SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: 500-06-001225-230

DATE: November 27, 2023

BY THE HONOURABLE ELENI YIANNAKIS, J.S.C.

S.N.
Applicant
v.

ROBERT GERALD MILLER
FUTURE ELECTRONICS INC.
RAYMOND POULET
SAM JOSEPH ABRAMS
HELMUT LIPPMANN
Defendants

and

ALONIM INVESTMENTS INC.
MULTIFORM PROPERTIES INC.
4306805 CANADA INC.
11172247 CANADA INC.
RODNEY MILLER
Impleaded Parties

JUDGMENT

JY0083

OVERVIEW

[1] Justice is always the ultimate objective. The final destination of an often perceived long and winding road. Justice cannot be rendered in a vacuum. It lives and breathes within a set of predetermined guardrails. That is how our justice system is built.

[2] But make no mistake. The road to justice cannot be precipitated and must be governed by the rule of law. It is precisely the Court's role to ensure that this road is followed in accordance with procedural safeguards aimed at protecting the rights of all parties involved.

[3] It is against this backdrop that this Court is tasked with rendering a decision on the Applicant's request seeking an extraordinary remedy—a Mareva-type injunction[1].

[4] While the Applicant demonstrates a serious apparent right on her underlying cause of action against the Defendants, she is essentially asking the Court, at the preauthorisation phase of the class action, to freeze proceeds of a sale that has yet to close, against notably Impleaded Parties that are not parties to the proposed class action, without having established urgency and without the proper evidence suggesting that there is a real risk of disappearance of assets.

[5] At the very beginning of this long and winding road, for the reasons detailed below, the Court cannot issue such an extreme remedy, but does not consider the proceeding to be an abuse of process.

CONTEXT

[6] The Court is seized with a request for a Mareva injunction (the "Mareva Application"). The Mareva Application is presented in the context of a proposed class action against Robert Gerald Miller ("Miller")[2], Future Electronics Inc. ("Future Electronics") (collectively the "Defendants") and three of its employees—Sam Joseph Abrams, Raymond Poulet and Helmut Lippmann. However, the Mareva Application does not seek any conclusions against the three defendant employees.

[7] There are also several Impleaded Parties to the Mareva Application who are not parties to the *Application to Authorise the Bringing of a Class Action & to Appoint the Applicant as Representative Plaintiff* (the "Authorisation Application"):

a) Alonim Investments Inc. ("Alonim") and Robmilco Holdings Inc. ("Robmilco"): Future Electronics is owned by Alonim, which is in turn owned by Robmilco, which is in turn owned by Miller;

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1 For the purposes of brevity, the terms "Mareva injunction" will be used.

2 The use of individual's last names in the present judgement is only for purposes of brevity and no disrespect is intended.

b) Multiform Properties Inc., (formerly known as Robert Gerald Miller Holdings Inc.), is the owner of the building where Future Electronics operates in Pointe-Claire Quebec. Miller is the sole shareholder of Multiform Properties;

c) 4306805 Canada Inc., a company that used to own two of the properties, now in Miller's name;

d) 11172247 Canada Inc., a company that used to own the property located at 78 Summit Crescent, now in Rodney Miller's name;

e) Rodney Miller, Miller's son.

[8] Miller was the President and CEO of Future Electronics until February 3, 2023. He stepped down after a broadcast from *Enquête* aired in which women were interviewed and gave their stories about how Miller allegedly paid them to engage in sexual relations while they were minors between the years 1996 and 2006.

[9] On February 22, 2023, the Applicant filed the Authorisation Application, which was later amended and then re-amended on October 31, 2023[3], on behalf of alleged victims of sexual exploitation. It is alleged that Miller paid underage adolescent girls to engage in sexual relations and that his employees at Future Electronics assisted him through a well-planned network.

[10] Miller denies these allegations.

[11] The class action has not yet been authorized and is under special case management. The reasons for which the authorisation hearing has not been scheduled are set out in a recent judgement rendered by Justice Christian Immer, the supervising judge appointed to this case. Unfortunately, a large part of the blame lies with the Applicant who has presented multiple applications thus delaying the authorisation hearing[4].

[12] The Applicant is claiming $2.5 million in compensatory and punitive damages. The Mareva Application states that the Applicant anticipates at least 50 alleged victims will join the class action and will be claiming similar amounts[5].

