

CITATION: The Regional Municipality of Peel v. Dualeh et al, 2025 ONSC 4389
COURT FILE NO.: CV-25-00736348-00CL
DATE: 20250728

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

RE: THE REGIONAL MUNICIPALITY OF PEEL, Plaintiff

AND:

HAMZA DUALEH, JIMMY GICHOHI, AHMED ABDULMALIK, HANI MUSE, ODAY ALHASASNEH, GABRIEL HERRERA, MOHAMUD SHIRE, NAJIIB ADAN, ABDULRAZAK ALZAIM, ASMA OMAR, NICHOLAS LOPES a.k.a. NICHOLAS CHRISTIAN MCKENZIE LOPES, KEVIN BACCHUS a.k.a. MOHAMED IMRAN BACCHUS, WAYNE ANGLIN a.k.a. WAYNE LOCKSLEY ANGLIN, GENEVIVE BENNETT a.k.a. NATASHA THOMAS, FABIO TORO a.k.a. FABIO ALONZO TORO, TIFFANY PHILLIPS, TRISTEN BAILEY, MICKEAL SIMMS a.k.a. MICKEAL BALFORD SIMMS, ABDI OMAR a.k.a. ABDI BASHIIR OMAR, ABDULRAHMAN AHMED a.k.a. ABDULRAHMAN MOHAMMED ABDULHAFEDH AHMED, JOHN DOE, and JANE DOE, Defendants

BEFORE: Justice Jane Dietrich

COUNSEL: *R. Bevan Brooksbank, Valerie Cheng*, for the Plaintiff
F.M. Sajid B. Hossain, for the Defendants

HEARD: July 17, 2025

REASONS FOR DECISION

Introduction

[1] The Defendant, Mr. Hamza Dualeh (“**Mr. Dualeh**”), seeks an order excluding his future income from sources unrelated to the Plaintiff from the scope of the Mareva injunction granted by Justice Conway on February 14, 2025 (the “**Mareva Order**”). In the alternative, he seeks a monthly release of funds from his frozen assets to meet his reasonable living expenses, as well as a one-time release to pay off his outstanding credit card and phone bill debts. Mr. Dualeh also seeks to remove the requirement in the Mareva Order that he surrender his passport.

[2] As well, Mr. Dualeh seeks to vary the Norwich Order granted by Justice Conway on February 14, 2025, by removing the number ending in 1042 from its scope, as his evidence is that the phone number belongs to Mr. Dualeh’s father and no claims have been made against his father in this proceeding.

[3] Regional Municipality of Peel (“**Peel Region**”) opposes Mr. Dualeh’s motion.

[4] For the reasons set out below, Mr. Dualeh’s motion is dismissed.

Background

The Fraudulent Scheme

[5] Peel Region's evidence on the application is that it is the victim of a fraudulent scheme perpetuated by Mr. Dualeh, a former employee, who intentionally routed public funds earmarked to help alleviate homelessness to the other named defendants (the “**Recipient Defendants**”). Peel Region's claim is that as a result of Mr. Dualeh and the Recipient Defendants’ actions, Peel Region was defrauded of \$5,075,274,90 of public funds, over the span of 20 months (the “**Fraudulent Scheme**”).

[6] On February 14, 2025, Justice Conway, on an *ex parte* basis granted both the Mareva Order and the Norwich Order. The background of the alleged Fraudulent Scheme is outlined in Justice Conway's endorsement and is not repeated here.

[7] Mareva orders were also made by Justice Conway in respect of the other 19 Recipient Defendants. Peel Region and nine of the Recipient Defendants have agreed to consent orders providing for certain carve outs to cover reasonable living expenses to be released to those defendants.

The Mareva Order and the Norwich Order

[8] The Mareva Order requires, among other things, the Banks (as defined in the Mareva Order) to freeze certain of the Defendants’ bank accounts and other assets, and Dualeh to surrender his Canadian passport to the Plaintiff’s counsel, Borden Ladner Gervais LLP (“**BLG**”). The Mareva Order was continued until trial by Justice Conway on March 6, 2025.

[9] The Mareva Order required Mr. Dualeh to deliver his Canadian passport to BLG immediately upon service of the Mareva Order. Further, Mr. Dualeh was required to deliver to the Plaintiff, a sworn asset affidavit detailing the nature, value and location of all assets held by Mr. Dualeh worldwide, within five days after service of the Mareva Order, i.e. February 26, 2025. Mr. Dualeh delivered his sworn asset affidavit and his passport to BLG on March 4, 2025.

[10] The Norwich Order requires, among other things, Freedom Mobile to disclose and deliver up all records held by Freedom Mobile concerning certain phone numbers, including the number ending in 1042.

