

\CITATION: *Li v. Bai et al.*, 2026 ONSC 1442
Court File No.: CV-24-00004015-0000
DATE: March 11, 2026

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Tianzhu Li)
)
Plaintiff) Dr. Ran He, counsel for the plaintiff
)
- and -)
)
)
Song Bai, Jie Chen, Feiyan Gao, Easyline) Yixin Wang, counsel for the defendants,
Mortgage Inc., CYD Investment Inc. and) CYD Investment Inc. and CY Capital Inc.
CY Capital Inc.)
)
Defendants) No one appearing for Song Bai, Jie Chen,
) Feiyan Gao and Easyline Mortgage Inc.
)
)
)

HEARD: November 27, 2025

RULING ON MOTION TO VACAT A MAREVA INJUNCTION

THE HONOURABLE JUSTICE SUNIL S. MATHAI

A. Introduction

[1] On October 23, 2024, the plaintiff, Tianzhu Li, brought an *ex parte* motion seeking, among other things, a *Mareva* injunction as against the defendants. That motion was granted and was subsequently extended on the consent of the parties. On November 19, 2024, the *Mareva* injunction against all the defendants was extended until further order of this court.

[2] The defendants, CYD Investment Inc. (“CYD”) and CY Capital Inc. (“CY Capital”) (collectively the “CY Defendants”), bring a motion to dissolve the *Mareva* injunction as against them. The plaintiff opposes the relief sought and argues that the *Mareva* injunction should be varied to minimize the impacts on the CY Defendants.

[3] For the reasons that follow, I grant the motion and discharge the *Mareva* order with respect to the CY Defendants.

B. Background

(i) The Plaintiff’s Claim

[4] The following is a summary of the plaintiff’s allegations as pleaded in her statement of claim.

[5] In 2020, the defendant, Mr. Bai, told the plaintiff that he owned a mortgage company named Easyline which specializes in private mortgages.¹ Mr. Bai convinced the plaintiff to provide him and Easyline with funds that he could loan out through Easyline. Mr. Bai assured the plaintiff that her funds would only be used for primary mortgages and that he would not use her funds for second or subsequent mortgages. Mr. Bai told the plaintiff that the interest rate on her loans would be between 10–11 percent.

[6] Between 2020 and 2022, the plaintiff advanced a total of \$400,000 to Mr. Bai and she received repayments in the amount of \$348,500. At para. 19 of the statement of claim, the plaintiff alleges that the repayments became slower in 2023 and that, “the balance on the loan[s] to [Mr. Bai] started to pile up.” In 2023, the plaintiff advanced a total of \$1,150,000 to Mr. Bai and only received \$450,000 in repayments. In February 2024, the plaintiff made a final advancement to Mr. Bai of \$300,000 which was not paid back.

[7] The plaintiff alleges that Mr. Bai made monthly interest payments on the various loans until May 2024. Beginning in June 2024, Mr. Bai told the plaintiff that he could not repay the principal amount of her loans. The plaintiff alleges that she is still owed \$1,051,500.

[8] With respect to Mr. Bai, the plaintiff alleges fraud and fraudulent misrepresentation. The plaintiff asserts that Mr. Bai used the corporate defendants, including the CY Defendants, as vehicles for his fraudulent scheme. The statement of claim alleges that Mr. Bai is the controlling mind of the CY Defendants and that Mr. Bai, “could direct each of the Corporate Defendants to take funds and advance funds for the purpose of his purported mortgage businesses”. The plaintiff’s claim against the CY Defendants is also anchored in fraud and fraudulent misrepresentation.

¹ On the *ex parte* motion, the plaintiff did not advise de Sa J. that she had entered into a subscription agreement for preferred shares of Easyline on October 30, 2020. It is not clear whether this omission is significant given that Mr. Bai has admitted to owing the plaintiff \$1,051,500.

[9] The plaintiff's statement of claim includes one specific factual allegation with respect to the CY Defendants: that Mr. Bai, through the CY Defendants, used the plaintiff's funds to provide a mortgage to a third party and was later sold to a new lender. The plaintiff alleges that she was not paid, but that other investors were paid out. As described in greater detail below, this loan relates to a project that I will refer to as the "Davenport Project".

[10] Finally, at para. 44 of the statement of claim, the plaintiff alleges that Mr. Bai's wife and mother, Ms. Gao and Ms. Chen respectively, were involved in a fraudulent conveyance scheme designed for the "purpose of rendering [Mr. Bai] judgment-free and defrauding [the plaintiff]."

(ii) The CY Defendants

[11] CYD is an Ontario corporation founded by Qiang Song ("Mr. Song") in April 2016. Mr. Song is the sole director and shareholder. CYD operates as a private lender and facilitates private mortgage transactions.

[12] CY Capital is an Ontario corporation incorporated by Qingyong Lian ("Mr. Lian"), Jun Zhao ("Mr. Zhao") and Mr. Song in May 2015. The shareholders are Mr. Lian (30%), Mr. Zhao (30%) and Mr. Song (40%). CY Capital earns fees for brokering and managing private lending transactions. For the most part, CY Capital only manages the loans provided for CYD. There is no dispute that Mr. Bai is not a shareholder, officer or director of either CYD or CY Capital.

[13] Liyun Zhu ("Ms. Zhu") is the marketing manager of CYD and CY Capital.

(iii) Procedural Background

[14] On October 23, 2024, de Sa J. granted the plaintiff's request for an *ex parte Mareva* injunction against all the defendants (the "*Mareva* order"). The *Mareva* order directed that the "matter be returnable on October 30, 2024, for an extension of [the] Order." While not titled this way, the *Mareva* order was an "interim order" as it was issued on an *ex parte* basis (see r. 40.02(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194).