[13] It is also stated that CA$ 200 million will be necessary to satisfy an eventual favourable judgement[6]. However, no breakdown is provided as to the requested amount.

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3 The Court was provided with a copy of the *Re-Amended Application to Authorize the Bringing of a Class Action & to Appoint the Applicant as Representative Plaintiff*, dated October 31, 2023.

4 *S.N.* c. *Miller*, 2023 QCCS 4471, par. 2-7.

5 Mareva Application, par. 4.

6 Mareva Application, par. 4.

[14] On September 14, 2023, a newspaper article reported that Future Electronics had been sold to a Taiwanese company[7]. In a press release published the same day by Future Electronics, it is stated that the company will be purchased by WT Microelectronics for US$ 3.8 billion. 100 % of the company's shares will be acquired in an "all cash transaction" which "is expected to close in the first half of 2024, subject to customary closing conditions including the receipt of required regulatory approvals"[8].

[15] Future Electronics' head office is located in Pointe-Claire, Quebec. It has 170 offices in 47 countries and 5,200 employees[9].

[16] A subsequent *La Presse* article published two days later, on September 16, 2023, states that the new shareholder plans to keep the head office in Pointe-Claire and that the management team will remain the same[10].

[17] On October 23, 2023, the Applicant filed the Mareva Application, which is supported by her sworn statement. The Applicant was examined by both of the Defendants on her sworn statement on November 9, 2023, and her depositions were filed into the Court record.

[18] The conclusions sought in the Mareva Application are extremely broad. The Applicant is essentially asking the Court to issue orders enjoining the Defendants, Miller and Future Electronics, as well as the Impleaded Parties from selling and disposing of any of their assets. Such an order can "cease to have effect" should the Defendants provide security by paying $200 million into the Court record[11].

[19] Briefly stated, the Applicant is asking the Court to stop or suspend the transaction unless $200 million is deposited in Court[12].

PARTIES' POSITIONS

[20] The Applicant claims that the Mareva Application meets the required criteria. She has an appearance of right since she has a strong underlying case against the Defendants. Moreover, the requirement of irreparable harm is met, since there is a risk that the sale proceeds will disappear based on Miller's persistent and dishonest conduct.

[21] Most of the facts referred to by the Applicant to demonstrate this conduct relate to the underlying facts of the case, such as Miller's use of a fake business card and the fact

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7 Exhibit MA-4.
8 Exhibit MA-6.
9 Exhibit MA-6.
10 Exhibit MA-5.
11 Mareva Application, conclusion e).
12 The Applicant is also seeking a safeguard order, since she is asking the Court to issue an order that would remain in full force and effect until an interlocutory order is granted and then until final judgment is rendered on the merits of the present legal proceeding (see: Applicant's Argument Plan, par. 69).

that three properties were held by *prête-noms* during the time the alleged events took place.

[22] However, she also points to the following additional facts. First, she claims that Miller cannot be found—that he is "M.I.A." and speculates that he could be living in Florida or in the Bahamas.

[23] Second, she points to the fact that in August 2023, so after the Authorisation Application was filed, Miller transferred his property located at 78 Summit Crescent to his son for no consideration, demonstrating an intent to make himself judgement proof.

[24] Finally, she claims that the timing of the transaction is suspicious: because of the pending proceedings against Miller, he is trying to dissipate his "prize jewel"[13], the shares he holds indirectly in Future Electronics.

[25] Defendants vehemently contest the Mareva Application and have even asked the Court to declare the proceeding and the Applicant's conduct abusive, since the Application is manifestly ill-founded in law and frivolous. Moreover, they claim that the Court cannot issue a Mareva Application, an injunctive remedy, prior to the authorisation of the class action.

[26] In addition, they argue that all of the required criteria to issue a Mareva injunction have not been met, including irreparable harm, the real risk of disappearance of assets and urgency. In their view, there are no facts put forward by the Applicant to support the allegations that Miller is attempting to "hide" the proceeds of the sale—the alleged risk is at best hypothetical and just pure speculation.

QUESTIONS AT ISSUE

[27] Since the Court is of the opinion that the criteria to issue a Mareva injunction are not met, it is unnecessary to answer the question as to whether such a remedy can be issued prior to the authorisation stage.

