CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

C.A. N°: 500-09-700210-230
S.C.M. N°: 500-06-001225-230

COURT OF APPEAL

S.N.

APPLICANT – Applicant

v.

ROBERT GERALD MILLER

and

FUTURE ELECTRONICS INC.

RESPONDENTS – Defendants

and

ALONIM INVESTMENTS INC.

ROBMILCO HOLDINGS LTD.

MULTIFORM PROPERTIES INC. (formerly ROBERT GERALD MILLER HOLDINGS INC.)

4306805 CANADA INC.

11172247 CANADA INC.

RODNEY MILLER

IMPLEADED PARTIES

APPLICATION FOR LEAVE TO APPEAL FROM A JUDGMENT RENDERED IN THE COURSE OF A PROCEEDING
(Articles 30, 31, 32 and 357 *C.C.P.*)
Applicant
Dated December 8, 2023

TO ONE OF THE HONOURABLE JUSTICES OF THE COURT OF APPEAL, THE APPLICANT RESPECTFULLY SUBMITS:

1. On February 22, 2023, the Applicant filed this class action alleging the sexual exploitation of underage adolescent girls, of which she was one. On November 17, 2023, the Applicant presented her *Application for a Provisional & Interlocutory Mareva-Type Injunction Order against Defendants Robert Gerald Miller and Future Electronics Inc.* (Arts. 49 & 510-511 C.C.P.) (the "Mareva Motion"). The hearing lasted approximately 3 hours.[1]

2. On November 27, 2023, the Honourable Justice Eleni Yiannakis, J.S.C. (the "Judge") rendered judgment dismissing the Applicant's Mareva Motion (the "Judgment").[2] The Judge rejected the Mareva Motion based on her assessment that the 4 criteria necessary to issue a Mareva injunction were not met (appearance of right, serious or irreparable harm, balance of convenience, and urgency).[3] Because of this, the Judge found that she did not have to decide the issue of ***whether*** such a measure can be granted prior to authorization,[4] which is "a question of principle, a new issue or an issue of law that has given rise to conflicting judicial decisions" (art. 30 C.C.P.). The Judgment was also "rendered in the course of a proceeding" that "causes irremediable injury to a party" because, if the Applicant is justified in her objective fear that the Defendants intend to hide or dissipate assets to thwart an eventual favourable judgment, the damage will be done, the assets there will be gone, and there will be no way of recovering them (art. 31. C.C.P.).

3. Attached are: the Judgment (**Sch. 1**), the Mareva Motion (**Sch. 2**), the Third Amended Application for Authorization ("AforA") (**Sch. 3**), and the Applicant's Argument Plan (**Sch. 4**).

FACTS

4. The facts are not in dispute, only their characterization is. On February 2, 2023, *Radio-Canada's* investigative program *Enquête* aired a program called « *Le Système Miller – des jeunes filles, de l'argent, des hôtels* »[5] in which women were interviewed on their encounters with Defendant Robert G. Miller ("Miller") who had paid them, with money and gifts, to engage in sexual relations, while under the age of 18, between 1994 and 2006. While Miller denied these allegations, he nevertheless stepped down as President and CEO of Defendant Future Electronics Inc. ("Future Electronics") the next day. On February 22, 2023, the present class

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[1] Specifically, the hearing was between 9h16–12h04 in room 2.13 of the Superior Court of Quebec.
[2] *S.N.* c. *Miller*, 2023 QCCS 4524.
[3] *Desjardins Assurances générales inc.* c. *9330-8898 Québec Inc.*, 2019 QCCA 523.
[4] Judgment at paras. 27-28.
[5] Viewable in French at https://www.youtube.com/watch?v=PrKyr5u99MY and in English at https://www.youtube.com/watch?v=F_LHTA95aj8.

action was filed, which was amended several times, including most recently on December 4, 2023 (Third Amended AforA).[6] The most recent class definition is "All persons who, while under the age of 18 years, performed sexual services in exchange for consideration with and/or were victims of sexual exploitation and/or were victims of sexual interference by Robert G. Miller". Part of the common issues are whether Defendant Miller violated ss. 286.1 (question a), 153 (question b), and/or 151 (question b.1)[7] of the *Criminal Code*, RSC 1985, c C-46. Part of this amendment included 47 Class Member declarations alleging that Defendant Miller paid them for sex while they were underage (the ages varying from 11-17). It is also alleged that in furtherance of Defendant Miller's scheme, he had told his victims that his name was "Bob Adams" and that he lived in the United States – neither are true – and he even used a fake business card with the name "Bob Adams" on it from Chicago, Illinois.