Procedural History

[11] This motion was scheduled to be heard on April 2, 2025. It was adjourned to May 1, 2025, because of the delay associated with Mr. Dualeh providing his sworn asset affidavit on

March 4, 2025. On April 4, 2025, Mr. Dualeh was cross-examined on his affidavits sworn in support of the Motion to Vary, during which he gave undertakings to provide certain answers and productions (the “**Undertakings**”) to Peel Region.

- [12] On May 1, 2025, counsel for Mr. Dualeh, requested an adjournment of the Motion to Vary on the basis that Mr. Dualeh required additional time to fulfil the Undertakings. Peel Region consented to the adjournment on the basis that Mr. Dualeh deliver (i) answers and relevant productions to the Undertakings by May 9, 2025, and (ii) a factum in support of the motion by May 16, 2025.
- [13] Certain answers to the Undertakings were delivered on May 12, 2025, but those answers were not complete. On May 22, 2025, further answers to Undertakings were delivered. Mr. Dualeh submits that he has answered the Undertakings to the best of his ability, however, Peel Region notes that certain Undertakings have not been fulfilled - these include the failure of Mr. Dualeh to deliver copies of rental cheques or proof of payment for his contribution of rent; a current copy of the lease agreement for his residence; source of funds and proof of payment for his trips to Somalia in October 2023 and Saudi Arabia in December 2024; and source of funds, including supporting documents, for financial assistance provided by Mr. Dualeh to individuals in Somalia.
- [14] Peel Region did not receive Mr. Dualeh’s factum until May 20, 2025, four days after the deadline endorsed by Justice Conway.
- [15] As well, in the underlying action, Mr. Dualeh also failed to deliver his Statement of Defence on time, despite having been served on February 21, 2025, and despite the Endorsement of Justice Conway dated May 1, 2025, ordering Mr. Dualeh to deliver his Statement of Defence by May 16, 2025. On May 26, 2025, having not received Mr. Dualeh’s pleading, Peel Region filed a requisition with the Court to note Mr. Dualeh in default. On June 9, 2025, at a case conference before Justice Conway, Peel Region advised that it would consent to setting aside the noting in default on the condition that it could seek costs thrown away. Justice Conway ordered that submissions on the issue of costs with respect to the noting in default be made at the same time as costs submissions on this motion.

Mr. Dualeh's Evidence

- [16] As noted above, Mr. Dualeh delivered a sworn asset affidavit on March 4, 2025. Mr. Dualeh also delivered an affidavit sworn on March 5, 2025, in connection with this motion and a supplementary affidavit sworn on March 14, 2025. As well, an affidavit sworn on July 13, 2025, was provided, which primarily addressed the timing of filing of Mr. Dualeh’s Statement of Defence.
- [17] Mr. Dualeh admits that he inadvertently failed to disclose in his sworn statement dated March 4, 2025, a bank account held jointly with his family. This account is primarily used to receive government benefit payments for Mr. Dualeh’s brother, Abdirahman Muhamed Dualeh, who has autism and requires care. The account was opened in 2018 and has, at all

times, been exclusively operated by Mr. Dualeh's father. Since Mr. Dualeh has had no involvement with the operation or use of this account, he advises that he unintentionally failed to recall and disclose it in his first sworn statement.

[18] Mr. Dualeh's evidence is:

- a. that he resides with his parents and other family members in a condominium located at Etobicoke, Ontario. The lease for the unit is in his father's name. Mr. Dualeh contributes \$1,000 per month towards rent;
- b. he maintains a mobile phone service with Freedom Mobile, incurring a monthly charge of approximately \$151.00. As of January 29, 2025, he had an outstanding balance of \$457.55, which remains unpaid due to the asset freeze imposed by the Mareva Order. Given the continued accrual of charges, Mr. Dualeh reasonably anticipates that his outstanding balance as of February 28, 2025, will amount to approximately \$617.55;
- c. he usually spends approximately \$500.00 per month for buying groceries and personal items, and approximately \$200.00 per month on transportation;
- d. he also has a membership with Planet Fitness, the monthly subscription of which costs approximately \$30.00. He also had a Crunchyroll subscription, which costs approximately \$12.50 per month;
- e. accordingly, he says that his total monthly living expense amount is approximately \$1,893.50 per month;
- f. he currently has only \$997.00 in his chequing account, which is all his money;
- g. he does not have any other savings;
- h. he is currently unemployed and is actively looking for employment; and
- i. the phone number ending in 1042 is registered to his father, and Mr. Dualeh provided the phone number as an alternative contact at work as he lives with his parents.