[28] However, the Court agrees, that at first glance, it would appear that the Mareva injunction, which is based on article 510 of the *Code of Civil Procedure* ("C.C.P.") is captured by the judgement rendered by Justice Donald Bisson on June 28, 2023 in this very case[14]. This judgement concluded that the Court, at the preauthorisation stage, did not have the authority to issue a safeguard order regarding communications between potential members of the class action and Defendants' attorneys[15]. Since the issuance of a Mareva order is largely governed by the same criteria as those of a provisional

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13 Marava Application, par. 28.

14 *S.N.* c. *Miller et al.*, 2023 QCCS 2333.

15 *S.N.* c. *Miller et al.*, 2023 QCCS 2333; see also: *Daigle* c. *Club de Golf le Rosemère et al.*, 2018 QCCS 5360.

interlocutory injunction and/or a safeguard order, it is logical that the same conclusion would apply with respect to the Mareva Application[16].

[29] The Court must decide the following issues:

a) Are the criteria to issue a Mareva injunction met?

b) Are the Mareva Application and/or Applicant's conduct an abuse of process?

ANALYSIS

1. ARE THE CRITERIA TO ISSUE A MAREVA INJUNCTION MET?

1.1 Nature of a Mareva Injunction

[30] The main objective of a Mareva injunction is to ensure that the execution of an eventual favorable judgement is not frustrated by the disappearance of the debtor's assets[17]. Such an injunction can only be issued in exceptional cases where it is shown that there is a real risk that the debtor's assets will disappear to the detriment of the creditor who has instituted an action against him[18].

[31] Simply stated, a Mareva injunction is of the same nature as an interlocutory provisional injunction (art. 510-511 C.C.P.)[19] and is similar to a seizure before judgement

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16 The majority of the authorities submitted by the Applicant on this issue were carefully considered by Justice Bisson, who nevertheless concluded that the Court did not have the power, under articles 49, 158 and 510 C.P.C., to issue a safeguard order at the preauthorisation stage. However, the Ontario case of *Li et al.* v. *Barber et. al.*, 2022 ONSC 1176, was not submitted to Justice Bisson. In this case, the Superior Court of Ontario issued a Mareva injunction before certification was granted to freeze the organizers' funds (cryptocurrency held in digital wallets) in the context of the class action regarding the 2022 Freedom Convoy protest in Ottawa. A further analysis would be required to determine the impact of this case regarding this issue.

17 *Desjardins Assurances générales inc.* c. *Malo*, 2020 QCCA 462, par. 28.

18 *Québec (sous-ministre du Revenu)* c. *Weinberg*, [2007] R.J.Q. 2240 (SC); *9336-6250 Québec inc.* v. *Quyen*, 2017 QCCS 540, par. 6.

19 **510.** A party may ask for an interlocutory injunction in the course of a proceeding or even before the filing of the originating application if the latter cannot be filed in a timely manner. An application for an interlocutory injunction is served on the other party with a notice of its presentation.
In an urgent case, the court may grant a provisional injunction, even before service. A provisional injunction cannot be granted for a period exceeding 10 days without the parties' consent.
511. An interlocutory injunction may be granted if the applicant appears to have a right to it and it is judged necessary to prevent serious or irreparable prejudice to the applicant or to avoid creating a factual or legal situation that would render the judgment on the merits ineffective.
The court may grant an interlocutory injunction subject to a suretyship being provided to cover the costs and any resulting prejudice.
It may suspend or renew an interlocutory injunction for the time and subject to the conditions it determines.

(518 C.C.P.)[20], except that instead of freezing assets, it orders the holder of those assets not to dispose of them without the Court's authorisation[21].

[32] It is an extraordinary remedy granted in extreme situations[22].

1.2 Criteria for the Issuance of a Mareva Injunction

[33] In a recent judgement—*Desjardins Assurances générales inc.* c. *9330-8898 Québec Inc.*[23] ["*Desjardins* c. *9330*"], the Court of Appeal sets out the criteria that govern the issuance of a Mareva order. The criteria, which are cumulative, are the same as those for an interlocutory provisional injunction, namely:

a) The appearance of right;

b) Serious or irreparable harm;

c) Balance of convenience;

d) Urgency[24].

[34] The real risk of disappearance of property constitutes the serious or irreparable harm that will be caused to the applicant if the Mareva order is not issued. *Prima facie* proof of a real risk of disappearance of the assets if required to meet this criterion[25].