[15] On the return date, the parties appeared before Fraser J. At that time, the plaintiff brought a motion to extend the *Mareva* order. The defendants, Ms. Gao and Ms. Chen, brought a motion to discharge the *Mareva* injunction as against them. On the consent of the parties, Fraser J. extended the *Mareva* order a further 14 days (the "Amendment Order"). Additionally, the *Mareva* order was varied to permit the CY Defendants to use specific bank accounts for defined purposes. For ease of reference, I reproduce the variations that are relevant to this motion:

5. THIS COURT ORDERS that the Order of the Honourable Justice De Sa dated October 23, 2024 granting a *Mareva* Injunction against the Defendants shall be discharged upon payment of \$1,051,500 to the Accountant of the Superior Court of Justice.

6. THIS COURT ORDERS that if the total value free of charges or other securities of the Defendants' assets in Ontario exceeds \$1,051,500 the Defendants may sell, remove, dissipate, alienate, transfer, assign, encumber, or similarly deal with them

so long as the total unencumbered value of the Defendants' assets in Ontario remains above \$1,051,500.

7. THIS COURT ORDERS that the RBC bank account #09998-1021732 (the "CYD Operating Account") held by the defendant, CYD Investment Inc. ("CYD"), shall be unfrozen, and CYD shall be permitted to operate and use CYD Operating Account, subject to the conditions described herein.

8. THIS COURT ORDERS that the defendant, CY Capital Inc. ("CY"), shall be permitted to open, operate and use a new bank account with the Royal Bank of Canada (the "CY Operating Account"), subject to the conditions described herein.

9. THIS COURT ORDERS that disbursements from the CYD Operating Account and CY Operating Account shall be restricted to the following purposes:

- (a) Payment of salaries and wages;
- (b) Payment of rent and utilities;
- (c) Payment of taxes;
- (d) Payment of software fees; and
- (e) Payment of interest to investors of CYD and CY.

[16] On November 13, 2024, the parties again consented to a further extension of the *Mareva* order until November 18, 2024.

[17] On November 15, 2024, Fraser J. heard the plaintiff's motion to extend the *Mareva* order and Ms. Gao and Ms. Chen's motion to dissolve the injunction. On November 19, 2024, Fraser J. dismissed Ms. Gao and Ms. Chen's motion (see *Li v. Bai*, 2024 ONSC 6452). In dismissing the motion, Fraser J. held that the *Mareva* order, "remains in force until further court order." (*Li*, at para. 46). Despite being served with the plaintiff's motion to extend the *Mareva* order, the CY Defendants did not attend the hearing of the motion, nor did they file materials in response to the plaintiff's motion to extend the injunction.²

C. Summary of evidence that is not in dispute

[18] Since the *ex parte* motion, the record has developed. What follows below is a summary of the evidence that is not in dispute between the parties.

(i) Mr. Bai's Investments with the CY Defendants

² Ms. Zhu swore an affidavit, dated November 13, 2024, in compliance with de Sa J.'s order. This affidavit was before Fraser J. on November 15, 2024.

[19] Between February 2023 and October 2024, Mr. Bai and Ms. Chen participated in six private lending transactions facilitated by CYD totalling \$905,000. Between January and July 2024, CYD repaid \$650,000 of that \$905,000. On several occasions, Mr. Bai directed CYD to make the loan repayments to third parties. As described in greater detail below, the parties also agree that CYD made several payments to the plaintiff in 2023 and 2024.

[20] As of November 2024, CYD owed Mr. Bai and Ms. Chen a total of \$255,000 in relation to two private lending transactions. In written submissions filed on December 4, 2025, Mr. Wang advised that \$200,000 of the \$255,000 principal was subject to power-of-sale proceedings that concluded on August 15, 2025. As a result of those proceedings, the remaining funds attributable to Mr. Bai and Ms. Chen is \$156,158.72. The plaintiff takes no issue with this amount.

(ii) Tracing of Monies

[21] The uncontested evidence establishes that a total of \$300,000 was moved from the plaintiff to Mr. Bai and then to CYD. None of the plaintiff's monies went to CY Capital.

[22] The \$300,000 is connected to two loan transactions.

[23] On February 27, 2023, Mr. Bai provided CYD with \$150,000 for a loan transaction for a property located at 2903-397 Front Street, Toronto, Ontario. The plaintiff was the source of Mr. Bai's investment in this loan transaction. When this mortgage was discharged, Mr. Bai directed CYD to make the repayments to two individuals. The plaintiff did not receive any funds on this loan.

[24] On June 7, 2023, Mr. Bai provided CYD with another \$150,000 for a loan transaction for a development project at 418 Davenport Road, Toronto, Ontario (the "Davenport Project"). That development project was secured against the Davenport property and another property in Vaughan, Ontario. The plaintiff was the source of Mr. Bai's June 7, 2023, investment.

[25] On November 16, 2023, Mr. Bai provided CYD with another \$100,000 for the Davenport Project. Unlike Mr. Bai's initial investment in this project, the November 16, 2023, investment did not originate from the plaintiff's funds.

[26] On December 7, 2023, the borrower for the Davenport Project repaid \$100,000 of the principal. Following this repayment, Mr. Bai directed that \$50,000 be disbursed to him in cash. CYD complied with this direction. On May 27, 2024, CYD sold the Davenport Project to new lenders for \$200,000. Mr. Bai directed that these funds be distributed to third parties. The plaintiff did not receive any repayment with respect to the Davenport Project loan.

[27] On May 17, 2023, Mr. Bai provided Sino Century Inc. ("Sino") with \$300,000. This money can be traced to the plaintiff's funds and was used for a loan transaction at 501 Yonge Street, Toronto, Ontario. Sino is not a party to the action. Ms. Zhu is the owner of Sino. In September 2023, Sino paid the plaintiff \$2,500. This payment made at the request of Mr. Bai. The 501 Yonge Street mortgage was discharged on October 6, 2023. At that time, Mr. Bai requested that his

principal repayment be re-directed to a third party. Sino complied with this request and transferred \$301,425 to a third party.