Issues

[19] There are three issues to be addressed:

- a. should the Mareva Order be varied to allow the release of funds to exclude Mr. Dualeh's future income from its scope, or in the alternative, to allow the release of \$1,863.50 per month from his frozen assets to pay his reasonable living expenses and a one-time release of \$1,120.55 for the payment of Mr. Dualeh's outstanding debts;
- b. should the Mareva Order be varied to remove the requirement for Mr. Dualeh to surrender his passport; and

- c. should the Norwich Order be varied to remove the number ending in 1042 from its scope.

Analysis

Issue 1: Should the Mareva Order be varied to allow the release of funds?

[20] There is a four-part test for the release of frozen funds for living and legal expenses. That test is set out in *Riar et al v. Khudal et al.*, 2023 ONSC 4529 at para. 35, citing *Waxman v. Waxman*, 2007 ONCA 326 [*Waxman*] at para. 39:

- a. The defendants must establish that they have no other assets available to pay their expenses other than those frozen by the injunction;
- b. If the defendants have met the first branch of the test, they must show evidence that there are assets caught by the injunction that are from a source other than the plaintiff, i.e. that are not proprietary to the plaintiff;
- c. The defendants must establish that they have exhausted all non-proprietary assets frozen by the Mareva to pay their reasonable living expenses, etc. If they have not, those assets must be exhausted before the defendants are entitled to look at the assets subject to the proprietary claim; and
- d. If the defendants have met the three above elements and still require funds for legitimate living expenses and their defence, the Court must balance the competing interests of the plaintiff in not permitting the defendants to use the plaintiff's money for their own purposes and of the defendants in ensuring that they have proper opportunity to present their defence before assets in their name are removed from them without a trial. In weighing the interests of the parties, it is relevant for the court to consider the strength of the plaintiff's case, as well as the extent to which the defendants have put forward an arguable case to rebut the plaintiff's claim.

[21] The party seeking to vary a Mareva injunction has the onus of proving that they have no other assets available for legal fees or living expenses: *Waxman* at para. 39 and *HMQ v. Madan*, 2020 ONSC 8093 [*Madan*] at para. 16.

[22] As stated in *Wayne Safety Inc. v Gendelman et al*, 2024 ONSC 1642 [*Wayne Safety #1*] at para 18 and 19:

18 In *Waxman*, the Court of Appeal held the defendant will not meet his onus if he refuses questions related to potential sources of income, and an adverse inference will be drawn if the defendant refuses to answer questions about his or her ability to finance living and legal expenses from other sources (paras. 41-43). If the defendants fail to provide evidence, they cannot discharge their onus: *Madan*, at para. 17.

19 Defendants that have not been forthcoming about their ability to draw on the assets of friends and family cannot meet their onus under the first branch of the *Credit Valley* test, since they have failed to establish on the evidence that they do not have access to assets that can be used to pay for legal fees or living expenses: *Royal Bank v. Welton*, 2009 CanLII 461965 (ONSC Comm List) ONSC 1692 at paras. 37- 38

- [23] To satisfy the onus, a defendant is required to make frank disclosure and demonstrate that there are no other assets available. Failure to be candid about an ability to obtain funds from various sources, including an ability to draw on the assets of friends and family, may be fatal to a defendant's ability to obtain a carve out: see *Li v. Hendren*, 2021 ONSC 1692 at paras. 42.
- [24] Mr. Dualeh submits that he satisfies the first requirement under the test - that the defendant must establish that he has no other assets available to pay for his expenses except for those frozen by the injunction. He claims that he has fully disclosed his assets in compliance with the Mareva Order by delivering a sworn statement on March 4, 2025, detailing the nature, value, and location of all his assets worldwide. His only available funds consist of \$997.00 in his chequing account, and he has no other savings or liquid assets. Furthermore, Mr. Dualeh is currently unemployed.
- [25] Peel Region disputes that Mr. Dualeh has satisfied his onus to show that he has no other assets available to pay his expenses other than those frozen by the injunction on the basis that he has not made full and frank disclosure. First, Peel Region notes that Mr. Dualeh failed to disclose in his March 4 asset affidavit (i) the Joint Account referred to above; (ii) a BMO Mastercard; and (iii) an RBC Visa card. Further, when questioned on the source from which he funded his trips to Somalia and Saudi Arabia in 2023 and 2024 respectively, Mr. Dualeh was unable to provide supporting documentation or otherwise indicate or locate the specific transactions in his account statements. At the hearing, counsel advised that the BMO Mastercard was previously closed, but there is no evidence before me to that effect. In his answers to Undertakings, Mr. Dualeh explained that the RBC Visa card was a replacement for a card previously disclosed and eventually provided various account

statements for that card. However, other than noting his trips to Somalia and Saudi Arabia were made through a travel agency (one of which he states was paid in cash), no supporting documentation or specific transactions in his account statements were identified.