[35] The persistent and dishonest behavior of the defendants will be considered to meet the standard of irreparable or serious harm if it causes a reasonable person to fear that the collection of his debt is in jeopardy[26]. As such, the irreparable harm criterion in a Mareva injunction is very similar to the objective fear that recovery of the claim might be jeopardized applicable in the context of a seizure before judgement governed by article 518 C.C.P.[27].

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20 **518.** With the authorisation of the court, the plaintiff may seize the defendant's property before judgment if there is reason to fear that recovery of the claim might be jeopardized without the seizure.

21 *Desjardins Assurances générales.* c. *9330-8898 Québec Inc.*, 2019 QCCA 523, par. 42; *Desjardins Assurances générales inc.* c. *Malo*, 2020 QCCA 462, par. 24.

22 *153114 Canada inc.* c. *Panju*, 2018 QCCS 5104, par. 21; *Gervais* c. *9223-7056 Québec inc. (Cake-Toi)*, 2023 QCCS 3983, par. 43; *Québec (sous-ministre du Revenu)* c. *Weinberg*, [2007] R.J.Q. 2240 (C.S.).

23 *Desjardins Assurances générales inc.* c. *9330-8898 Québec Inc.*, 2019 QCCA 523 [Desjardins c. 9330].

24 *Desjardins* c. *9330*, par. 47.

25 *Desjardins* c. *9330*, par. 50.

26 *Desjardins* c. *9330*, par. 51; *Denis Majeau inc.* c. *Normand Majeau inc.*, 2023 QCCS 3600, par. 21-25.

27 Article 518 C.P.C.; *Desjardins* c. *9330*, par. 52.

1.3 Appearance of Right

[36] The appearance of right requires that the underlying cause of action be serious[28]. In other words, the Applicant must demonstrate that she has a reasonable chance of succeeding on her case on the merits. The Court stresses that contrary to the arguments made by Miller's attorney, the appearance of right that must be demonstrated is with regard to the underlying cause of action and not regarding the issuance of the Mareva itself, as clearly stated in *Desjardins* c. *9330*: "*Le demandeur n'a pas à prouver son droit comme il devra le faire lorsque l'instruction sur le fond viendra*"[29].

[37] Also, Defendant Miller pleaded that a strong appearance of right was required for a Mareva injunction based on the 2017 Superior Court judgement rendered in *9336-6250 Quebec inc.* c. *Quyen*[30]. This judgement refers to a "jurisprudential trend" which would require a higher standard of proof on this criterion. However, there is no caselaw cited in support of this statement[31]. It would appear though that this trend comes from Ontario and was rejected by the Quebec Superior Court in *Cinar Corp.* c. *Weinberg*[32]. In addition, the 2019 Court of Appeal decision in *Desjardins* c. *9330* is the most recent and leading authority on the required criteria for a Mareva injunction which continues to refer to an appearance of right, as stated above[33].

[38] The Court therefore believes that the applicable criterion that must be met is that of an appearance of right on the merits of the case.

[39] In this case, at the preauthorisation stage, where Defendants have not had a chance to file a defense or even to contest the Authorisation Application, it is difficult to properly ascertain the Applicant's chances of success. However, based solely on the allegations contained in the Authorisation Application, and without conducting any analysis as to the quantum claimed, the Court finds that the allegations against the Defendants, Miller and Future Electronics, are serious and that she has a reasonable chance of succeeding on the merits. As such, this criterion *vis-à-vis* Defendants is met.

[40] However, the same cannot be said concerning the appearance of right against the Impleaded Parties. They are not parties to the Authorisation Application and no cause of action has even been alleged.

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28 *Desjardins* c. *9330*, par. 46-57.

29 *Desjardins* c. *9330*, par. 56, 57; *Cinar Corp.* c. *Weinberg*, 2005 CanLII 27867 (QC CS), par. 9, 15-16.

30 *9336-6250 Québec inc.* c. *Quyen*, 2017 QCCS 540, par. 7.

31 *9336-6250 Québec inc.* c. *Quyen*, 2017 QCCS 540, par. 7. See also: *9014-4304 Québec inc.* c. *Société en commandite ACG Kaloom*, 2023 QCCS 4279, par. 30 which does not refer to any caselaw either, but cites *9336-6250 Québec inc.* c. *Quyen*, par. 7.

32 *Cinar Corp.* c. Weinberg, 2005 CanLII 27867 (QC CS), par. 9, 15-17; Li et al. v. Barber et al., 2022 ONSC 1176, par. 8; see also : *Google Inc.* v. *Equustek Solutions inc.*, 2017 SCC 34, par. 24-25.