D. Analysis and Findings

(i) Governing Legal Principles

[28] The parties agree that the test for dissolving or vacating an interlocutory *Mareva* order requires consideration of the following factors (see *Jack Digital Productions Inc. v. Comex Foreign Exchange Inc.*, 2007 CanLII 43901 (Ont. S.C.J.), at para. 7; *Chan v. Chan*, 2023 ONSC 6143, at para. 13):

- (a) whether there has been inordinate delay in advancing the claim;
- (b) whether there has been harm to the defendant;
- (c) whether the present facts are substantially different from the facts upon which the original order was given; and
- (d) the balance of convenience.

[29] The parties also agree that the CY Defendants have the burden of establishing that the factors favour dissolving the *Mareva* order (see *Jack Digital*, at para. 10; *Chan*, at para. 12; and *Business Depot Ltd. v. Canadian Office Depot Inc.* (2000), 186 F.T.R. 160 (F.C.A.), at para. 6).

[30] A motion to re-open, vary, or dissolve an interlocutory injunction is a request for extraordinary relief. As a consequence, there is a heavy burden to establish that an interlocutory injunction should be dissolved or varied (see *Jack Digital*, at para. 10; *Business Depot*, at para. 4)

[31] I will examine each factor in turn.

(ii) Application of the Governing Legal Principles

(a) Whether there has been inordinate delay in advancing the plaintiff's claim

[32] The CY Defendants concede that this matter has progressed without inordinate delay. This factor does not weigh in favour of dissolving the *Mareva* order.

(b) Whether there has been harm to the CY Defendants

[33] In his affidavit, Mr. Song asserts that the *Mareva* order has caused ongoing harm to the CY Defendants. Specifically, he asserts that the injunction has caused the following harms:

- (a) the CY Defendants' bank accounts were frozen;

- (b) shareholders were required to inject additional capital to sustain operations because the funds in the unfrozen operating accounts had been depleted;
- (c) the CY Defendants are unable to release the repaid loan principal and investors are demanding repayment and threatening litigation;
- (d) the CY Defendants are unable to solicit new investors;
- (e) the CY Defendants' reputation has been severely damaged due to public association with fraud allegations and the existence of a court-ordered injunction; and
- (f) the CY Defendants have experienced a multitude of lost business opportunities.

[34] To establish the lost business opportunities, Mr. Song's affidavit relies on several messages between mortgage brokers and CYD. In those messages, the mortgage brokers request mortgages from CYD for their clients. The communications are attached as seven exhibits to Mr. Song's affidavit (Exhibits 37–43).

[35] The plaintiff argues that the *Mareva* order does not prevent the CY Defendants from continuing their business, nor is there any prohibition on the CY Defendants from structuring new lending vehicles. To demonstrate her point, the plaintiff cites an email exchange in February and March 2025 where the CY Defendants sought the plaintiff's consent to repay the principal of an investor's loan.

[36] On February 19, 2025, Mr. Wang requested the plaintiff's position with respect to CYD paying out an investor's principal loan. Dr. He did not respond. On March 6, 2025, Mr. Wang again sought the plaintiff's position and advised that CYD would make the payment on March 10, 2025, absent any objection from the plaintiff. In the email exchange, Mr. Wang asserts that clause 6 of the Amendment Order permitted CYD to payout the principal of an investor's loan because CYD had a total of \$9,000,000 in unencumbered assets.

[37] There is nothing in the record that indicates whether the plaintiff consented to the payout, nor is there anything before me that confirms that the payment was made. However, it is clear that the CY Defendants take the position that clause 6 of the Amendment Order permits them to use funds from the frozen accounts to repay their investors as long as their unencumbered assets exceed \$1,051,500. In oral argument, Dr. He advised that he agrees with Mr. Wang's interpretation of clause 6 of the Amendment Order.

[38] In considering the totality of the evidence on harm, I find that the CY Defendants have suffered harm from the *Mareva* order and will likely continue to suffer harm because of the order. I arrive at this conclusion for three reasons.

[39] First, shareholders have had to infuse new capital into the companies as the operating accounts have been depleted. If the *Mareva* order is continued, the operating accounts will continue to be depleted, and shareholders will continue to be required to provide additional capital to keep the businesses afloat.

[40] Second, I accept that the fraud allegations would damage the CY Defendants' reputation. In some respects, however, this harm is not entirely related to the *Mareva* order. Rather, the harm has been suffered by the nature of the plaintiff's claim as against the CY Defendants. Put another way, this harm would arise, albeit possibly to a lesser extent, even without the *Mareva* order.

[41] Third, I accept that investors are unlikely to invest in the CY Defendants if they fear that their principal will be "trapped".

[42] While I find that the *Mareva* injunction has harmed or will harm the CY Defendants, I am unable to ascertain how significant the impacts are or will be moving forward. There is a paucity of evidence that assists in assessing the degree of the harm suffered by the CY Defendants. For example, there is no evidence of how much capital shareholders were required to put forward to the CY Defendants. Additionally, I do not have any evidence regarding the current value of the operating accounts or how much additional funds will be necessary to keep the CY Defendants in business.

[43] Finally, there is nothing before me that demonstrates that the CY Defendants have suffered business losses. As noted above, I accept that investors may be unwilling to invest in the face of a *Mareva* order. However, for the purpose of dissolving an injunction, the CY Defendants must lead evidence that concretely establishes the severity of financial harm. They have not.

