

**CITATION:** Sherif Gerges Pharmacy Professional Corporation et al. v. Niam Pharmaceuticals Inc. et al, 2025 ONSC 970

**COURT FILE NO.:** CV-24-00731492-00CL

**DATE:** 20250212

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

**RE:** SHERIF GERGES PHARMACY PROFESSIONAL CORPORATION on its own behalf as shareholder of and in the name and on behalf of SEVA DRUG MART INC. ~~and~~, SHERIF GERGES on his own behalf and as shareholder of and in the name and on behalf of EGLINTON DRUGS INC., and SHERIF GERGES on his own behalf and as a shareholder of and in the name and on behalf of WOODBINE DOWNS HEALTHCARE REALTY INC., Applicants

-and-

NIAM PHARMACEUTICALS INC., CONNECT RX INC., o/a SRX HEALTH WHOLESALE & DISTRIBUTION, ADESH VORA PHARMACY PROFESSIONAL CORPORATION and ADESH VORA., Respondents

**BEFORE:** Jane Dietrich J.

**COUNSEL:** *Clarke Tedesco, Katarina Wasielewski* for the Applicants

*Christopher A.L. Caruana*, for the Respondents

**HEARD:** February 3, 2025

**REASONS FOR DECISION**

**Introduction**

[1] The applicant, Sherif Gerges seeks (i) a *Mareva* injunction freezing an amount equivalent to net proceeds of sale (the “**Funds**”) of units 9, 10 and 11 at 25 Woodbine Downs Boulevard, Toronto (the “**Properties**”); (ii) a preservation order with respect to the Funds pursuant to Rule 45.02 of the *Rules of Civil Procedure* R.R.O. 1990, Reg 194 (the “**Rules**”); and (ii) a production order with respect to the documents and records in Adesh Vora’s power, possession or control showing the receipt and any subsequent transactions involving the Funds to identify the location of the Funds.

## Background

[2] The Properties were owned by Woodbine Downs Healthcare Realty Inc. (“**Woodbine Downs**”). Mr. Gerges and Mr. Vora are both directors and 50% shareholders of Woodbine Downs.

[3] Mr. Vora, without the knowledge or consent of Mr. Gerges, on or about April 12, 2024, amended the provincial corporate profile report for Woodbine Downs to remove Mr. Gerges as a director.

[4] Mr. Vora then proceeded to sell the Properties without the knowledge or consent of Mr. Gerges. Unit 11 was sold for gross proceeds of \$780,000 on April 18, 2024. Units 9 and 10 were sold for gross proceeds of \$2,450,000 on April 30, 2024.

[5] Together, the sale of the Properties, after payment of outstanding loan and transaction costs, resulted in net proceeds of \$2,911,842.79. After payment of outstanding taxes, utility and water arrears, Mr. Vora then proceeded to transfer the remaining funds from Woodbine Downs – again without Mr. Gerges knowledge or consent – as follows:

- (a) \$2,028,742 to the respondent Niam Pharmaceuticals Inc. (“**Niam**”), a corporation that is controlled (directly or indirectly) by Mr. Vora, for purported repayment of loans. No documentation regarding loans has been provided nor according to Mr. Vora does it exist;
- (b) \$689,259.80 to Seva Drug Mart Inc. (“**Seva**”) for purported loan repayments. Again, no documentation regarding the loans has been provided. Seva is jointly owned by Mr. Vora and Mr. Gerges, however, at the time, Mr. Vora maintained control of the bank account for Seva.
- (c) \$8,700 to Vora MD Inc., a corporation jointly owned by Mr. Vora and Mr. Gerges for purported repayments of further loans (again no documentation has been provided in respect of those loans); and
- (d) \$50,000 to Goreway Total Health Inc. and Peel Drugs Inc. (however, that was returned, and later disbursed to Niam, among others).

[6] In inquiring about the status of Woodbine Downs’ outstanding secured loans, Mr. Gerges became aware of the sales of Units 9 and 10 on or about November 18, 2024. He became aware of the sale of Unit 11 on or about December 18, 2024.