33 In *Desjardins Assurances générales inc.* c. *Malo*, 2020 QCCA 462, the crux of the analysis is whether a Mareva order can be published at the *Registre foncier*. However, at par. 24, the Court refers to the required criteria, and states *regarding the real risk of disappearance of assets* (not appearance of right), that the burden on this issue may be higher than for a seizure before judgement.

[41] More specifically, regarding the corporate Impleaded Parties, there are no allegations relating to the lifting of the corporate veil. There are no such allegations in the Mareva Application either, save to state that these Impleaded Parties are Miller's alter egos[34]. However, pursuant to articles 298, 302, 309 and 317 of the *Civil Code of Quebec* ("C.C.Q."), because these Impleaded Parties each have a distinct legal personality and a distinct patrimony from Miller, such allegations are necessary to establish a cause of action against them[35]. As such, in the absence of such allegations, there is no appearance of right against the corporate Impleaded Parties.

[42] As for Rodney Miller, the sole conclusion affecting him is the one seeking to declare *inopposable* the *Acte de cession* published on August 31, 2023, whereby the 78 Summit Crescent property was transferred to him for no consideration[36]. Such a conclusion cannot be sought at an interlocutory stage on a Mareva injunction. In fact, it is outside the scope of a Mareva injunction, since it is in essence a paulian action governed by articles 1631 to 1636 C.C.Q.. Such a conclusion may ultimately be sought on the merits of the class action, if authorised and assuming the necessary criteria are met, but at this stage is ill-founded.

[43] Finally, the Supreme Court of Canada's decision in *Google Inc.* v. *Equustek*[37], does not support the Applicant's argument to establish an apparent right against the Impleaded Parties. This case stands for the principle that the assistance of third parties, who are not themselves guilty of any wrongdoing, may be necessary in order to ensure the enforcement of the Mareva order[38]. The third parties identified include banks, financial institutions, storage facilities and Internet service providers, such as Google[39].

1.4 Irreparable Harm and Real Risk of Disappearance of Assets

[44] Regarding the serious or irreparable harm criterion, which requires an objective demonstration by the Applicant of a real risk of disappearance of assets, the Court finds that this criterion has not been met.

[45] There has been no demonstration, even on a *prima facie* level, that there is a real risk of disappearance of the assets by the Defendants, Miller and Future Electronics. The Applicant must establish an *objective* fear that without the order sought, Defendants will dilapidate or hide their assets in order to evade the execution of a potentially favourable judgement on the merits of the class action[40]. In other words, if the Applicant's fear is

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34 The statement that the Impleaded Parties are Miller's alter egos in only made in the Applicant's Argument Plan, par. 64-65.

35 *9014-4304 Québec inc.* c. *Société en commandite ACG Kaloom*, 2023 QCCS 4279, par. 39-41.

36 Mareva Application, conclusion k).

37 *Google Inc.* v. *Equustek Solutions Inc.*, 2017 SCC 34.

38 *Google Inc.* v. *Equustek Solutions Inc.*, 2017 SCC 34, par. 28-33.

39 *Google Inc.* v. *Equustek Solutions Inc.*, 2017 SCC 34, par. 30, 31,33.

40 *Desjardins* c. *9330*, par. 50, 51; *Droit de la famille—163104*, 2016 QCCS 6193, par. 39; *Préfab de Beauce inc.* c. *Perron*, 2019 QCCS 4965, par. 6.

purely *subjective* or the prejudice alleged is hypothetical, the irreparable harm criterion will not be met[41]. This is the case here.

[46] The Applicant cannot point to any objective fact which demonstrates that Defendants are attempting to conceal or hide the eventual proceeds of the sale. On the contrary, Future Electronics was transparent in its September 14, 2023, press release regarding the main points of the upcoming transaction. We know that it is a share purchase agreement and that Future Electronics' operations will be maintained in Quebec. There will only be a change in the share ownership of the company.

[47] At the hearing, the attorneys for Miller and for Future Electronics confirmed that the liabilities of Future Electronics would be assumed by the purchaser. Of course, the Court does not have proof of this statement, but contrary to an assets-based purchase, there is no reason whatsoever to assume that the transaction was structured in a way to avoid paying a potential favorable judgement on the class action.

