissipating assets (*Khan*, at para. 29). In this case, I have found the opposite. This finding is what creates the irreparable harm and distinguishes the case at bar from *Khan*.

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<sup>6</sup> It is not necessary for me to make a finding on whether the Risteskis breached the April 10, 2025, interim order. The circumstances involving the alleged breach of the order are set out in my endorsement dated July 17, 2025.

(vi) *Undertaking*

[112] Mr. Paunovski has provided an undertaking as to damages. The defendants have not challenged the undertaking.

**Costs**

[113] Given the plaintiff's mixed success on the motion, my inclination is to reserve costs on the interlocutory motion to the trial. If the plaintiff seeks costs, then Mr. Anisman shall serve and file a written submission on costs (no more than 5 pages) on or before December 11, 2025. Mr. Otto may file responding written submissions on costs (no more than 5 pages) on or before January 12, 2026.

**Order**

[114] The parties shall immediately consult on the form and content of a draft order that is consistent with this ruling. To be clear, the *Mareva* injunction will apply to assets jointly held by the Risteskis (e.g., their joint bank account). Ms. Risteski's income is modest as she is currently receiving WSIB pension benefits, Old Age Security benefits and CPP disability benefits. Ms. Risteski denies receiving any income from Donco. Ms. Risteski can arrange to have her benefits deposited into a new bank account that is not subject to the *Mareva* injunction.

[115] Once the order is issued and entered, the April 10, 2025, interim order will expire as will my August 18, 2025, order relating to ongoing living expenses and legal fees. At that time, Mr. Risteski may bring a motion to access funds for legal fees and ordinary business expenses in light of these reasons.

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The Honourable Justice Sunil S. Mathai

Released: November 10, 2025