

**CITATION:** Accomplish Capital Inc. v. Kroeker, 2023 ONSC 3141  
**COURT FILE NO.:** CV-22-00687139-0000  
**DATE:** 20230414

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** ACCOMPLISH CAPITAL INC., BLUECORE PARTNERS INC., BLUECORE II PARTNERS INC., BLUECORE PARTNERS 3 INC., CANOR FINANCIAL INC., ANVIPE CAPITAL INC., BLUECORE CAPITAL INC. and BLUECORE II CAPITAL INC.

**AND:**

JEFFREY KROEKER, ILIJA VULIC, PER-ERIK KARLSSON, CIVIS LAW LLP, SHAW MCLELLAN LLP, BRIAN MCLELLAN, DELTA1TRADER TECHNOLOGY AG, DELTA1TRADER AS, TRUE BLUE CAPITAL INC., KBR CAPITAL PARTNERS AS, MARK ZAMIRSKI, DIANA ZDERIC, (a.k.a. Diana MajicManninen), NOVA INITIUM CORPORATION, JOHN DAVID MURPHY, SILVER ISLE CORPORATION, 11318063 CANADA INC., DRIVEN CARS CANADA THUNDER BAY INCORPORATED, CRYSTAL HARBOUR CORPORATION, ALEXANDRA DIANA PEPAJ, COMPLETE MEDICAL ASSESSMENTS INC., PETER DURIC, MICHAEL DURIC, METROPOLITAN FINANCIAL GROUP LTD., HRISTO HRISTOV, VIKEL ASSESSMENTS INC., OMNIS EVALUATIONS CENTRE INC., PRIME HEALTH ASSESSMENT LTD., PROCARE EVALUATIONS INC., DMITRY CHERNOMORSKY and 1725840 ONTARIO INC. o/a GTA ASSESSMENT CENTRE, and VAXHOLM CORPORATION

**AND BETWEEN:**

JEFFREY KROEKER, ILIJA VULIC and CIVIS LAW LLP

**AND:**

ACCOMPLISH CAPITAL INC., BLUECORE PARTNERS INC., BLUECORE II PARTNERS INC., BLUECORE PARTNERS 3 INC., CANOR FINANCIAL INC., ANVIPE CAPITAL INC., BLUECORE CAPITAL INC. and BLUECORE II CAPITAL INC.

**BEFORE:** Justice Chalmers

**COUNSEL:** *C. Tedesco, D. Carson, and R. Taylor*, for the Plaintiffs/Defendants by Counterclaim  
*M. Zamirski*, Self-represented  
*D. Zderic a.k.a. D. MajicManninen*, Self-represented

*N. Wainwright*, for the Defendants, John Murphy, Driven Cars Canada and Silver Isle Corporation/Plaintiffs by Counterclaim

*A. Flesias*, for the Defendant, Nova Initium Corp.

*L. Lung* for the Defendants, Brian McLellan and Shaw McLellan LLP/Plaintiffs by Counterclaim

*H. Albrecht*, for the Defendants, Peter & Michael Duric, Metro Financial Group Ltd., H. Hristov, Vikel Assessments Inc., Omnis Evaluations Centre Inc., Prime Health Assessment Ltd., Procare Evaluations Inc.

**HEARD:** April 6, 2023

## **ENDORSEMENT**

### **Overview and Factual Background**

[1] The Plaintiffs bring this motion for a *Mareva* injunction and ancillary relief. Following the oral argument, I granted the relief sought with reasons to follow. Here are those reasons.

#### ***Preliminary Issue – Request for an Adjournment***

[2] The matter first came before me on January 30, 2023. The Plaintiffs moved without notice for a *Mareva* injunction and other relief. I was not satisfied that the motion should proceed without notice. I adjourned the Plaintiffs’ motion to February 6, 2023, to allow for service of the motion material on the Defendants. I ordered the issuance and registration of a CPL on the Hemlock property.