[48] In addition, the fact that the purchaser is a Taiwanese company, that the funds are in US dollars and that they "can be deposited anywhere in the world"[42], do not ground an objective fear that Miller and/or Future Electronics will run off with the proceeds of the sale or attempt to place them out of reach of the Applicant. The Applicant is erroneously equating potential unknown difficulties to execute a judgement (for example the execution fee of 0.8% of the claim in Taiwan or that Taiwan is not a party to the Hague Convention[43]) to an attempt by Miller to "hide" the proceeds of the sale.

[49] The Applicant argues that in the case of characterised dishonest and persistent conduct, even when an action or behaviour appears neutral at first glance, it can still justify an objective fear that the recovery of the plaintiff's claim will be jeopardised[44].

[50] However, the "dishonest and persistent" conduct that must be analysed is the one *regarding the Mareva orders*. In analysing this alleged conduct, the Court must not consider the underlying facts in the Authorisation Application, but rather the facts, if any, directly relating to the real risk of disappearance of assets[45]. As such, the Court cannot consider the fact that certain properties were held by *prêtes-noms* prior to the institution of the Authorisation Application[46], nor the alleged fact that Miller used a fake identity to interact with potential class members[47]. These allegations relate to the underlying facts of the case and not to the analysis at hand.

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41 *Droit de la famille—163104*, 2016 QCCS 6193, par. 40.
42 Mareva Application, par. 13-15, 50-51.
43 Mareva Application, par. 52 &58; Exhibit MA-33.
44 *Desjardins* c. *9330*, par. 51.
45 *Denis Majeau inc.* c. *Normand Majeau inc.*, 2023 QCCS 3600, par. 21-25.
46 Properties located at 375 and 380 Oliver Avenue in Westmount; Mareva Application, par. 37-46.
47 Mareva Application, par. 47-49.

[51] So, what are the facts alleged by the Applicant in support of her claim that Miller and/or Future Electronics' conduct has been dishonest and persistent to ground an objective fear that her claim will be put in jeopardy?

[52] First, the Applicant claims that she has been unable to serve Miller in person with the Mareva Application and had difficulty serving the Authorisation Application, which demonstrate that he is "missing" or "hiding", an element indicating his dishonest conduct. To support her position, she has filed bailiff reports regarding the service of the Authorisation Application[48], which was ultimately served on Miller through his attorney, who accepted service[49]. The Applicant has also filed two bailiff reports showing two recent failed attempts to serve Miller personally with the Mareva Application at 78 Summit Crescent[50].

[53] Miller's attorney stated in open Court that his client was living in Montreal at 78 Summit Crescent in Westmount. While proof of this has yet to be made, there is absolutely no proof that Miller is living outside of Quebec, in the United States or in the Bahamas, as alleged by the Applicant. The Applicant herself recognizes the speculative nature of these allegations, stating in her Application that 'this information has not been independently verified"[51].

[54] In an application dated August 2, 2023, seeking to examine Miller pre-trial, the Applicant reproduces public statements made by Miller's attorney in December 2022 indicating that he is seriously ill and that it is urgent that he be examined[52]. Miller's attorney argued that he is bed ridden and that this explains the failed attempts to serve him personally.

[55] At this stage, it is not up to the Court to determine Miller's whereabouts and it is not the Court's role to resolve contradictions in the evidence. However, the combined analysis of the facts outlined above does not indicate a "dishonest" behavioral pattern by Miller, nor can the Court infer any intent that he is missing or hiding.

[56] Second, the Applicant points to Miller's transfer without consideration of the property located at 78 Summit Crescent to his son. According to the municipal evaluation, the value of this property is approximately $9.5 million[53]. This transfer occurred on August 9, 2023, and the *Acte de cession* was published on August 31, 2023, after the Authorisation Application was filed[54]. As the Court has already stated, this transaction can

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48 Exhibits MA-7, MA-9 & MA-10.

49 Exhibit MA-11. The Court has read the exchanges between the lawyers and cannot find, on the face of these exchanges that "Class Counsel (...) forcefully persuaded [Miller's attorney] to accept service on behalf of his client", as stated at par. 21 of the Mareva Application.

50 Exhibits MA-37 & MA-38.

51 Mareva Application, par. 22, 23.

52 *Application by the Applicant for Permission to Examine Defendant Robert G. Miller Pre-Trial*, dated August 2, 2023, which is still pending.