- [26] Further, Peel Region argues that Mr. Dualeh has not been forthright in disclosing his ability to obtain funds by other means. Mr. Dualeh has not adduced any evidence, either in his affidavits or during cross-examination, to suggest that his parents no longer have the financial means to contribute to Mr. Dualeh's financial needs, or that they intend to cease to provide Mr. Dualeh with further financial support.
- [27] Mr. Dualeh has also not provided full and frank disclosure regarding his expenses. Mr. Dualeh admitted during cross-examination that since his bank accounts were frozen by the Mareva Order on February 14, 2025, he has not incurred any expenses with respect to rent, groceries, or transportation. Mr. Dualeh's evidence is also that he is currently residing with his parents and other family members at an apartment unit at Etobicoke. However, the standard form of the lease provided by Mr. Dualeh appears to have been on a template form created in 2020 yet was purportedly signed by the landlord in 2008. Further, the lease was not signed by the listed tenant, Mohamed Dualeh, Mr. Dualeh's father. Under cross-examination, Mr. Dualeh was unable to provide an explanation for these inconsistencies. As well, when asked to provide documentation substantiating Mr. Dualeh's claimed monthly contribution of rent in the amount of \$1,000.00, he only identified two transfers in the amount of \$1,500.00 to an unnamed account or individual on November 21, 2024, and December 19, 2024, in his Answers to the Undertakings.
- [28] As noted above, the first part of the test that Mr. Dualeh must meet is that he that he has expenses and that he has no other assets available to satisfy them. The most significant expense claimed by Mr. Dualeh is that of rent. As noted above, I am not persuaded based on the record before me that Mr. Dualeh is required to pay or has consistently paid \$1,000 a month as rent as he claims. Further, there is no evidence that he has transportation or grocery expenses. Even if Mr. Dualeh has some expenses, I am not persuaded that Mr. Dualeh has explained why he has no other assets available to satisfy them. As noted in *Wayne Safety #1*, Mr. Dualeh has not been forthcoming about his ability to draw on the assets of friends and family. As such, I am not persuaded that Mr. Dualeh has met the first branch of the test set out in *Waxman*.
- [29] Accordingly, I am not persuaded that the Mareva Order should be modified to provide for the payments of funds to Mr. Dualeh as he requests.

Issue 2: Should the Mareva Order be varied to remove the requirement for Mr. Dualeh to surrender his passport?

- [30] In considering whether to order the surrender of passports pursuant to s. 101 of the CJA, the Court must determine whether such an order is "just and convenient", and the analysis is fact specific. Osborne J., in *Wayne Safety Inc. v Diana Gendelman et al.*, 2023 ONSC 3517 [*Wayne Safety #2*] at para 45, suggested the following non-exhaustive considerations may be useful to consider:

- a. Are there assets, and particularly assets (including but not limited to funds), located outside the jurisdiction, which are the subject of the Mareva relief?
- b. Were those assets transferred out of this jurisdiction in an attempt to place them beyond the reach of this Court?
- c. Were there attempts on the part of the defendant to hide, to not disclose, or transfer contrary to any court order, any assets, documents, or other evidence out of the jurisdiction?
- d. Were there attempts on the part of the defendant to hide, to not disclose, or transfer contrary to a court order, any assets?
- e. Was there a breach by the defendant of a prior order of the court?

- [31] In her original endorsement of February 14, 2025, in this matter, Justice Conway noted: “The order contains a provision requiring Mr. Dualeh to surrender his passport to Peel Region’s counsel. His present location is unknown. He was overseas for some period while the Overpayments were occurring. His evidence is critical to Peel Region’s recovery efforts and his presence in the jurisdiction is therefore warranted. These orders have been granted in Mareva orders: see *Wayne Safety Inc. v. Diana Gendelman et al.*, 2023 ONSC 3517, at paras. 30-47. I am prepared to grant this order but, as with the entire Mareva order, this specific provision will be revisited at the comeback hearing.”
- [32] Although Mr. Dualeh’s location is now known, the remainder of Justice Conway’s reasons remain relevant.
- [33] As well, the particulars of Mr. Dualeh’s activities overseas in Somalia and Saudi Arabia (the latter as recently as December, 2024 to January of 2025) are relevant. Mr. Dualeh takes the position that his trip to Somalia was just a short visit. However, in October 2023, Mr. Dualeh emailed his direct supervisor saying that he would be unable to work for an indeterminate amount of time due to, among other reasons, his need to be with his family in Somalia, where he was situated at the time.
- [34] As well, when questioned on his ties to Somalia, Mr. Dualeh’s answers were inconsistent. It is clear he has family in Somalia. Although in cross examination, Mr. Dualeh stated that he supported those family members financially and emotionally, in his Answers to Undertakings, he claimed that he misunderstood the question in cross-examination and that he never remitted any funds to Somalia.
- [35] It is unclear how Mr. Dualeh’s trips to Somalia in 2023 and Saudi Arabia in 2024 were funded – despite claiming that such trips were funded by his RBC account, Mr. Dualeh