[3] On February 6, 2023, Mr. Flesias, on behalf of the Defendants, Mark Zamirski (Zamirski) and Nova Initium Corp. (Nova), and Mr. Wainwright on behalf of the Defendants, Murphy, Driven Cars Canada and Silver Isle Corporation (the Murphy Defendants) attended on the motion. Those Defendants requested an adjournment. The motion was adjourned to March 7, 2023, on terms.

[4] On March 7, 2023, Mr. Klaiman attended and advised that he was recently retained by the Defendant, Diana Zderic, a.k.a. Diane MajicManninen (Zderic). He also expected to be retained by Nova which would require a Notice of Change of Solicitors to be served because Nova was represented by Mr. Flesias. Mr. Klaiman stated that he may also be retained on behalf of the Defendant, 11318063 Canada Inc. (113 Corp.) which would require the noting in default as against 113 Corp. to be set aside. Finally, Mr. Klaiman stated that he may also be retained by the then proposed Defendant, Vaxholm Corporation.

[5] Mr. Klaiman requested an adjournment of the motion for the *Mareva* injunction. Because of his recent involvement, he had not had an opportunity to file any material. Mr. Flesias supported the adjournment request. I “reluctantly” adjourned the matter to April 6, 2023, on terms. I established a timetable for the delivery of materials and cross-examinations.

[6] At the return of the motion on April 6, 2023, Mr. Flesias advised that his retainer with Zamirski has ended and Zamirski is acting on his own behalf. Mr. Flesias continues to be the lawyer of record for Nova however, he does not have instructions from Nova with respect to the motion. Zderic advised that she believed Mr. Klaiman would be acting on her behalf and on behalf of her company, Nova. He apparently went on vacation and did not prepare any materials for the motion. According to Zderic, he continues to be on vacation, and she has not received a response from him. Mr. Klaiman did not formally go on the record for Zderic or Nova. He did not attend the motion today.

[7] Zamirski and Zderic requested an adjournment of the motion. It is their position that they have been unable to put all relevant materials before the court. This was the same reason why Zamirski requested the adjournment on February 6, 2023 and Zderic requested the adjournment on March 7, 2023. I am satisfied that Zamirski had sufficient opportunity to put materials before the court. He was previously represented by Mr. Flesias. Zamirski filed an affidavit in his name sworn February 22, 2023. He also filed a factum. In the case of Zderic and Nova, they have known of this motion since January 31, 2023. They were aware since the last adjournment on March 7, 2023 that the motion would be argued today. They received the timetable and knew of the dates when material was to be filed.

[8] I denied the adjournment request. This is the third time Zamirski and the second time Zderic have requested an adjournment of the motion. The motion has been pending for several months. It is my view that the Plaintiffs’ motion should not be delayed any further because of issues Zamirski, Zderic and Nova may have had with respect to retaining counsel.

[9] Before hearing the parties’ submissions on the motion, Mr. Grillone advised that he intends to bring a motion to intervene in the action. He states that he has an independent claim against the Defendant, Bluecore Capital. Bluecore Capital brought a bankruptcy application which was heard by Justice Kimmel from February 27 to March 3, 2023. He argues that this action is relevant to the determination of the Bankruptcy application. Mr. Grillone conceded that the *Mareva* relief does not directly affect him. I was not prepared to consider Mr. Grillone’s request for intervener status in the absence of a complete motion record. Mr. Grillone remained in attendance on the motion as an observer.

### ***The Underlying Action***

[10] The Plaintiffs allege that the underlying action concerns a significant fraud on the Plaintiffs, through which over \$17,000,000 in investor funds were misappropriated by the Defendants. Investors of Accomplish Capital Inc. (Accomplish) believed they were investing in a litigation financing business, but instead the funds were diverted to companies controlled by the Defendants and were used to purchase real estate and other assets.

[11] Zamirski was the person primarily responsible for the day-to-day operation of Accomplish. At the relevant time, Zamirski's common-law spouse, Zderic, was the sole director of Nova and 113 Corp. The Plaintiffs retained Sheree Mann of Froese, Forensic Accountants, to trace the Accomplish funds. She determined that at least \$17,290,000 was transferred by Accomplish to Nova for no consideration.