[44] Mr. Song asserts that Exhibits 37–43 of his affidavit demonstrate that the CY Defendants have lost business opportunities. I do not accept his evidence on this point for the following reasons:

- (a) Mr. Song did not receive the messages reflected in Exhibits 37-43. The exhibits simply reflect inquiries from prospective clients. On their face, the exhibits do not establish that the proposed transactions were abandoned because of the *Mareva* order. Similarly, the answers to undertakings relating to Exhibits 37-43 do not provide evidence that the proposed transactions could not be completed because of the *Mareva* order;
- (b) Mr. Song is not in charge of the CY Defendants' day-to-day business operations and his evidence on business loss is based on information and belief, which has not been identified as such. While hearsay evidence is permitted on a motion, I am not willing to accept hearsay evidence on this point because it is a contentious issue. I note that Ms. Zhu's affidavits do not speak to the harms suffered by the CY Defendants;
- (c) In cross-examination, Mr. Song testified that he could not provide specifics on lost business opportunities; and
- (d) Mr. Song's affidavit states that the lost business opportunities are a direct result of the CY Defendants being prohibited from repaying investors or engaging in new lending activities. This evidence is inconsistent with the CY Defendants' interpretation of clause 6 of the Amendment Order. Given this inconsistency, I would have expected Mr. Song's affidavit to include confirmatory evidence that clearly established: (a) that deals were not completed; (b) that potential business was lost because of the *Mareva*

order; (c) financial documents establishing lost revenue or income. No such evidence is before me.

[45] *Mareva* injunctions will always cause some harm to the subject of the order. In determining whether to dissolve the injunction, the question is not whether the CY Defendants have been harmed. Rather, the focus is whether the degree of harm warrants dissolving the injunction. Decisions from this court have described the level of harm required to dissolve an injunction as being “real and pervasive harm” (*Chan*, at para. 18) or as “irreparable harm” (*Jack Digital*, at para. 9). On the record before me, I am unable to find that the harms experienced by the CY Defendants are “real and pervasive” or “irreparable”. I note that the plaintiff has provided an undertaking with respect to damages and there is no suggestion that she is impecunious. Any loss suffered by the CY Defendants can be recouped from the plaintiff if the action is dismissed as against these defendants.

[46] I find that this factor does not warrant dissolving the *Mareva* order.

(c) Whether the present facts are substantially different from the facts upon which the original Mareva order was given or that the factual underpinnings of the Mareva order are no longer valid

[47] The CY Defendants must establish that the facts on this motion are substantially different from the facts upon which the *Mareva* order was given or that the factual underpinnings of the *Mareva* order are no longer valid (see *Jack Digital*, at para. 7).

[48] Regrettably, there are no reasons that set out the key factual underpinnings for granting the *Mareva* order against the CY Defendants. As is often the case on urgent *ex parte* motions, de Sa J. did not provide reasons for granting the injunction. Fraser J.’s reasons of November 19, 2024, do not address the plaintiff’s claim against the CY Defendants because these defendants did not oppose the extension motion.

[49] Given the absence of reasons, my analysis proceeds in four parts. First, I summarize the governing principles for *Mareva* injunctions. Second, I outline the evidence the plaintiff relied on in the *ex parte* motion and the extension motion as it relates to the CY Defendants. Third, I identify the factual findings that, in my view, supported the *Mareva* order against the CY Defendants at the time of the extension motion. Finally, I consider whether the more developed record undermines those factual underpinnings.

Step 1 – Criteria for a *Mareva* injunction

[50] For a *Mareva* injunction to be granted, the plaintiff must establish the following:

- (1) a strong *prima facie* case, meaning that the plaintiff will probably prevail or is likely to succeed at trial;
- (2) the defendants have assets in the jurisdiction;

- (3) there is a serious risk that the defendants will remove or dissipate their assets to avoid judgment;
- (4) the plaintiff will suffer irreparable harm if the injunction is not granted;
- (5) the balance of convenience favours granting the injunction, in the sense that the harm suffered if the injunction is not granted will exceed the harm that will be suffered if it is allowed; and
- (6) the moving party must also give a meaningful undertaking as to damages.

(see *Chitel et al. v. Rothbart et al.* (1983), 39 O.R. (2d) 513 (C.A.); *SFC Litigation Trust (Trustee of) v. Chan*, 2017 ONSC 1815, 137 O.R. (3d) 382 (Div. Ct.), at paras. 17–20, 60; *Neville v. Sovereign Management Group Corp.*, 2022 ONSC 3466, at paras. 30, 33; *OPFFA v. Paul Atkinson et al.*, 2019 ONSC 3877, at para. 6; and with respect to interlocutory injunctions, see *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334)

[51] To satisfy the dissipation of assets element, the plaintiff must establish, by direct or circumstantial evidence, that the responding party is removing or dissipating assets in an attempt to defeat creditors or avoid judgment (see *Ghaeinizadeh v. Ku De Ta Capital Inc.*, 2010 ONSC 4169, at paras. 51, 66; *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 para. 11(b); and *Securitas Technology Canada v. North West Construction*, 2023 ONSC 4430, at para. 36). Importantly, 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).

[52] In the context of a *Mareva* injunction, the first and third elements are intertwined with the fourth and fifth element. Where the plaintiff has a strong *prima facie* case, their inability to enforce judgment obtained at trial due to the removal or dissipation of assets *is* the irreparable harm that a *Mareva* injunction is designed to protect against (*10390160 Canada Ltd. et al.*, at para. 56; *Securitas Technology*, at para. 24). Similarly, the balance of convenience will generally favour granting the injunction where the plaintiff has established the first and third elements of the test (see *OPFFA*, at para. 19; *Noreast Electronics Co. Ltd. v. Danis*, 2018 ONSC 879, at paras. 37–38; and *Hao Chen et al. v. Masih Moazen-Safaei*, 2025 ONSC 3098, at para 79).

