



[1] In this case, the Plaintiffs allege that the defendants Gonzalo Raul Aguiar Gadea (“Aguiar”), along with his corporate alter ego A.D. Group of Companies Inc. (“A.D Group”), and the other defendants, have engaged in a significant and prolonged fraud.

[2] In essence, the Plaintiffs allege that they made investments in the approximate amount of \$27 million in Uruguay to develop cannabis production facilities.

[3] They say that the moneys were loaned to A.D. Group who was to direct these funds to these investments in Uruguay. They say that Aguiar is the principal of A.D. Group and that all these investments were made as a result of his representations that he had connections in Uruguay, that he would manage these investments for their benefit, and that a TD Trust Account would be used to receive and disburse the funds.

[4] On January 31, 2023, Perell J. granted a worldwide *Mareva* injunction up to the amount of \$25,000,000. On March 3, 2023, Chalmers J. granted an Anton Pillar Order. On March 10, 2023, Koehnen extended the *Mareva* injunction.

[5] On December 15, 2023, the Plaintiffs moved for default judgment against A.D. Group and Aguiar. At that time, A.D. Group had not filed a Notice of Intent to Defend or Statement of Defence. Aguiar had also failed to deliver either a Notice of Intent to Defend or a Statement of Defence, although it was unclear as to whether Aguiar had been noted in default. There were service issues.

[6] At that time, Aguiar attended with a lawyer Ricardo Rachetti, his Uruguayan-based counsel. He requested an adjournment. A.D. Group did not attend at that time, although properly served.

[7] Aguiar advised that he had not filed a defence because he could not afford to as his assets were frozen. He also said he had been dealing with the proceedings in Uruguay. He said that he and his lawyers had provided sufficient evidence to the court in Uruguay regarding the way the funds at issue were dispersed, and that he wanted an opportunity to file evidence in these proceedings.

[8] I adjourned the matter to today with a timetable, directing that any motion to set aside the default judgment would be heard today before me, together with the motion for default judgment.

[9] This morning, A. D. Group again failed to appear although properly served.

[10] Aguiar attended with Mr. Rachetti. He filed a document called a Statement of Defence on Caselines. It is not in a proper form and does not properly respond to the Statement of Claim, and is frankly unintelligible, but the Plaintiffs quite properly withdrew their motion for default judgment against Mr. Aguiar in light of his filing of this document. As against Aguiar they seek only an Order that Aguiar provide a proper Statement of Defence within 30 days.

[11] I canvassed this with Aguiar and Mr. Rachetti and they requested that they be permitted to do so within 60 days. Despite the significant delay in this matter, I am allowing them 60 days as they will need to retain Ontario counsel to ensure that their Statement of Defence complies with the Rules of Civil Procedure.

[12] I note here also that Aguiar remains in breach of court orders including:

- a) An Order that he provide an accounting of the Funds in question;
- b) An Order that he provide a sworn asset declaration; and
- c) An Order that he provide particulars of his legal and living expenses.

[13] As such, I will also be making an Order that Aguiar comply with these Orders immediately.

[14] The Plaintiffs have indicated that they may be bringing a motion for summary judgment at some point. The matter is voluminous with thousands of pages in the court record. Three judges have already read these materials.

[15] If there is a summary judgment motion, I am directing that it be heard by me, if I am available, to save court resources and the need for another judge to read these materials as well.

[16] Aguiar, and other defendants who appeared, took no position on the default judgment sought against A.D. Group or any of the relief sought.

## **Decision**

[17] For the reasons that follow, I am granting default judgment in the amount of US \$11,812,487 and CAD \$500,000 as against A.D. Group, together with an Order that that \$268,377.02 held by supervising counsel be disbursed to A. D. Group together with funds held by TD Bank in the approximate amount of \$100,000.

## **The Issues**

[18] In arriving at my decision, I have considered the following issues:

- Issue 1: Do the materials provide a basis for a finding of liability?
- Issue 2: If so, what are the damages to which the Plaintiffs are entitled?
- Issue 3: Do the materials entitle the Plaintiffs to judgment on their tracing claim?

## **Analysis**

### **Issue 1: Do the materials provide a basis for a finding of liability?**

### **Consequences of noting in default**

[19] The test on a motion for default judgement was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitled it to judgement on the pleaded claim?

[20] I am satisfied that the deemed admissions in the Statement of Claim and affidavit evidence entitle the Plaintiffs as a matter of law to judgment as against A.D. Group. These show that:

- Throughout 2019 – 2022, the Plaintiffs provided US \$27.8 M to A.D. Group for specific purpose investments of developing businesses in Uruguay (the “Funds”).
- The Funds were initially deposited into a USD TD Canada Trust bank account of A.D. Group located in Toronto (“TD Bank Account”).
- A.D. Group’s books and records only account for US \$15,536,948.00 as properly utilized funds.
- A.D. Group has failed to provide an accounting for the remaining funds as ordered by the Court on January 31, 2023 (the “Defrauded Funds”).

[21] I am satisfied that the Plaintiffs have made out a case in:

- a) civil fraud as per the requirements set out in *Bruno Appliance and Furniture v. Hyrniak*, 2014 SCC 8 at para 21 and *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.* 2002 SCC 19 at para 39.
- b) Breach of fiduciary duty.
- c) conversion which consists of the wrongful interference with the ownership or title to another’s chattel.
- d) unjust enrichment which involves an enrichment of the defendant, a corresponding detriment to the plaintiff and an absence of juristic reason for the enrichment.