[12] After receiving the funds, Nova disbursed the funds to the other Defendants to the action. John David Murphy (Murphy) is the director of the Defendants, Driven Cars Canada, Crystal Harbour Corporation, and Silver Isle. He was also a former director of 113 Corp. The Murphy Parties admit to receiving approximately \$2,200,000 from Zamirski. However, the forensic investigation concludes that \$5,000,000 was received by the Murphy Parties. Legal title to the property located at Crystal Beach, which is where Zamirski and Zderic live, was put in Murphy's name. Approximately \$1,200,000 was advanced to Silver Isle to purchase the Fort William Property, Amber Property, 577 Eleventh Street Property and the 589 Eleventh Street Property. 589 Eleventh Street is the registered address of Murphy's company, Driven Cars.

[13] The Plaintiffs state that on September 30, 2022, eight days following service of the Statement of Claim on Zamirski, Nova registered cautions on the various properties. On January 26, 2023, the Hemlock Property was listed for sale. The Hemlock Property was owned by 113 Corp. which is a company directed by Zderic. Despite \$17,290,000 flowing from Accomplish to Nova, as of June 2022, Nova's three bank accounts at TD Bank had an aggregate balance of \$113.70. As of June 2022, 113 Corp had a negative balance with the TD Bank in the amount of \$2.00.

[14] Zamirski has not denied that the transfers were made from Accomplish to Nova. In his affidavit sworn February 22, 2023, he confirms that he managed Accomplish and earned an annual salary in excess of \$400,000. He states that in addition to the litigation funding business, Accomplish was involved in real estate investments. In his oral submissions, he argued that the various real estate transactions were known and approved of by Accomplish. He also stated that Accomplish approved of the transfers to Nova to keep the real estate business separate from the litigation funding business. He stated that there was a video of a meeting in Norway with representatives of Accomplish, in which the real estate purchases were discussed. Zamirski states that he and Zderic were both present when the discussion of the real estate purchases took place with Accomplish.

[15] Zamirski did not produce any documentation in support of his position that Accomplish was aware of Nova and approved of the transfers, and real estate purchases. He argued that Accomplish had documentation in its possession which confirmed that Accomplish was aware of the real estate and other investments. It is his position that the documents were lost or intentionally destroyed by Accomplish. He did not keep copies of any of the documentation.

[16] Counsel for Accomplish objected to Zamirski giving this evidence in his oral submissions. The allegation that relevant documents had been lost or destroyed by Accomplish had not been previously raised by Zamirski. The video of the meeting in Norway has not been

produced. There was no reference to Accomplish fraudulently destroying documents or to the video evidence in his affidavit sworn February 22, 2023, or his cross-examination.

[17] I asked Zamirski why he did not include the evidence with respect to lost or destroyed documentation or the video in his motion material. He stated that he thought Zderic would submit this information. I do not find this explanation to be credible. He was allegedly at the same meeting in Norway when the transactions were discussed and would have had the same information as Zderic. He submitted an affidavit to the court in which deposed at paragraph 6 that the various business streams were well known to those involved in the operations of Accomplish. There is no reference to a meeting in Norway in which the real estate transactions were discussed. One would have thought the if such a meeting took place, Zamirski would have referenced the meeting at this point in his affidavit. Also, if there was a video evidencing the meeting, that fact would have also been disclosed in the affidavit.

### **Analysis and Discussion**

[18] The Plaintiffs bring this motion for the following relief:

- (a) *Mareva* Injunction;
- (b) For the payment into court of the net proceeds of the sale of 577-11<sup>th</sup> Street; and
- (c) Substituted service on some of the Defendants who the Plaintiffs state are avoiding service.

#### **(1) *Mareva Injunction***

##### ***The Test***

[19] Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides the court with the jurisdiction to grant interlocutory injunctions including *Mareva* injunctions. Section 101 states:

##### *Injunctions and receivers*

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory Order may be granted or a receiver or receiver and manager may be appointed by an interlocutory Order, where it appears to a judge of the court to be just or convenient to do so.