53 Exhibit MA-23.

54 Mareva Application, par. 35 & conclusion k); Exhibit MA-21.

be contested through a paulian action, if the required criteria are met. Without pronouncing itself on this specific transaction, this one element is insufficient to ground an objective fear that Miller is dilapidating his patrimony.

[57] The Court also notes that since the filing of the Authorisation Application, Miller has transferred two of the properties into his patrimony[55], which is not consistent with a persistent pattern of dishonest behavior. Contrary to the allegations made by the Applicant[56], the Court cannot conclude at this stage that these transfers were solely made with a view of to "look more above board" and that they were part of some larger strategy to attempt not to look like he was making himself judgement proof.

[58] Finally, the Applicant argued that the timing of the Future Electronics transaction was suspicious, and that Miller was trying to dispose of his most precious asset further to the institution of the Authorisation Application. The reasoning here is difficult to follow.

[59] The sale and the upcoming transaction were publicly announced on September 14, 2023. The press release issued by Future Electronics confirmed that the decision to sell was taken further to the allegations targeting Miller reported by the press on February 2, 2023, to "separate Mr. Miller from the company"[57]. There is nothing "suspicious" about Future Electronics' announcement which provides the reasons which prompted the sale of the company's shares and the timetable for a potential closing. The Court cannot see how this element demonstrates Miller's dishonesty or reproachful conduct.

[60] Based on the above, the Applicant has not met the criterion for irreparable harm and has failed to demonstrate that there is a real risk of disappearance of assets.

1.5 Balance of convenience

[61] In its analysis of the balance of convenience, the Court must consider the consequences of the Mareva orders sought on the Defendants and the Impleaded Parties[58].

[62] Here, a Mareva order will not only deprive the Defendants, Miller and Future Electronics of disposing of their assets until a judgement on the merits has been rendered but will also deprive the Impleaded Parties from their rights. The Courts have qualified this restriction flowing from a Mareva order as "severe"[59].

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55 Properties located at 375 and 380 Oliver Avenue in Westmount; Mareva Application, par. 37-46.
56 Mareva Application, par. 28.
57 Exhibit MA-4.
58 *Dorval* c. *Marcotte*, 2011 QCCS 4369, par. 46, 47.
59 *9336-6250 Québec inc.* c. *Quyen*, 2017 540, par. 33; See also: *Gervais* c. *9223-7056 Québec inc. (Cake-Toi)*, 2023 QCCS 3983, par. 45, where the Court uses the term "*contraignante*" to qualify the order sought; *Droit de la famille—163104*, 2016 QCCS 6193, par. 23.

[63] As already stated, the conclusions sought by the Applicant are extremely broad. Although they are drafted in a way that "provides a way out" by depositing $200 million, the objective sought is to stop the transaction from proceeding, pending such a deposit. The choice made by the Applicant as to the all-encompassing nature of the conclusions, rather than limiting them to only seeking a guaranty, is disproportionate and on the balance of convenience favors the Defendants and the Impleaded Parties.

[64] Where there is an absence of real risk of disappearance of assets, as is the case here, the Courts have found that only the defendants are subject to inconveniences if the Mareva order were to be issued[60].

[65] Here, the Court finds that the balance of conveniences favors the Defendants and the Impleaded Parties.

1.6 Urgency

[66] Finally, regarding the urgency criterion, the required urgency must be real and imminent[61]. In addition, the judicial proceeding seeking the Mareva injunction should be filed as soon as the applicant has knowledge of the possible prejudice that will be suffered[62].

[67] The Applicant argued that urgency may result not only from known facts, but also from the fact that an apprehended act can be taken in an unpredictable manner and that once taken, cannot be remedied[63].

[68] The September 14, 2023, press release is the starting point of this analysis since that is when the Applicant obtained knowledge of the upcoming transaction. As the Court has previously stated, the press release issued, on its face, is transparent and reveals the main elements of the proposed transaction. There is no "unpredictability" to this event.

[69] Moreover, it is apparent that the transaction has yet to close. All we know as to the timing of the closing, is that regulatory approval still needs to be obtained and that it will likely occur in the first half of 2024. This obviously means that the funds have yet to be received by Defendants. Therefore, there is no urgency to intervene since there is no evidence of serious or irreparable harm as outlined above and no proof that the Defendants have set in motion a plan to place the money out of reach.

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60 *Entreprises Bertrand Roberge ltée* c. *Giroux*, 2023 QCCS 2987, par. 140; *9014-4304 Québec inc.* c. *Société en commandite ACG Kaloom*, 2023 QCCS 4279, par. 66.