[7] The proceeds of sale of the Properties have been transferred out of Woodbine Downs by Mr. Vora. As of October 31, 2024, Woodbine Downs had a closing bank account balance of \$158.90.

[8] Mr. Vora has not provided a full accounting of the proceeds of sale of the Properties. Although he has provided some numbers showing what happened to the proceeds, these include estimates for property taxes and HST, which Mr. Gerges questions as being proper amounts.

[9] Mr. Vora has also not provided further information regarding what happened to the proceeds of sale following their transfer from Woodbine Downs. The largest issue is what happened to the amount of approximately \$2 million following its transfer from Woodbine Downs to Niam.

[10] Mr. Vora does not challenge the evidence of Mr. Gerges that the Properties were sold without Mr. Gerges' knowledge or consent. He also does not challenge that he caused the proceeds of sale to be transferred out of Woodbine Downs, including approximately \$2 million to Niam.

[11] Mr. Vora, however, attempts to justify his actions. He states that he and Mr. Gerges together owned nine pharmacies. Those pharmacies were losing substantial amounts each month. Mr. Gerges was subject to a non-dissipation order (“**NDO**”) in his family law proceedings and was not able to sell his shares in those pharmacies (or related companies). To keep the pharmacies going, Mr. Vora caused other pharmacies to make a series of inter-company loans, and Mr. Vora advanced funds to the various pharmacies as well. Mr. Vora says that the only viable option was the sale of the Woodbine Downs properties.

[12] Mr. Vora says that the proceeds of sale were used to pay (i) outstanding property tax; (ii) real estate commissions; (iii) closing costs; (iv) the entirety of the secured indebtedness for Woodbine Downs; (v) water arrears; (vi) debts owing to Vora MD Inc. (the “head landlord” and a company also owned 50% by the applicant and Mr. Vora); (vii) arrears owing to the condominium corporation; (viii) HST arrears; (ix) utility arrears; (x) repayment of loans owing to Seva and (vi) repayment of loans owing to Niam.

[13] Mr. Vora says that subject to final tax adjustments, the remaining funds available for distribution to shareholders from the proceeds of sale of the Woodbine Downs property is \$1,377,895.12 or, for each 50% shareholder, \$688,947.56. Mr. Vora has arranged for \$689,050.00 to be held by the Respondents' counsel to stand to the credit of the present proceedings. Mr. Vora advised that he would consent to an order that such amount be held by his counsel pending further Court order.

[14] Mr. Vora's position is that he has a number of claims against Mr. Gerges that should be subject to equitable set off, such that the amount ultimately to be paid to Mr. Gerges as shareholder of Woodbine Downs will be even further reduced.

## Issues

[15] The issues to be determined on this motion are:

- (a) Should a *Mareva* injunction be ordered against the respondents;
- (b) Should a preservation order be made pursuant to Rule 45.02; and
- (c) Should additional production be ordered by Mr. Vora at this time?

## Analysis

### Mareva Injunction

[16] The test for a *Mareva* injunction requires the moving party to establish (1) a strong prima facie case; (2) particulars of its claim against the respondents, including the grounds of its claim and the amount, and fairly stating the points made against it by the respondents; (3) grounds for believing that the respondents have assets in Ontario; (4) grounds for believing that there is a risk of the respondents assets being removed from Ontario, dissipated, or disposed of before a judgment or award is satisfied; and, (5) an undertaking as to damages; see *Sibley & Associates LP v. Ross*, 2011 ONSC 2951 [*Sibley*] at para 11, citing *Chitel v. Rothbart*, 1982 CanLII 1956 (ON CA).

[17] As a preliminary point, Mr. Vora takes the position that Mr. Gerges is not entitled to *Mareva* relief as it is equitable relief, and he must therefore come to court with clean hands: see *R. v. Consolidated Fastfrate Transport Inc.*, 1995 CanLII 1527 (ONCA) [*Fastfrate*], at para. 133. In this regard, Mr. Vora points to alleged breaches of the family law NDO by Mr. Gerges and Mr. Gerges' actions, which Mr. Vora say caused a financial crisis at the various pharmacies.