5. Soon thereafter, Defendant Miller made the decision to sell Future Electronics.[8] "The decision at that point was to separate Mr. Miller from the company … This included the launch of a formal sale process. The founder made that call …".[9] On September 14, 2023, Future Electronics issued a press release stating that WT Microelectronics (based in Taiwan) "has entered into a definitive agreement to acquire 100% of the shares of Future Electronics for an enterprise value of US$3.8 billion in an all-cash transaction … and is expected to close in the first half of 2024, subject to customary closing conditions including the receipt of required regulatory approvals." Currently, Future Electronics is owned by Alonim Investments Inc., which is in turn owned by Robmilco Holdings Ltd., which is in turn 100% owned by Defendant Miller. The headquarters of Future Electronics (237 Hymus boul. in Pointe-Claire), a building with a city evaluation of $30.5 million, is owned by Robert Gerald Miller Holdings Inc. (which is now Multiform Properties Inc.), which is 100% owned by Defendant Miller.

6. The Applicant has never been able to serve Defendant Miller personally, despite many attempts. In order to serve the original AforA, the bailiff went to Defendant Miller's listed home address (78 Summit Crescent in Westmount), but nobody answered the door (3 attempts each time), the driveway and stairs were covered in snow that had neither been shovelled, nor walked through and a notice was left in the mailbox; Defendant Miller never

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[6] These amendments were all contested by the Defendants and judgment is expected to be rendered in January 2024.
[7] This question was added as an amendment after it was discovered that 3 women claimed that they were under the age of 14 years old when they were paid for sex by Defendant Miller [Madame 42 (11 years old), Madame 45 (12 years old), and Madame 46 (12 years old)].
[8] Judgment at paras. 24 and 59.
[9] Exhibit MA-4 (The Globe and Mail article dated September 14, 2023).

reacted. 3 attempts were also made to serve Defendant Miller at 2 other residential locations that he is known to frequent (375 and 380 ave. Oliver in Westmount); again, no one answered the door and no one ever responded.[10] In August 2023, the Applicant tried twice to serve Defendant Miller with her Notice of Appeal, but again, no one was at his home address.[11] More recently, the Applicant tried twice to serve Defendant Miller with the Mareva Motion at his home address and once at 380 Olivier, without success and no one called the bailiff back.[12] During the hearing on the Mareva Motion, "Miller's attorney stated in open Court that his client was living in Montreal at 78 Summit Crescent in Westmount … Miller's attorney argued that he is bed ridden and that this explains the failed attempts to serve him personally"[13] – but no affidavit was produced to this effect by Defendant Miller.

7. With regard to Defendant Miller's personal residence, which has a city evaluation of $9.5 million – in 1984, it was purchased by Defendant Miller in his own name; in 2021, he donated it to 11172247 Canada Inc. Until the facts surrounding this class action were made public, 11172247 Canada Inc. listed Me Jules Charette of Norton Rose as its sole shareholder, director and officer; on March 30, 2023, after this class action was filed, an annual declaration at the *Registre des entreprises* was filed removing Me Charette and replacing him with Defendant Miller; on April 19, 2023, a declaration of correction was filed replacing Defendant Miller with his son, Rodney Miller; on August 31, 2023, pursuant to a private agreement, 11172247 Canada Inc. transferred ownership of the property for $1.00 to Defendant Miller's son, Rodney. Consequently, after the institution of the present action, $9.5 million left Defendant Miller's patrimony to end up in his son's.

8. With regard to Defendant Miller's other 2 properties (375 and 380 Olivier), which have a combined city evaluation of $4.5 million – before this class action was filed, they were both owned on paper by 4306805 Canada Inc., which at first listed Me Minzberg of Davies and then after Me Charette of Norton Rose as its sole shareholder, director and officer; on March 30, 2023, an annual declaration at the *Registre des entreprises* was filed removing Me Charette and replacing him with Defendant Miller; on August 31, 2023, pursuant to a private agreement, 4306805 Canada Inc. transferred ownership of the 2 properties for $1.00 each to

[10] Judgment at paras. 52 and Exhibits MA-7 (procès-verbal d'huissier) and MA-9 (procès-verbal d'huissier).
[11] Exhibit MA-36 (procès-verbal d'huissier).
[12] Exhibit MA-37 (procès-verbal d'huissier) and MA-38 (procès-verbal d'huissier).
[13] Judgment at paras. 53-54.