was unable to identify specific transactions in the account statements provided pursuant to his Answers to Undertakings or otherwise.

- [36] Counsel for Peel Region also suggested a potential compromise position. That being, counsel for Mr. Dualeh would hold Mr. Dualeh's passport, Mr. Dualeh would provide advance notice to Peel Region of any proposed trip, and unless an order otherwise was obtained within a period of time, Mr. Dualeh's passport would be returned to him by his counsel. However, Mr. Dualeh's current counsel is not prepared to hold his passport on this basis.
- [37] Accordingly, I am not persuaded that the Maerva Order should be varied so as to remove the restriction regarding Mr. Dualeh's passport at this time.

Issue 3 - Should the Norwich Order be varied to remove the phone number ending in 1042 from its scope

- [38] A motion to set aside a Norwich order obtained *ex-parte* is heard "de novo". The consideration is whether the order should be granted on all the evidence: see *Alberta (Treasury Branches) v. Leahy*, 2000 ABQB 575, at para. 51 [*Leahy*]. Accordingly, Peel Region must establish that the Norwich Order for the disclosure of information, documents and records associated with the number ending in 1042 is appropriate in the circumstances.
- [39] The factors to be considered when determining whether to grant a request for a Norwich Order are as follows:
- a. whether the applicant has provided evidence sufficient to raise a valid, *bona fide* or reasonable claim;
 - b. whether the applicant has established a relationship with the third party from whom the information is sought such that it establishes that the third party is somehow involved in the acts complained of;
 - c. whether the third party is the only practicable source of the information available; whether the third party can be indemnified for costs to which the third party may be exposed because of the disclosure; and
 - d. whether the interests of justice favour the obtaining of the disclosure.
- [40] Mr. Dualeh seeks to remove the number ending in 1042 from the scope of the Norwich Order on the basis that the phone number belongs to his father, Mohamed Dualeh. He alleges that Peel Region has failed to establish a connection to his father. The lack of involvement of Mr. Dualeh's father in the underlying action is not disputed.
- [41] Rather, the dispute surrounds Mr. Dualeh's use of the relevant phone number. Peel Region's evidence is that upon Mr. Dualeh's termination, Mr. Dualeh provided the relevant phone number to Peel Region and advised that it was the 'best number to reach him at'. In

his evidence, Mr. Dualeh says that the number was provided as an ‘alternative’ number. Mr. Dualeh does not say in his evidence that he does not regularly use the phone number. There is no evidence from Mr. Dualeh’s father that Mr. Dualeh does not regularly use the number either. The basis on which Justice Conway granted the Norwich Order in respect of the relevant phone number remains undisturbed.

- [42] In an effort to reach an expedient and fair resolution, Peel Region proposes to: provide Mr. Dualeh with 20 days’ notice if Peel Region intends to make use in evidence of any information connected to the number ending in 1042; and to the extent that such information impacts any privacy concerns of Mr. Dualeh’s father, counsel to Peel Region and Mr. Dualeh shall work collaboratively to avoid any filing of the information, or alternatively, negotiate a proposed limited protective or sealing order.
- [43] I accept that Peel Region’s proposal is appropriate in the circumstances.

Disposition

- [44] Mr. Dualeh’s motion is dismissed. I am prepared, however, as noted in paragraph 42 above, to accept Peel Region’s proposed handling of proposed evidence regarding the phone number ending in 1042.
- [45] If the parties are not able to resolve costs of this matter, Peel Region may email a costs submission of no more than three double-spaced pages to the Commercial List Office within 15 days of the date of this endorsement. Mr. Dualeh may deliver responding submissions of no more than three double-spaced pages within 15 days following the delivery of Peel Regions submissions. No reply submissions are to be delivered without leave.
- [46] The costs submissions should incorporate by reference (there is no need to duplicate) the costs submissions made by the parties with respect to the issue of costs thrown away in respect to the noting in default as set out in Justice Conway’s endorsement of June 9, 2025.

The Honourable Justice J. Dietrich

Date: July 28, 2025