Step 2 – The plaintiff’s evidence on the *ex parte* motion and extension motion

[53] In obtaining the interim order and the extension, the plaintiff relied on the following evidence:

- (a) CYD made interest payments to the plaintiff and issued a T4A to the plaintiff. The plaintiff relies upon this evidence to demonstrate that CYD knew that the plaintiff had invested funds in CYD;

- (b) CY Capital also made payments to the plaintiff and issued a T4A slip to the plaintiff. Again, the plaintiff argues that this demonstrates that CY Capital knew that the plaintiff invested funds with the CY Defendants; and
- (c) Mr. Bai, through CYD, lent \$300,000 to a third party for the Davenport Project.³ On December 11, 2023, this mortgage was reduced from \$300,000 to \$200,000 without notice to the plaintiff. In May 2024, this mortgage was sold to a new group of lenders without any notice to the plaintiff or any monies being paid to the plaintiff. Mr. Bai was paid. The plaintiff relies upon this evidence to establish that the CY Defendants were dissipating assets for the purpose of avoiding judgment.

Step 3 – Factual underpinnings in support of the *Mareva* order

[54] Based on the above, I infer that the essential factual underpinnings supporting the *Mareva* injunction against the CY Defendants are:

- (a) the plaintiff established a strong *prima facie* case that Mr. Bai “controls” the CY Defendants and/or that the CY Defendants knew that the plaintiff was an investor; and
- (b) the plaintiff has established a real risk that the CY Defendants are dissipating assets to avoid judgment. At the time of the extension motion, the only evidence that the CY Defendants were dissipating assets was: (1) the payout of the Davenport Project; and (2) the strong *prima facie* case that Mr. Bai had control over the CY Defendants.

[55] The parties agree that the CY Defendants have assets in Ontario, and the plaintiff has provided an undertaking with respect to damages. The CY Defendants do not take issue with the undertaking, nor have they argued that the plaintiff does not have the financial wherewithal to satisfy the undertaking.

Step 4 – Is there a change in the factual underpinnings that support the *Mareva* order

[56] The CY Defendants argue that the foundation for the *Mareva* order has collapsed. Specifically, the CY Defendants argue that the evidence before this Court demonstrates that Mr. Bai does not have *de facto* control over the CY Defendants.

[57] Unsurprisingly, the plaintiff disagrees. The plaintiff argues that there has been no change to the factual foundation that led to the *Mareva* order and that the more developed record adds further support to her allegation that Mr. Bai controls the CY Defendants and that the CY Defendants knew that the plaintiff was a source of Mr. Bai’s investment funds.

[58] As a starting point, I return to the plaintiff’s statement of claim. With respect to Mr. Bai, the plaintiff alleges that he committed the torts of fraud and fraudulent misrepresentation and that he used CYD and CY Capital as vehicles for his fraud scheme. Further, the plaintiff alleges that the CY Defendants are liable for the fraud perpetrated by Mr. Bai (see statement of claim, at paras.

³ As it turns out, the plaintiff was only the source of \$150,000 of Mr. Bai’s investment in the Davenport Project.

1, 39). In recognition that Mr. Bai is not an officer or director of either CYD or CY Capital, the plaintiff pleads that Mr. Bai “appears to be in control” of the CY Defendants. Finally, the plaintiff alleges that the CY Defendants committed the tort of fraud and fraudulent misrepresentations (see statement of claim, at para. 1).

[59] The claim does not plead any specific interactions between the plaintiff and any employees, directors, officers or shareholders of the CY Defendants. Rather, the plaintiff’s statement of claim only identifies false misrepresentations made by Mr. Bai to the plaintiff. Of course, a false misrepresentation is a necessary element for both the tort of civil fraud and the tort of fraudulent misrepresentation (see *Bruno Appliance and Furniture, Inc. 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; *1000425140 Ontario Inc. v. 1000176653 Ontario Inc.*, 2024 ONCA 610, 500 D.L.R. (4th) 639, at para. 24).

[60] Given the statement of claim, the plaintiff’s theory of liability as against the CY Defendants is not clear. In her factum, the plaintiff argues that the CY Defendants were “willfully blind or negligent” to the fact that the plaintiff was the source of funds for the Davenport Project. Frankly, it is not clear how this allegation supports a finding that the CY Defendants committed the tort of civil fraud or fraudulent misrepresentation. Similarly, it is not clear to me how this allegation supports the plaintiff’s position that Mr. Bai controls the CY Defendants. This allegation could support the application of the doctrine of knowing receipt, but the plaintiff did not plead knowing receipt.⁴

[61] As noted above, the parties agree that Mr. Bai is not a shareholder, director, officer or employee of the CY Defendants. Consequently, Mr. Bai does not have *de jure* control over the CY Defendants. Instead, the plaintiff argues that Mr. Bai is in *de facto* control of the CY defendants.

[62] The plaintiff’s argument is anchored in the following evidence:

- (i) Mr. Bai’s representations that Mr. Song and Ms. Zhu were his business partners;
- (ii) Mr. Bai is a “significant source” of the CY Defendants’ business;
- (iii) WeChat messages between Mr. Bai and Ms. Zhu;
- (iv) Mr. Bai instructed CYD to make payment to third parties; and
- (v) CY Capital and CYD made payments to the plaintiff and issued a T4A for some of the payments.

[63] I find that Mr. Bai’s purported statements to the plaintiff to be weak evidence that Mr. Bai was in *de facto* control over the CY Defendants. In cross-examination, the plaintiff admitted that

⁴ In oral argument, Dr. He admitted that the statement of claim does not plead the doctrine of knowing receipt and suggested that he would amend the claim to include such a pleading. I have not considered the doctrine of knowing receipt because it is not pled against the CY Defendants.