Defendant Miller. There was never any question that Defendant Miller owned these 2 properties and that his lawyers were acting as his *prête-noms*.[14]

NEW ISSUE, THAT IS INDEPENDENT OF CONDITIONS OF CLASS AUTHORIZATION, AND CONFLICTING JUDGMENTS

9. Because the Judge had already concluded that there was not enough evidence to support the issuance of a Mareva order, she did not decide the issues of: (a) whether or not such an order can be rendered before authorization; (b) if so, in what amount ($200 million for the Class or only $2.5 million for the Applicant); and (c) under what legal provisions or principle (arts. 49 & 510 C.C.P., and the court's general powers to protect class members). The first 2 issues are new in Quebec and the last one has conflicting jurisprudence:

> [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.
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> [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.[15] 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.[16] Since the issuance of a Mareva order is largely governed by the same criteria as those of a provisional interlocutory injunction and/or a safeguard order, it is logical that the same conclusion would apply with respect to the Mareva Application.[17]

10. As the Judge correctly pointed out, in the recent Ontario case *Li et al*. v. *Barber et. al*., 2022 ONSC 1176, R.S.J. MacLeod granted a *temporary* Mareva injunction before certification up to an amount of $20 million in the class action against the 2022 Freedom Convoy protest in Ottawa.[18] The Mareva order has been varied and extended 4 times and is now "extended and shall remain in force until the final determination of this action or further

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[14] Both *Acte de cession sous seing privé* documents (Exs. MA-24 and MA-28) say this « Les Parties déclarent en sus que la présente cession est faite en exécution d'une entente de prête-nom exécutée entre elles … ».

[15] *S.N.* c. *Miller et al.*, 2023 QCCS 2333.

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

[17] 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.

[18] See paras. 45-46 of the Reasons for Decision and the Order dated February 17, 2022 at paras. 4 and 12 "… so long as the total unencumbered value of the Mareva Respondent's frozen assets remains above $20 million.
THIS COURT ORDERS that this Order will cease to have effect if the Mareva Respondents provide security by collectively paying the sum of $20 million into Court."

Order of this Court".[19] This case answers issues (a) and (b) in Ontario, which it is submitted should be the same in Quebec. A Mareva order can be issued before authorization and in an amount that represents anticipated class-wide damages and not just for the Applicant.

11. With respect to the mechanism of how a Mareva injunction may be granted before authorization, art. 510 C.C.P. states: "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." Consequently, whether or not the class action has been authorized is not significant – the Mareva motion could even have even been filed before the class action. It is also submitted that art. 49 C.C.P. has no limitation as to the powers that a court may exercise "*at any time and in all matters*" to "grant injunctions or issue protection orders or orders to safeguard the parties' rights for the period and subject to the conditions they determine. As well, they may make such orders as are appropriate to deal with situations for which no solution is provided by law." It is submitted that the Court has the authority to protect the interests of class members by rendering any necessary order, including a Mareva.

12. With respect to the right to appeal a judgment rendered prior to authorization, where it satisfies the criteria of arts. 31 or 32 C.C.P., and the issue does not relate to the conditions of authorization, as is rare, but as is the case here, they are permissible.[20]

13. There is a lack of uniformity and guidance in Quebec on the powers of the court to render injunctive or safeguard measures pre-authorization. There is authority to apply art. 49 C.C.P. pre-authorization in *Larose* c. *Corporation de l'École des Hautes Études commerciales de Montréal*, 2020 QCCS 5176, paras. 11-16, which deems that the Court of Appeal overruled *Daigle* c. *Club de golf de* Rosemère, 2018 QCCS 5360 in deciding *FCA Canada inc.* c. *Garage Poirier & Poirier inc*., 2019 QCCA 2213, paras. 58 & 73 and *Amnistie internationale Canada* c. *Environnement Jeunesse*, 2020 QCCA 223, paras. 10 & 15.[21]