##### *Terms*

(2) An Order under subsection (1) may include such terms as are considered just.

[20] For a *Mareva* injunction, the plaintiff must satisfy the requirements for an interlocutory injunction as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 SCR 199, and typically a plaintiff must establish:

- (a) a strong *prima facie* case;

- (b) the defendant has assets in the jurisdiction;
- (c) there is a serious risk that the defendant will remove property or dissipate assets before judgment; and
- (d) the balance of convenience favours granting an interlocutory injunction.

Absent unusual circumstances, the plaintiff must provide the undertaking as to damages normally required for any interlocutory injunction.

[21] A *Mareva* injunction is an extraordinary remedy because as a general policy of civil procedure, a remedy that allows pre-judgment execution against the defendant's assets is not favoured. However, where there is a strong case that the defendant has defrauded the plaintiff, the law's reluctance to allow pre-judgment execution yields to the more important goal of ensuring that the civil justice system provides a just and enforceable remedy against such serious misconduct: *2092280 Ontario Inc. v. Voralto Group Inc.*, 2018 ONSC 2305 (Div. Ct.).

### ***Strong Prima Facie Case***

[22] A strong *prima facie* case is one that will probably prevail at trial or is likely to succeed at trial. Here, I am satisfied that the Plaintiffs have established a strong *prima facie* case of fraud.

[23] The elements of a claim for civil fraud are as follows:

- (a) A false representation was made by the defendant;
- (b) The defendant knew or was reckless as to the falsehood of the representation;
- (c) The false representation causes the plaintiff to act; and
- (d) The plaintiff's actions result in a loss: *Bruno Appliance and Furniture v. Hyrniak*, 2014 SCC 8, at para. 21.

[24] Here, there is evidence that funds were raised from investors for Accomplish's litigation funding business. Instead of the funds being used for their stated purpose, at least \$17,290,000 was transferred to Nova, 113 Corp. and Vaxholm, which were companies owned and operated by Zamirski or his spouse, Zderic. The funds transferred to those companies were then used to purchase, among other things, a golf course, and residential and commercial real estate properties. Although Zamirski, in his oral submissions, argued that Accomplish was aware of the transfers to Nova, no documentary evidence was provided by Zamirski or Zderic to support this position.

[25] In order to obscure the fraud, interest payments continued to be made to the investors. Those payments were made from newly raised investments into Accomplish. It was only when no new funds could be raised, as a result of the pandemic, did the interest payments to investors stop. At that point, the fraud was discovered. The Plaintiffs argue that this has the hallmarks of a Ponzi scheme. I agree.

[26] Zamirski and Zderic failed to produce any materials to support the position that there was no fraud and that Accomplish was aware of Nova and approved the transfer of \$17,290,000. I find that Zamirski's explanation that he expected Zderic to put this evidence before the court to not be credible. I draw an adverse inference from Zamirski and Zderic's failure to provide any documentation disproving the alleged fraud: *Cardinal Meat Specialists Limited. v. Zies Foods Inc.*, 2014 ONSC 1107, at para. 39.

***The Defendant has Assets in the Jurisdiction***

[27] There is evidence that the Defendants have assets in Ontario. The Hemlock property is owned by 113 Corp. Nova registered cautions over properties owned by Murphy and Silver Isle claiming a proprietary interest in those properties. The Crystal Beach Property is owned by Murphy and according to Murphy, the property is held in trust for Zderic. Zderic and Zamirski live in the Crystal Beach Property.

[28] Zamirski denies owning any property in his name. He testified on cross-examination that he does not have a bank account. He stated that his remuneration from Accomplish was paid to Nova. Murphy, in his affidavit, states that Zamirski, and Zderic live a lavish lifestyle and have luxury vehicles, properties and boats. This is denied by Zamirski.

[29] I am satisfied that the Defendants have assets in Ontario, namely the real properties.