Mr. Bai told her that he did not own the CY Defendants. The plaintiff also confirmed that Mr. Bai did not tell her that he was in actual control of the CY Defendants. The plaintiff went on to explain that Mr. Bai told her that he was a “partner” in the CY Defendants and Sino.

[64] Mr. Bai’s representation that he was a “partner” with Mr. Song and Ms. Zhu in the CY Defendants is not compelling evidence. Mr. Bai’s representations to the plaintiff cannot somehow transform him into a controlling mind of the CY Defendants. Mr. Bai’s representation, in and of itself, is not strong evidence that Mr. Bai was in *de facto* control over the CY Defendants.

[65] I also find that the extent of Mr. Bai’s business with the CY Defendants does not establish that he has control over them. Mr. Bai and Ms. Chen invested a total of \$905,000 with CYD from February 2023 to October 2024. Those investments were made with respect to six loans. As of November 2024, CYD managed loan receivables totalling \$9,723,000 secured by more than 20 mortgages. Only \$255,000 of that amount originated from Mr. Bai and Ms. Chen. While Mr. Bai and Ms. Chen invested large sums of money with CYD, he does not appear to be a dominant investor in CYD. I find that the size of Mr. Bai’s investments in CYD do not demonstrate that he is in *de facto* control over the CY Defendants.

[66] The WeChat messages are not strong evidence that Mr. Bai is in *de facto* control over the CY Defendants. In his factum and oral argument, the plaintiff highlighted a few examples of the messages that support the plaintiff’s position. I will highlight two examples emphasized by Dr. He in oral submissions.

[67] First, on November 28, 2023, Mr. Bai messaged Ms. Zhu about a mortgage for Mr. Bai’s client who had purchased a pre-construction home. At the end of the message, Mr. Bai says, “Can we do a loan of \$980,000 on the pre-construction property for one year?” (emphasis added).

[68] Second, on June 5, 2023, Mr. Bai messaged Ms. Zhu about another mortgage of one of his clients. In that message Mr. Bai says, “The client wants to borrow \$300,000 from *us*. Is that possible?” (emphasis added).

[69] Neither exchange demonstrates *de facto* control or a partnership that would somehow make the CY Defendants liable for misrepresentations made by Mr. Bai. The messages demonstrate that Mr. Bai was very familiar with Ms. Zhu and was engaged in business with the CY Defendants. They are not strong evidence of anything more. Put another way, this evidence is equally if not more consistent with Mr. Song’s evidence that Mr. Bai worked with the CY Defendants by introducing loan projects and personally participating in projects managed by the CY Defendants.

[70] I turn now to the CY Defendants’ payments to the plaintiff.

[71] As noted above, there is no dispute that CY Capital made the following payments to the plaintiff:

June 27, 2023 – \$2,950

January 19, 2024 – \$2,000

[72] Similarly, there is no dispute that Mr. Bai instructed CYD to redirect principal repayments to third parties and that CYD provided the following cheques to the plaintiff:

July 7, 2023 – \$1,250

August 7, 2023 – \$1,250

September 7, 2023 – \$1,250

November 7, 2023 – \$1,250

December 7, 2023 – \$1,250

March 1, 2024 – \$3,333.33

April 1, 2024 – \$2,500 and \$4,752

May 1, 2024 – \$2,500 and \$4,752

May 1, 2024 – \$3,333.33

[73] The import of these payments is a matter of significant dispute between the parties.

[74] The plaintiff argues that the payments establish that Mr. Bai was in control of the CY Defendants. The plaintiff also argues that the payments establish that the CY Defendants knew or were reckless to the fact that the plaintiff was a source of Mr. Bai's funds.

[75] The CY Defendants argue that as an investor, Mr. Bai was entitled to instruct CYD to redirect interest payments to the plaintiff. CYD had no reason to deny Mr. Bai's direction because CYD believed that the investment funds for each project originated exclusively from Mr. Bai. The fact that Mr. Bai directed the CY Defendants where to remit interest payments that were ostensibly his does not, on its own, demonstrate that he was in *de facto* control of them or that they knew the plaintiff funded his investments.

[76] Similarly, the CY Defendants argue that Mr. Bai request that CYD remit his principal payouts on the Davenport Project and the 2903-397 Front Street loan to third parties does not demonstrate *de facto* control over the CY Defendants. Mr. Bai was the investor, and he was entitled to request that CYD direct his money to third parties.

[77] With respect to the payments by CY Capital, I find that this evidence, either in isolation or together with the payments from CYD, is not strong evidence that Mr. Bai was in *de facto* control over the CY Defendants or that the CY Defendants knew that the plaintiff was the source of Mr. Bai's funds. There were only two CY Capital payments made to the plaintiff and the issuance of a T4A slip for these payments is consistent with the payments being made as referral fees, not investment income.

[78] I do, however, accept that the CYD payments to the plaintiff could support the plaintiff's position that the CY Defendants knew that the plaintiff was the source of at least some of Mr. Bai's investments with CYD. As noted above, CYD issued a T4A slip to the plaintiff in 2023. Ms. Zhu's evidence establishes that the T4A was issued in error. CYD should have issued the plaintiff a T5, which is a statement of investment income. This evidence can support the plaintiff's position that CYD knew that the plaintiff was a source of Mr. Bai's investments.