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[19] Order for Fourth Extension of Mareva Injunction, May 2, 2022, para. 1.
[20] *FCA Canada inc.* c. *Garage Poirier & Poirier inc*., 2019 QCCA 2213, para. 21.
[21] Despite the body of authority that art. 49 C.C.P. applies before authorization, Justice Bisson, J.S.C., in *S.N.* c. *Miller*, 2023 QCCS 2333, a prior judgment in this case, had written:
« [71] En effet, sur ce dernier point, quant à la demande d'ordonnance de sauvegarde, le Tribunal le répète : il n'existe aucune autorité québécoise qui permet expressément à une partie demanderesse en action collective de se prévaloir de l'article 49 Cpc, ou de l'article 158 Cpc ou de l'article 510 Cpc afin d'obtenir une ordonnance de sauvegarde avant que l'action collective ne soit autorisée par jugement. Il est vrai que la Cour d'appel a permis l'application de certaines facettes de l'article 49 à l'étape pré-autorisation, mais jamais spécifiquement quant à la demande d'ordonnance de sauvegarde, et pas dans l'arrêt du 22 juin 2023, *Bernard* c. *Collège Charles-Lemoyne de Longueuil inc.* Le Tribunal est donc d'avis que la demanderesse ne peut ici demander une ordonnance de sauvegarde. La seule option qui lui reste est le pouvoir de gestion du Tribunal et de protection des membres. »

ERRORS IN LAW

14. The Applicant respectfully submits that the main error in law that runs through the entire Judgment – is that the Judge assessed the probative value of the evidence in the Mareva Motion as if it were on a final or second-to-final (interlocutory) stage, when it was more preliminary (provisional and safeguard). The Judge seemed to appreciate this distinction when she wrote at footnote 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..." What is being requested is a provisional injunction to temporarily freeze the disposition of certain assets, to be followed by an affidavit from the Defendants within 10 days detailing a list of assets in order to proceed to the next, more onerous step. It is only at a later stage – either on a renewal of the provisional injunction or at the interlocutory step, that a contested and contradictory battle is possible. At that time, the parties will have submitted affidavit evidence, performed cross-examinations, and conducted limited document discovery. That is the only time that the Applicant will be required to and be able to prove her allegations. At this preliminary stage, the allegations of the Applicant should have been taken for true and the evidence should not have been weighed.[22] Instead, the Judge demanded convincing and determinative evidence for each of the Applicant's allegations – which could not be possible at such an early stage and with such an imbalance in information.

15. With regard to Defendant Miller's spurious whereabouts, the Applicant demonstrated that Defendant Miller was not present at his supposed home residence or his other 2 properties for 8 months (February to November). On the other hand, the Judge allowed Defendant Miller's attorney to make impermissible evidence, without any affidavit, that he lives at 78 Summit Crescent, but cannot answer the door because he is bedridden.[23] The Judge wrote "[55] … However, the combined analysis of the facts outlined above does not indicate a "dishonest" behavioural pattern by Miller, nor can the Court infer any intent that he is missing or hiding." There are 2 errors here. One, verbal evidence from Defendant Miller's attorney should not have been permitted. Two, the caselaw holds that the inability to locate

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[22] *Desjardins Assurances générales inc.* c. *9330-8898 Québec inc.*, 2019 QCCA 523, para. 40; *Griffis* c. *Grabowska*, 2009 QCCA 2421, para. 17; *Stopponi* c. *Bélanger*, 1988 CanLII 293 (QC CA), para. 12 & 20.

[23] Presumably, being bedridden would necessitate help in order to survive, by someone who would: (i) at least at times enter and exist the residence, (ii) show a sign of life, & (ii) be capable of answering the door.

a debtor is an important and relevant factor, both alone and combined with other circumstances, to establish an objective fear that recovery of a claim may be in jeopardy.[24]

16. With regard to Defendant Miller transferring his personal residence worth $9.5 million to his son for $1.00 after being sued, it is hard to imagine a more obvious scheme to dissipate assets. This element alone, but especially in combination with the other circumstances, should have been sufficient to demonstrate "objective fear". Instead, the Judge wrote "[56] … As the Court has already stated, this transaction can 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." This reasoning is unsustainable. In 5 years, when final judgment is rendered condemning the Defendants to damages, this property will be long gone.