61 *Droit de la famille—163104*, 2016 QCCS 6193, par. 26; *9336-6250 Québec inc.* c. *Quyen*, 2017 QCCS 540, par. 8.

62 *Droit de la famille—163104*, 2016 QCCS 6193, par. 26.

63 Gervais Céline, *L'injonction,* Points de droit, Cowansville, Ed. Yvon Blais, 2002, 58.

[70] Finally, the Applicant waited over a month to file her Mareva Application—September 14 to October 23, another element which indicates the absence of real and imminent urgency for the Court to intervene.

1.7 Conclusion

[71] While the Applicant has shown that she has an appearance of right against the Defendants, she has no such appearance of right against the Impleaded Parties, she has not proven that she will suffer irreparable harm nor that there is a real risk of disappearance of assets, nor has she proven that the balance of convenience favors her or that the urgency criterion has been met. For these reasons, the Mareva Application will be dismissed.

2. ARE THE MAREVA APPLICATION AND/OR APPLICANT'S CONDUCT AN ABUSE OF PROCESS?

[72] Defendants contend that both the Applicant's Mareva Application and her conduct, as well as her attorneys are an abuse of process pursuant to article 51 C.C.P.

[73] The case cited by Defendants to argue abuse of process, is *Droit de la famille—171723*[64], where in the context of an *ex parte* Mareva injunction, the Court found that the applicants had made false representations, in violation of their duty to a full and frank disclosure.

[74] Here, Defendants argue that since the Applicant admitted in her depositions that she did not have personal knowledge of the facts alleged in the Mareva Application and was steered by her attorneys, she was making false representations and her conduct as well as her attorneys' is significantly blameworthy.

[75] The Court does not agree. As in all class actions, the proposed representatives often do not have knowledge of all the facts alleged. They are frequently at a disadvantage because of the significant informational deficit they face[65]. Here, the Court is of the opinion that the sworn declaration signed by the Applicant was simply to attest to the existence of the documents referenced. She had no way of obtaining any additional facts relating to the details of the transaction and her absence of knowledge on these aspects is not surprising.

[76] Although it is true that several of the allegations in the Mareva Application contained speculative facts, the Court does not believe that the Applicant's sworn affidavit was complacent, as was the finding in *Droit de la famille—171723*[66]. Nor does the Court

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64 *Droit de la famille—171723*, 2017 QCCS 3344, par. 343-349.
65 *S.N. c. Miller*, 2023 QCCS 2333, par. 67(2).
66 *Droit de la famille—171723*, 2017 QCCS 3344, par. 347.

believe that the Applicant, nor her attorneys violated their duty to a full and frank disclosure.

[77] In *Biron* c. *150 Marchand Holdings inc.*[67], the Court of Appeal reminds us that the Court must exercise extreme caution prior to concluding that a situation constitutes an abuse of process and that the bar remains high:

> [126] L'article 51 *C.p.c.* couvre une panoplie de situations et le spectre de ces situations est large, mais, dans tous les cas, la barre est haut placée et elle doit le demeurer au risque de banaliser ce qu'est une procédure abusive et de constituer un frein à l'accès à la justice. Les procédures manifestement mal fondées et celles qui ne visent qu'à faire taire l'autre partie doivent être sanctionnées. Il en va de même de la partie qui utilise la procédure de manière excessive ou déraisonnable ou de manière à nuire à autrui. Mais, je le répète, la barre de l'abus de procédure doit demeurer haut placée.
>
> [Emphasis added]

[78] Here, the Court is not convinced that the Mareva Application and/or the Applicant or her attorneys' conduct were abusive.

FOR THESE REASONS, THE COURT:

[79] **DISMISSES** the *Application by the Applicant for a Provisional & Interlocutory Mareva-Type Injunction Order Against Defendants Robert Gerald Miller and Future Electronics Inc.*, dated October 23, 2023.

[80] **The WHOLE** with judicial costs to follow the outcome of the authorisation on the class action.

Eleni Yiannakis

Signature numérique de Eleni Yiannakis
Date : 2023.11.27 14:01:35 -05'00'

ELENI YIANNAKIS, J.S.C.

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67 *Biron* c. *150 Marchand Holdings inc.*, 2020 QCCA 1537, par. 126.

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Hearing date: November 17, 2023.