[18] Mr. Vora is not a party to the family law proceedings nor was he the beneficiary of the NDO in that proceeding. The doctrine of clean hands is not general moral assessment of the moving party; rather, the misconduct complained of must have secured the moving party an advantage in the very matter at issue: see *BMO Nesbitt Burns Inc. v. Wellington West Capital Inc.*, 2005 CanLII 30303 (ONCA) at para. 28.

[19] I do not find that the allegations made by Mr. Vora disentitle Mr. Gerges to the equitable relief sought in the circumstances.

[20] Mr. Gerges must show a strong prima facie case. Mr. Gerges' draft claim against Mr. Vora is for, among other things, fraud, conversion, a constructive trust over the proceeds of sale, and oppression. Based on the facts set out above, there is a strong prima facie case, at least in conversion. Mr. Vora does not dispute that he sold the Properties without Mr. Gerges' consent or knowledge, despite Mr. Gerges' role as a director and 50% shareholder of Woodbine Downs. Mr. Vora also does not dispute that the proceeds of sale were transferred out of Woodbine Downs.

[21] Rather, Mr. Vora argues that because of his many claims of equitable set-off against Mr. Gerges, there is no guarantee that Mr. Vora's claim would ultimately succeed at trial, in that an order for payment of funds would be made.

[22] It may be that the equitable set-off claims will be taken into account at some point. Mr. Vora relies on the case of *Dhothar v. Atwal*, 2009 BCSC 1203 [*Dhothar*] where it was found that summary judgment in conversion was not available where equitable set off claims created a genuine issue for trial.

[23] I do not find the case of *Dhothar* helpful in this context. I do not agree with Mr. Vora that a strong prima facie case is the same test as that applied on a summary judgment motion.

[24] In the present circumstances, I find that Mr. Gerges has established a strong prima facie case.

[25] Mr. Vora acknowledges that he has assets in Ontario. In fact, Mr. Vora's evidence is that he has assets with hundreds of millions of dollars in Ontario. Mr. Vora has interests in two pharmacies that are jointly owned with Mr. Gerges. Mr. Vora is also a director and majority shareholder in SRx Health Solutions Inc. ("**SRx Health**"). Mr. Vora takes issue, however, with the fact that there is any risk of dissipation of assets.

[26] Mr. Gerges relies on *Fastfrate* for the proposition that past evidence of Mr. Vora's dishonest conduct can be used to support a finding of future dissipation of assets. However, as noted in *Fastfrate* at para 136, the real focus should be on the availability of assets to satisfy a judgment which is likely to be obtained because a strong prima facie case has been made out.

[27] Mr. Gerges claims that Mr. Vora has been selling the assets of Niam, has sold three pharmacies (which were just purchased from Gerges in 2024) and is attempting to sell two pharmacies that he jointly owns with Mr. Gerges. As well, a transaction is in progress with respect to SRx Health which, if completed, would see Mr. Vora's shares in SRx Health be exchanged for shares in a publicly traded U.S. corporation.

[28] Mr. Vora argues that the SRx Health transaction will increase Mr. Vora's assets rather than dissipate them, and in any event, the evidence is that following completion of that transaction, Mr. Vora's shares in the new entity cannot be sold for a least six months. Mr. Vora also agrees that he has sold locations, but takes the position that those sales were of unprofitable locations and did not dissipate his assets but rather improved them.

[29] Mr. Vora acknowledges that the Woodbine Downs assets have been dissipated, however, that has already taken place. Mr. Vora takes the position that there is no evidence that his own assets will be dissipated. Rather, he has agreed to consent to an order that the \$689,050.00 currently held by the Respondents' counsel would be held pending further order of the Court. Further, he says that two of the pharmacies he owns are jointly owned with Mr. Gerges and cannot

be sold without Mr. Gerges' consent, and if the transaction with SRx Heath takes place, the evidence is that the shares Mr. Vora will receive cannot be traded for at least six months.

