

[4] The parties attended Civil Practice Court on May 13, 2025. Chalmers, J. directed the parties to attend a case conference “as quickly as possible” to deal with both motions. He established a timetable for the exchange of materials leading to the case conference. He specifically provided that “the case conference judge may make procedural orders, may make orders for interlocutory relief and give directions. In the appropriate case the case conference judge may make substantive orders...in advance of the case conference each side should deliver a case conference memo of up to five double spaced pages in length setting out their position on the motion and why they should succeed.” (emphasis added, citation omitted).

[5] By order dated May 30, 2025, the motion judge granted Mr. Edwards authority to withdraw from the RBC account \$10,000 per month for three months. The materials on which the motion judge made his order were not served on the appellants or on RBC.

[6] As soon as the parties received the initial order of the motion judge, counsel for RBC and counsel for the appellants contacted the court to advise of what they believed to be a mix-up in the court system, considering the previous directions of Chalmers, J. They provided the court with the endorsement of Chalmers, J. and with their motion materials. The motion judge issued a second endorsement on May 30, 2025 in which he found there was no conflict with the order of Chalmers, J. since Chalmers, J. did not issue a temporary *Mareva* injunction but only ordered a case conference. He stated his order permitted the withdrawal of a monthly allowance for living expenses, which is an order he would have made on the return of a *Mareva* injunction.

[7] RBC facilitated the first payment of \$10,000 to Mr. Edwards. On July 2, 2025, Koehnen, J. ordered RBC was not required to make any additional payments to Mr. Edwards until this court dealt with the motion for leave to appeal, which was granted.

[8] The appellants have brought a motion seeking to introduce fresh evidence. They seek to admit:

- (1) the evidence they sent to the motion judge after his first order; and
- (2) additional material explaining the procedural history including, for example, that the motion material for the motion in-writing was never served on them.

[9] This material is credible and could not have been put before the motion judge at the outset of the motion in-writing since the appellants were not aware of it. The material could impact the outcome of the appeal. We therefore find it meets the test in *R. v. Palmer*, [1980] 1 S.C.R. 759.

[10] In our view, the motion judge made two errors. First, he erred by refusing to vary his order once he became aware of the order of Chalmers, J. Chalmers, J. had already made an order directing the two motions to be dealt with as soon as possible at a case conference including advising that the case conference judge may make interlocutory orders. The order of the motion judge conflicted with the order of Chalmers, J. because instead of permitting the parties to attend the case conference where they would have the opportunity to file materials and make submissions, it permitted the release of funds without any responding materials or submissions.

[11] Second, the motion judge breached procedural fairness by refusing to vary his order once RBC and the appellants contacted him. The implication of those parties' communications to the court after they received the first May 30, 2025 order was that they were not aware of the motion in-writing and that they wanted and expected the opportunity to make submissions on Mr. Edwards' motion. They explained that they intended to do so as directed by Chalmers, J. In those circumstances it was an error for the motion judge to refuse to reconsider his order.

[12] The appeal is allowed, and the orders of the motion judge dated May 30, 2025 are quashed. Mr. Edwards shall return the \$10,000 already released from the RBC account back to that account within 30 days.

[13] The Appellants are entitled to costs of the appeal and motion for leave to appeal in the amount of \$17,500, all inclusive.

O'Brien J.

I agree: _____
Sachs J.

I agree: _____
Backhouse J.

Oral reasons given: January 6, 2026

Written reasons released: January 9, 2026

CITATION: Panelized Building Solutions Inc. v. Bank of Montreal et al, 2026 ONSC 170
DIVISIONAL COURT FILE NO.: DC-25-00000449-0000
DATE: 20260109

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Sachs, Backhouse and O'Brien JJ.

BETWEEN:

PANELIZED BUILDING SOLUTIONS INC. AND
LUMBER CITY INC.

Appellants

– and –

JOHN DOE also known as KISMET CLUB INC.,
JOHN DOE DIRECTOR(S), THE BANK OF
MONTREAL AND THE ROYAL BANK OF
CANADA

Respondents

REASONS FOR JUDGMENT

O'BRIEN J.

Released Orally: January 6, 2026

Released: January 9, 2026