***There is a Serious Risk That Assets Will be Removed or Dissipated Before Trial***

[30] The assets from Accomplish were transferred to companies controlled by Zderic. Funds were then transferred from those companies to purchase properties and other assets. There is a strong inference that the money was moved in this way to hide or obscure the transfers. Zamirski argued on the motion that no attempt was made to hide the transactions and Accomplish was aware of Nova and the fact that \$17,290,000 was transferred from Accomplish to Nova. As noted earlier in these reasons, Zamirski did not produce any documentation to support this submission.

[31] There is evidence that attempts have been made to sell the assets. The Hemlock property was listed for sale. The net proceeds from the sale are being held in trust for the benefit of this action. The property at 577-11th Street has also been sold. The transaction is scheduled to close on April 17, 2023. I order that the net proceeds attributable to the Defendants from this sale are also to be held in trust for the benefit of the action.

[32] I find that Zamirski has not been forthright with respect to his assets. He stated he did not have a bank account. He stated that his remuneration from Accomplish was paid to Nova but denied having a beneficial interest in the company. He refused questions on cross-examination as to how he pays for things on an ongoing basis.

[33] Zamirski has also not been forthright about his relationship with Zderic. The two of them live at the Crystal Beach property. When an attempt was made to serve Zderic, Zamirski denied knowing her. He denied having a spouse. In oral argument today, he stated that he knew Zderic

went by the name of MajicManninen. He admitted that MajicManninen is his common-law spouse.

[34] Here, there is actual evidence of attempts to sell two of the properties. Also, in cases involving allegations of fraud, the real risk of the removal or dissipation of assets can be established by inference, as opposed to direct evidence: *Sibley & Associates LP v. Ross*, 2011 ONSC 2951, at para. 63. As stated by Strathy J. (as he then was):

Rather than carve out an “exception” for fraud, however, it seems to me that in cases of fraud, as in any case, the Mareva requirement that there be risk of removal or dissipation can be established by inference, as opposed to direct evidence, and that inference can arise from the circumstances of the fraud itself, taken in the context of all the surrounding circumstances. It is not necessary to show that the defendant has bought an air ticket to Switzerland, has sold his house and has cleared out his bank accounts. It should be sufficient to show that all the circumstances, including the circumstances of the fraud itself, demonstrate a serious risk that the defendant will attempt to dissipate assets or put them beyond the reach of the plaintiff.

[35] I am satisfied that there is a serious risk that the Defendants will dissipate or dispose of the assets before trial if the injunction is not granted.

***Does the Balance of Convenience Favour Granting the Injunction?***

[36] In considering the balance of convenience, the court must consider which of the parties will suffer the greater harm from either granting or refusing to grant the interim order pending a determination on the merits: *RJR-MacDonald*, at paras. 62 and 63.

[37] Zamirski testified that he has no assets and no bank account. If that is true, he will presumably not be affected, if the injunction is granted. The order provides for the release of some money to Zamirski and Zderic for interim living expenses. If additional money for living expenses and legal fees is required, they may make a request for additional amounts to be released to them.

[38] I am satisfied that the interests of the Plaintiffs in preserving the assets purchased with its money over balances the interests of the Defendants. If, as Zamirski argues, the purchases of the properties was made with Accomplish’s money, and the purchases were approved and authorized by Accomplish, there is no reason why those assets ought not be preserved for Accomplish pending the trial.

[39] The Plaintiff have provided the undertaking as to damages.

[40] I am satisfied that the balance of convenience favours granting the injunction.

(2) *Payment into Court of the Net Proceeds of the Sale of 577-11th Street*

[41] The property at 577-11<sup>th</sup> Street is owned by the Murphy Defendants. On February 28, 2023, counsel for the Murphy Defendants provided notice that they had entered into an Agreement of Purchase and Sale with respect to the property. The sale is to an arms length purchaser. The Plaintiffs are seeking an order that the net proceeds be held in trust pending for the benefit of this action.