[79] That said, I cannot review this evidence in isolation. Rather, I must review this evidence in the context of the full record, including the following evidence:

- (a) Mr. Bai and Ms. Chen provided funds to CYD for investments;
- (b) The CY Defendants never received funds directly from the plaintiff;
- (c) The plaintiff did not notify the CY Defendants that some of Mr. Bai's funds originated from her;
- (d) Mr. Bai did not notify the CY Defendant that some of his funds originated from the plaintiff;
- (e) The CY Defendants did not know that the plaintiff was a source of Mr. Bai's funds for the Davenport Project or the 2903-397 Front Street loan. CYD did not believe the plaintiff was an investor in either project, so there is nothing unusual with CYD's disbursement of funds on both projects;
- (f) Mr. Bai was an investor in the Davenport Project. As an investor, he was entitled to be repaid his principal upon the sale of the Davenport Project loan and to direct CYD to remit his funds to third parties;
- (g) Mr. Bai was an investor in the 2903-397 Front Street project. As an investor, he was entitled to instruct CYD to redirect the repayment of his principal investment to third parties;
- (h) In cross-examination, the plaintiff admitted that she did not have any communications or direct interactions with the CY Defendants;
- (i) As an investor, Mr. Bai was entitled to instruct CYD to re-direct interest payments owed to him to the plaintiff;
- (j) Mr. Song's affidavit states that Mr. Bai has never been the controlling mind of the CY Defendants and that Mr. Bai has only worked with the CY Defendants in a limited capacity, introducing loan projects and personally participating in projects managed by the CY Defendants; and
- (k) Mr. Bai swore an affidavit attesting to the fact that he is not involved with either CYD or CY Capital, though Easyline would frequently cooperate with CYD and CY Capital

with respect to private mortgages (this affidavit was before Fraser J. on the November 15, 2024 motion).

[80] Ultimately, a trial will resolve the issue of whether the plaintiff can establish, on a balance of probabilities, that Mr. Bai was in *de facto* control over the CY Defendants. I cannot usurp the function of the trial. My task is to determine whether the more developed record undermines the key factual findings that were necessary to grant the *Mareva* order. I find that it does.

[81] The evidence before me establishes a credible explanation for why the CY Defendants followed Mr. Bai's direction to send payments to third parties and the plaintiff. The defendants' explanation undermines the plaintiff's assertion that the plaintiff was in *de facto* control of the CY Defendants or that the CY Defendants knew that the plaintiff was a source of Mr. Bai's funds. On the record before me, I cannot completely discount the CY Defendants' explanation which is consistent with the fact that: (a) Mr. Bai is not an officer, director, shareholder or employee of the CY Defendants; and (b) the plaintiff had no direct interactions with the CY Defendants outside of receiving the above noted payments.

[82] The plaintiff argues that Ms. Zhu's evidence that Mr. Bai instructed CYD to redirect his interest payments to the plaintiff is not credible. The plaintiff argues that the payments dated March 1, 2024, April 1, 2024, and May 1, 2024, are consistent with payments made for interest owing on a \$1,051,500 principal loan at 10% or 11%. As of February 8, 2024, there is no dispute that Mr. Bai owed the plaintiff \$1,051,500.

[83] The plaintiff goes on to argue that the payments on these dates do not follow standard accounting practices and that the explanations for the interest calculations do not match the amounts paid out. For example, the plaintiff points out that the explanation provided for the interest payments made on April 1, 2024 and May 1, 2024 should total \$8,026; however, the actual payments made on both dates totals \$7,252. CYD argues that this is a mere accounting error. The plaintiff rejects this explanation as being implausible.

[84] I agree with the plaintiff that there are unusual aspects of the CY Defendants' accounting evidence. Even with these "warts", I do not find that the accounting issues would warrant discounting Mr. Song and Ms. Zhu's evidence that Mr. Bai directed CY Capital to pay referral fees to the plaintiff or that Mr. Bai instructed CYD to redirect his interest payments to the plaintiff.

[85] I arrive at this conclusion, in part, because the plaintiff does not suggest that the payments made between July 2023 and December 2023 were interest payments outstanding on the principal owed by Mr. Bai to the plaintiff. During that time, there is no dispute that Mr. Bai owed the plaintiff between \$751,500 and \$1,051,500, but the interest payments from CYD during this period only amounted to \$1,250, which is well below what would have been owed on the full amount owing. The payments made from July 2023 to December 2023, which were associated with the Davenport Project, appear to be consistent with the interest that was owed to Mr. Bai.

[86] In light of the above, I find that the CY Defendants have established that a key factual underpinning of the *Mareva* order is no longer valid: that there is a strong *prima facie* case that

Mr. Bai was in *de facto* control of the CY Defendants or that the CY Defendants knew that the plaintiff was a source of Mr. Bai's investment funds.

[87] Even if I had found that the more developed record still supported a finding that the CY Defendants knew that the plaintiff was the source of Mr. Bai's funds, it is not clear that such a finding would be sufficient to establish a strong *prima facie* case of fraud and fraudulent misrepresentation. Again, there is no allegation or evidence that suggests that the CY Defendants made any representations, false or otherwise, to the plaintiff. In the absence of such evidence and in the absence of a pleading of knowing receipt, it is not clear how the CY Defendants' knowledge over the source of Mr. Bai's investment funds creates a strong *prima facie* case.

[88] I will now examine the finding that there is a real risk that the CY Defendants were dissipating assets to avoid judgment.

[89] At the time of the extension motion, the strongest evidence in support of this finding was the disbursement of funds on the Davenport Project. Since that time, the CY Defendants have provided a credible explanation for the Davenport Project payout. CYD paid the investors who provided funds for the Davenport Project loan and the plaintiff had not directly paid CYD any funds.

[90] As explained above, the CY Defendants have led credible evidence that they were unaware that the plaintiff was a source of Mr. Bai's funds. This is consistent with the plaintiff's evidence that she did not have any direct interactions with the CY Defendants. The plaintiff did not directly pay any money to CYD for this project or any other project. In light of this evidence, there is nothing abnormal about CYD's distribution of funds to investors. I find that the CY Defendants' evidence undermines the finding that the CY Defendants were dissipating assets for the purpose of thwarting the plaintiff's ability to satisfy a judgment.