[22] As already noted, Perell J. found that the Plaintiffs had made out a strong prima facie case in fraud when he granted a *Mareva* injunction in January 2023.

### **Issue 2: What are the damages to which the plaintiff is entitled?**

[23] At this stage, only US \$15,536,948.00 of the money advanced has been accounted for in the defendants' books and records although that figure might change after the defendants comply with the various orders so that the Plaintiffs can investigate this matter further.

[24] The difference between the money advanced and the money that appears to have been properly invested is \$11,812,487 (USD) and \$500,000 (CAD).

[25] I am satisfied that the evidence supports a liquidated damages award in these amounts as against A.D. Group.

[26] The Plaintiffs also claim that A.D. Group is liable for the outstanding accounts payable of one of the companies (Ignapin SA) to whom the Funds were supposed to flow in the amount of \$2,400,000. The Plaintiffs argue that they provided sufficient Funds to pay this company's legitimate creditors who would have been paid but for the diversion of funds.

[27] I raised the issue of whether this might constitute double counting in that: If \$2,400,000 in Funds had been properly directed towards Ignapin SA, it would reduce the amount of liquidated damages by this exact amount. Plaintiff counsel advised that they would adjourn this portion of their claim for default judgment against A.D. Group to a later date as there are some proceedings in Uruguay that may affect this claim in any event.

[28] There is also a claim in respect of a mortgage that Aguiar had placed on his home the Plaintiffs allege he purchased with the Defrauded Funds. The mortgage is in the amount of \$1,200,000. The Plaintiffs made this claim when they were seeking default judgment against both Aguiar and A.D. Group on a joint and several basis. If the motion had proceeded against both and been successful, there may have been a basis for this award as against A.D. Group as the Plaintiffs were seeking to lift the corporate veil. Since the motion is no longer proceeding against Aguiar, the Plaintiffs are also agreeable to adjourning this claim against A.D. Group to a later date.

[29] Therefore, I am satisfied that the Plaintiffs have established damages in accordance with the following chart:

<b>TOTAL Investment (USD)</b>	\$27,349,435.00
<b>TOTAL Investment (CAD)</b>	\$500,000.00
	<b>Less (-)</b>
<b>Accounted for / properly utilized investment funds</b>	\$15,536,948.00
	<b>Subtotal = US \$11,812,487 &amp; CAD \$500,000.00</b>

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[30] Therefore, the Plaintiffs are entitled to judgment in the amount of US \$11,812,487 and CAD \$500,000 together with pre and post judgment interest at the rates in the Courts of Justice Act.

**Issue 3: Do the materials entitle the Plaintiffs to judgment on their tracing claim?**

[31] Funds acquired by fraud and breach of fiduciary duty are impressed with constructive or resulting trust that may be followed and recovered by their true owner, unless acquired by a *bona fide* purchaser for value, without notice of the fraud: *Electa* at paras 33-36.

[32] I am satisfied that the remaining balance in the TD Bank accounts is a portion of the Plaintiffs' Defrauded Funds. I am also satisfied that funds currently held in the trust account of the Independent Supervising Solicitor, as described in the materials, are also a portion of the Plaintiffs' Defrauded Funds.

[33] I am also satisfied that the *Mareva* injunction should be further extended against A.D. Group post-judgment.

[34] The funds in the TD Bank account and the Independent Supervising Solicitor account will equal less than \$400,000.

[35] There remains significant outstanding withdrawals and expenditures of the Plaintiffs' Defrauded Funds to trace. It is just and convenient in the circumstances to continue the *Mareva* injunction against A.D. Group, to restrain A.D. Group, and/or other third parties with knowledge of the Order, from dissipating any assets pending execution of the judgement itself, or at least conclusion by the Plaintiffs that all ill-gotten gains of A.D. Group have been identified, preserved and/or liquidated for the Plaintiffs benefit: *Canadian Premier Life Insurance Company v Ho*, 2016 ONSC 496; *Coast to Coast Against Cancer v Sokolowski*, 2016 ONSC 170.

**Conclusion**

[36] Therefore, I Order as follows:

- Partial Default Judgment against A.D. Group in the amount of US \$11,812,487 and CAD \$500,000 together with an adjournment of some claims against A.D. Group to a later date;
- An Order that Aguiar file his Statement of Defence compliant with the Rules of Civil Procedure by April 8, 2024;
- An Order that Aguiar comply with previous Orders made against him;

- An Order that funds held by TD Bank and the Independent Supervising Solicitor be released to the Plaintiffs; and
  
- An Order extending the *Mareva* Injunction and the Anton Pillar Order against A.D. Group until trial.

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Papageorgiou J.

**Released:** February 7, 2024

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

1999269 ONTARIO LIMITED  
and 1999267 ONTARIO LIMITED

Plaintiffs

**– and –**

GONZALO RAUL GADEA AGUIAR a.k.a GONZALO  
RAUL AGUIAR GADEA, A.D. GROUP OF  
COMPANIES INC.,  
ROXANA GUADALUPE MARROQUIN DONAN,  
ANDREE ALEJANDRO AGUIAR DONAN a.k.a  
ANDREE  
ALEJANDRO DONAN AGUIAR, ADRIAN AGUIAR  
DONAN a.k.a.  
ADRIAN DONAN AGUIAR, A.R.A. GROUP OF  
COMPANIES INC., OPTIMA CAULKING INC.,  
MARIE DEL CORVO, JOHN DOE, JANE DOE AND  
DOE CORPORATION

Defendants

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**REASONS FOR JUDGMENT**

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Papageorgiou J.