[42] The Plaintiffs are moving under R. 45 of the *Rules of Civil Procedure* for the preservation of the property. It is the Plaintiffs' position that the Murphy Defendants would be unjustly enriched by the retention of the proceeds of a sale of a property that was purchased with Accomplish's funds. The Plaintiffs argue that they can demonstrate a constructive trust over the property on the basis that the property was purchased with the proceeds of fraud.

[43] The 577-11<sup>th</sup> Street property was purchased with a down-payment of \$300,000 from Nova. Zamirski admitted on cross-examination that Nova advanced funds to Murphy's company, Silver Isle to purchase the property. The forensic report of Ms. Mann traces the money from Accomplish to Nova and then to Silver Isle. There was a payment of \$320,000 to Silver Isle on January 31, 2020. Murphy takes the position that the payment from Nova was a loan. To date, Murphy has not produced documentation that the payment was a loan. He has not provided documentation with respect to any payment he may have made towards the purchase.

[44] Murphy argues that he provided services with respect to the 577-11<sup>th</sup> Street property for which he should be compensated. He made the business decision to purchase the property. He managed the property and arranged for the tenants. He paid for the carrying costs and arranged to have the property sold. He states that there is no strong *prima facie* case against the Murphy Defendants that would justify denying him his modest profit from the sale of the property.

[45] I am satisfied that the proceeds of the sale of 577-11<sup>th</sup> Street property, after payment of any prior registered encumbrances and reasonable legal fees and real estate commissions are to be paid into the trust account of counsel for the Plaintiffs for the benefit of this action. I am satisfied on the evidence before me, that the down-payment for the purchase of the property was from money diverted from Accomplish to Nova.

[46] Although the net proceeds are to be held in trust, Murphy may deliver a sworn statement setting out the revenues and expenses with respect to the period Silver Isle owned the property. The amounts invested by Murphy and/or Silver Isle will be paid out to Murphy. If there is any dispute between the parties as to the amount to be paid to Murphy, the parties may seek a case conference before me for further directions.

[47] In oral argument, Zamirski stated that the Murphy Defendants had entered into an Agreement of Purchase and Sale to sell the residential property at 1941 Crystal Beach Ave., Shuniah, Ontario. Counsel for the Murphy Defendants stated that he is not aware of an agreement to purchase this property. If there is such an agreement, I direct counsel for the Murphy Defendants to provide a copy of the agreement to counsel for the Plaintiffs. If there is a

pending sale of the property, any party may seek a case conference before me on notice to all parties for directions regarding the sale of the property.

(3) *Substituted Service*

[48] The Plaintiffs have been unable to personally serve the Defendants, Dmitry Chernomorsky (Chernomorsky) and 1725840 Ontario Inc. o/a GTA Assessment Centre (GTA). The Plaintiffs seek an order for substituted service.

[49] The Plaintiffs made reasonable efforts to effect personal service on Chernomorsky and GTA. An attempt at personal service was made at 2 Silvercreek Crescent, Barrie, which was the registered address of the company GTA. An adult female at that address stated that Chernomorsky moved to North York. The Plaintiffs retained a private investigator who spoke with Chernomorsky's mother who confirmed that he continued to live at 2 Silvercreek Crescent, Barrie. Further attempts were made to personally serve Chernomorsky at that address but were unsuccessful.

[50] I find that the Plaintiffs are entitled to an order for substituted service. I order that service may be made by sending a copy of the Amended Statement of Claim by regular mail to 2 Silvercreek Crescent, Barrie, and that service will be effective five days after mailing.

**Disposition**

[51] I am satisfied that the Plaintiffs are entitled to the relief sought. I grant the *Mareva* injunction and the ancillary orders. I order that the net proceeds from the sale of 577-11<sup>th</sup> Street shall be held in trust for the benefit of the action. Finally, I order substituted service on the Defendants Chernomorsky and GTA.

[52] Costs of today are reserved to the Judge hearing the trial of the action.

[53] I signed the draft order following the oral hearing.

**Date: April 14, 2023**