

**CITATION:** Calisto v. Covenant Group, 2023 ONSC 4016  
**COURT FILE NO.:** CV-22-00690644  
**DATE:** 20230705

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:**            **Santina Calisto**

Plaintiff

**AND:**

**Covenant Group Ltd.**

Defendants

**Royal Bank of Canada**

Third party

**BEFORE:**    Justice Papageorgiou

**COUNSEL:** Boris Alexander, [boris.alexander@monkhouselaw.com](mailto:boris.alexander@monkhouselaw.com), for the Plaintiff

*Margarita Dvorkina* [Mdvorkina@rickettsharris.com](mailto:Mdvorkina@rickettsharris.com), for the Defendant

**READ:**        March 27, 2023

**ENDORSEMENT**

**Overview**

[1] Covenant Group Ltd. (“Covenant”) is a company that places temporary and permanent workers with employers in Ontario.

[2] Santina Calisto was an employee of Covenant. On September 28, 2022, someone established a domain name which was similar to the legitimate domain name registered and used by Covenant. On that day, someone used Ms. Calisto’s work email address to send correspondence to one of Covenant’s clients. This client was directed to send a payment intended for Covenant in the amount of \$108, 198.09 to an alternate bank account with the Royal Bank of Canada (“RBC”). This other account was not associated with Covenant (the “Account”).

[3] Ms. Calisto denies that she had anything to do with this. The motion was brought in this proceeding because she is suing Covenant for wrongful dismissal and Covenant had thought that she was involved in this purported fraud. I am making no findings on that issue.

[4] On March 27, 2023 I made a Norwich Order directing that RBC to provide all information as to who holds this Account and I also made a *mareva* injunction order freezing the money in this Account. I adjourned the motion requesting interim recovery of the moneys in the account pending receipt by Covenant of information from RBC as to who holds the account so that they could be served with this motion.

[5] Covenant now brings this motion for interim recovery of the moneys held in this Account as well as another account discussed below where some of the funds were transferred.

### **The issue**

[6] The sole issue before me is whether Covenant has satisfied the test for interim recovery of personal property.

### **Decision**

[7] For the reasons that follow, I am granting an Order for interim recovery of personal property as sought.

### **Analysis**

[8] Pursuant to r. 44.01 of the Rules of Civil Procedure a court can order the interim recovery of personal property where: (a) property is readily identifiable; (b) the plaintiff is the owner or lawfully entitled to the property; and (c) the property was unlawfully taken or detained by the other party: See also *Higher Ground LLC v. Langstaff*, 2010 ONSC 4108 at paras 11-12.

[9] This order is discretionary and the moving party must demonstrate “substantial grounds” for the relief: *Higher Ground*, at paras 11-12. This does not require a trial of the issues, but the court should be satisfied that there is a “high degree of assurance that the party will succeed at trial.” *Higher Ground* at para 14.

[10] I am satisfied that Covenant meets all aspects of the test for the following reasons:

- There is uncontradicted evidence from Covenant’s client that the payment was meant for Covenant.
- There is uncontradicted evidence that an alternate domain name was created and that Ms. Calisto’s email address was used to divert these funds to a bank account which is not held by Covenant.
- After the making of the Norwich Order, RBC advised Covenant that the holder of the Account was a person named Onaopepo Shuaib and that she lived in Winnipeg, Manitoba.
- Further, Covenant learned that \$71,717 was transferred to another account also held by Onaopepo Shuaib (the “Second Account”).

- As at the date of the supplementary affidavit filed by Covenant, the Account holds only \$21,292.62 of the amount initially diverted and the Second Account has a balance of \$51,703.87. I note that prior to the transfer of the \$71,717 to the Second Account, its balance was negative.
- On May 30, 2023, in accordance with my Order, Covenant served a copy of the Norwich Order and *Mareva* Injunction Order on Onaopepo Shuaib, advising that Covenant would be proceeding with the motion for interim recovery of personal property which was originally scheduled to proceed on Jun 8, 2023.
- To date, there has been no response from Onaopepo Shuaib or claim by anyone to any interest in the Account or the Second Account.

### **Conclusion**

[11] Therefore, the property sought is identifiable, there is substantial evidence that the funds were unlawfully taken from Covenant and that Covenant is lawfully entitled to the funds.

[12] Order to go in the form signed by me today.

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**Papageorgiou J.**

**Date: July 5, 2023**