[91] The same can be said about CYD's payouts from the property located at 2903-397 Front Street. At the time of the extension motion, the plaintiff was not aware that her funds had been used by Mr. Bai to fund the 2903-397 Front Street loan. When this mortgage was discharged, Mr. Bai instructed CYD to redirect his payments to third parties. Again, I find that the CY Defendants have provided a credible explanation for disbursing the funds in this way: the CY Defendants believed that the sole investor in this project was Mr. Bai. The CY Defendants' evidence on this payout is even more compelling than their explanation of the Davenport Project payout. Unlike the Davenport Project, CY Capital did not pay referral fees to the plaintiff on this project and CYD did not redirect Mr. Bai's interest payments to the plaintiff.

[92] To summarize, I find that the more developed record undermines two key factual findings necessary to support the *Mareva* order. This alone warrants dissolving the injunction against the CY Defendants. Nevertheless, I will go on to consider the balance of convenience.

(d) The balance of convenience

[93] I find that the balance of convenience favours dissolving the *Mareva* order as against the CY Defendants. I come to this conclusion for three reasons.

[94] First, the balance of convenience does not favour continuing the *Mareva* order in circumstances where the record does not establish a strong *prima facie* case as against the CY Defendants or that there is a real risk that the CY Defendants will dissipate assets to avoid judgment.

[95] Second, the existing injunction already secures more than sufficient assets to satisfy the plaintiff's claim. Mr. Bai's personal residence has over \$950,000 in net equity, and Mr. Bai and Ms. Chen's outstanding loan investments with the CY Defendants total \$156,158.72. Taken together, this amount exceeds the amount owed to the plaintiff and the security threshold set out in clause 6 of the Amendment Order.⁵

[96] Finally, the CY Defendants have more than enough unencumbered assets to satisfy any judgment if they were found jointly and severally liable with Mr. Bai.

[97] The plaintiff argues that Mr. Bai only has a 1 percent ownership stake in his principal residence. The remaining 99 percent resides with his mother, Ms. Chen. Mr. Bai and Ms. Chen are tenants in common, which means that each party's legal and beneficial interest in the property is distinct and severable. The plaintiff argues that the principal residence is not a sufficient guarantee for the outstanding debt because the plaintiff does not have a strong case against Ms. Chen.⁶

[98] I reject the plaintiff's argument. The plaintiff has already established a strong *prima facie* case as against Ms. Chen and resisted her motion to dissolve the *Mareva* order as against her and Ms. Gao. Given that two of my colleagues have found that the plaintiff has established a strong *prima facie* case against Ms. Chen, there is a sound basis for concluding that the plaintiff can establish joint and several liability as against Mr. Bai and Ms. Chen.

[99] The plaintiff argues that any potential harms to the CY Defendants can be addressed through a variation to the *Mareva* order. Specifically, the plaintiff proposes the following:

The Plaintiff's current claim totals approximately \$1,051,500, exclusive of interest and costs. As such, the Plaintiff submits that the *Mareva* Order can be varied to preserve mortgage principal assets held by CYD and CY equal to this amount, with all other corporate assets to be released from the *Mareva* Order, subject to standard disclosure and cooperation terms.

[100] I accept that the plaintiff's proposed variation would address the harms caused by the injunction. However, the plaintiff's proposal ignores the jurisprudence described above. The balance of convenience will not favour imposing a *Mareva* injunction in the absence of the moving party establishing a strong *prima facie* case and a real risk that the responding party is dissipating

⁵ The net equity in Mr. Bai's personal residence combined with the value of the outstanding loan investments with the CY Defendants would total \$1,106,158.72. This exceeds the \$1,051,500 threshold in clause 6 of the Amendment Order by \$54,658.72.

⁶ In oral argument, Dr. He argued that the plaintiff is unlikely to be successful against Ms. Chen.

assets for the purpose of defeating judgment. On the record before me, neither have been established.

E. Conclusion

[101] In granting the CY Defendants' motion, I am cognizant of the fact that relief from an interlocutory order is an exceptional remedy and that there is a heavy burden to establish that an interlocutory injunction should be dissolved. That said, granting a *Mareva* injunction is itself an exceptional remedy as it stands as one of the few exceptions to the general principle that plaintiffs are not entitled to pre-judgment relief to ensure the enforcement of their claim post-judgment (see *Sabourin and Sun Group of Companies v. Laiken*, 2013 ONCA 530, 116 O.R. (3d) 641, at para. 53, *aff'd Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79; *Buduchnist Credit Union Limited v. 2321197 Ontario Inc.*, 2024 ONCA 57, 169 O.R. (3d) 641, at para. 45).

[102] This motion is the court's first opportunity to evaluate the *Mareva* order as against the CY Defendants with the benefit of a more complete record. Upon review of this record, I find the factual underpinnings of the *Mareva* order are no longer valid.

[103] Accordingly, I grant the CY Defendants' motion and order as follows:

- (a) the *Mareva* order is dissolved as against the CY Defendants;
- (b) I direct that a reference be held to determine the damages suffered by the CY Defendants because of the injunction (see *Miragliotta et al. v. Zanette et al.*, 2019 ONSC 4599, at para. 30); and
- (c) On the consent of the parties, the CY Defendants shall pay into court the amount of \$156,158.72, which represents Mr. Bai and Ms. Chen's outstanding investment with the CY Defendants.

[104] Finally, I order costs in favour of the CY Defendants in the amount of \$20,000 inclusive of H.S.T. and disbursements. This amount is reasonable considering the complexity of the motion, the development of the record and the fact that the parties' partial indemnity costs are quite similar.

The Honourable Justice Sunil S. Mathai