[30] A *Mareva* injunction is extraordinary relief intended to prevent irreparable harm to the moving party so that if the moving party is successful, they are not left in the position where they cannot collect damages.

[31] Given Mr. Vora's agreement to consent to an order with respect to the \$689,050.00 currently held by the Respondents' counsel, and the evidence regarding Mr. Vora's other assets in Ontario, I am not persuaded that evidence of dissipation has been shown such that the extraordinary relief requested by Mr. Gerges is appropriate.

[32] Accordingly, I do not find that Mr. Gerges' has established the grounds required for the granting of a *Maerva* injunction.

#### Preservation Order pursuant to Rule 45.02

[33] Rule 45.02 provides that "where the right of a party to a specific fund is in question, the court may order the fund to be paid into court or otherwise secured on such terms as are just".

[34] The appropriate test for relief under Rule 45.02 requires the moving party to establish that (a) the moving party claims a right to a specific fund; (b) there is a serious issue to be tried regarding the moving party's claim to that fund; and (c) the balance of convenience favours granting the relief sought by the moving party: see *Sadie Moranis Realty Corporation v. 1667038 Ontario Inc.*, 2012 ONCA 475 [*Sadie Moranis*] at para. 18

[35] As set out in para 19 of *Sadie Moranis*, a specific fund must be readily identifiable when the order is sought.

[36] Mr. Gerges' claims that following payment of the secured loan and transaction fees net proceeds of sale from the Properties in the amount of \$2,911,842.79 was available to Woodbine Downs. He claims that those funds are readily identifiable in bank statements and from closing documents and should be ordered to be paid into court.

[37] However, Mr. Gerges also admits that those funds have been disbursed. The proceeds of sale may be the subject matter of the dispute, but they no longer exist as a readily identifiable fund. Accordingly, the requirements of Rule 45.02 have not been established.

#### Production of Documents

[38] Mr. Gerges also seeks an order for the production of all documents and records in Mr. Vora's power, possession or control showing the receipt, and any subsequent transactions involving the Funds to permit Mr. Gerges to identify the location and use of the Funds.

[39] Mr. Vora argues that this is part of the relief requested by Mr. Gerges on the application and is subject to the normal Rules with respect to the hearing of the application.

[40] Mr. Gerges did not provide any case law or legal argument to support his request at this time. Accordingly, I am not persuaded that such production should be separately ordered at this time.

### **Disposition & Order**

[41] For the foregoing reasons, I dismiss Mr. Gerges' motion.

[42] I do find it appropriate that an order be made that the amount of \$689,050.00 currently held by the respondents' counsel is to be held pending further order of the Court. Counsel is directed to email my assistant with a draft of the requested order for my review and signature. If there is an issue with the form of order, a case conference may be booked before me through the Commercial List Office.

[43] Fixing costs is a discretionary decision under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. In exercising my discretion, I may consider the result in the proceeding, any offer to settle or to contribute made in writing, and the factors listed in Rule 57.01. These factors include but are not limited to: (i) the result in the proceeding; (ii) the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer; (iii) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the steps in the proceeding for which costs are being fixed; (iv) the amount claimed and the amount recovered in the proceeding; (v) the complexity of the proceeding; (vi) the importance of the issues; and (vii) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding. Rule 57.01(1)(f) provides that the court may also consider "any other matter relevant to the question of costs."

[44] In exercising my discretion to fix costs, I must consider what is fair and reasonable for the unsuccessful party to pay in this proceeding, and balance the compensation of the successful party with the goal of fostering access to justice: *Boucher v Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.) at paras. 26 and 37.

[45] For these reasons, I fix the costs of the motion in the amount of \$25,000, inclusive of disbursements and Harmonized Sales Tax, and order Mr. Gerges to pay that amount to the Mr. Vora within 30 days of the date of this order.

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Jane Dietrich J.

**Date:** February 12, 2025, **as amended on** February 13, 2025