17. With regard to Defendant Miller's other 2 properties, the best that can be said is – after over 10 years of Defendant Miller hiding his ownership by using his various lawyers as his *prête-noms*, he finally admitted that he was true owner. The Judge wrote "[57] … Miller has transferred two of the properties into his patrimony, which is not consistent with a persistent pattern of dishonest behaviour." Both of these statements are incorrect; the properties were always owned by him and his 10 years of concealment is helpful to establish Defendant Miller's pattern of « *conduite malhonnête persistante et caractérisée* » (along the alleged sexual crimes and fake identity).

> « [15] ... S'agissant d'une conduite malhonnête persistante (ou caractérisée), le juge pourra cependant apprécier la portée de ces faits à la lumière de cette conduite. C'est ainsi qu'un geste, un comportement ou une initiative, quoique neutre à première vue, pourra tout de même justifier le demandeur de craindre que sans la saisie avant jugement des biens du défendeur le recouvrement de sa créance ne soit mis en péril. »[25]

18. The following facts were put forward by the Applicant to illustrate Defendant Miller's "persistent and characterized dishonest conduct": (a) concealing the true title of his primary residence behind a corporate veil on which he does not even appear as a shareholder, director, or officer, in his lawyer's name as his *prête-nom*; (b) hiding the true ownership of his 2 properties behind a corporation where he does not appear as a shareholder, director, or officer by using his lawyer's name as his *prête-nom*; (c) allegedly committing criminal acts in

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[24] *Maisonair Climatisation inc.* c. *Manricks*, 2006 QCCA 62, paras. 1-4; *Mercedes-Benz Financial Services Canada Corporation* c. *Seweha*, 2021 QCCA1893, paras. 4 & 25.
[25] *Griffis* c. *Grabowska*, 2009 QCCA 2421.

violation of ss. 286.1 (obtaining sexual services for consideration), 153 (sexual exploitation), and 151 (sexual interference) of the *Criminal Code*; and (d) allegedly giving out false business cards with a fake identity to his alleged victims.

19. It is through this lens that one should view the impending sale of Future Electronics – if the sale of Defendant Miller's most important asset could be viewed as neutral (though the timing, on its own, is objectively suspicious), Defendant Miller's "persistent and characterized dishonest conduct" logically leads to the conclusion that the sale of Future Electronics creates objective fear that the potential recovery of the Applicant's debt is in peril.[26]

20. Further, it is not any one fact, taken in isolation, that should be measured, but rather all the facts taken together in order to draw a complete portrait. As stated in *Maisonair Climatisation inc.* c. *Manricks*, 2006 QCCA 62:

> « [4] S'il est vrai que chacune des allégations en elle-même n'est peut-être pas suffisante pour autoriser une saisie avant jugement, l'ensemble des circonstances mentionnées…est suffisant pour établir une crainte objective de mise en péril de la créance de l'appelante. »

21. The Judge decided that all of the facts alleged as "persistent and characterized dishonest conduct" were irrelevant to the Mareva Motion because they related to the merits of the case and not to Defendant Miller's acts of dissipating assets. This assessment is erroneous; no such distinction exists or is justified.[27]

22. All of the circumstances, taken together, infer a risk of dissipation, thereby justifying a Mareva order as a form of security. *Equustek Solutions Inc.* v. *Jack*, 2012 BCSC 1490 states:

> "[31] … In some circumstances, such as where there is evidence of fraud, a risk of dissipation of assets can be inferred (Netolitzky). Where the risk of dissipation of assets is not imminent, the court's fundamental concern should be to protect its process from abuse. As a result, given a Mareva injunction can be granted as a form of security, it is not essential that there be evidence of active removal or dissipation of assets."

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[26] Instead, the Judge wrote "[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". 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."

[27] The Judge wrote "[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. As such, the Court cannot consider the fact that certain properties were held by *prêtes-noms* prior to the institution of the Authorisation Application, nor the alleged fact that Miller used a fake identity to interact with potential class members. These allegations relate to the underlying facts of the case and not to the analysis at hand."

23. As to the serious or irreparable harm criterion, the harm that the Applicant and the Class would suffer if they should find themselves unable to locate assets to execute a successful judgment against is both serious and irremediable.[28]

24. As to the balance of inconvenience criterion, the caselaw holds that *prima facie* evidence of a clear right, dispenses with the need to consider the balance of convenience.[29] The Judge did conclude that the Applicant has a clear appearance of right (there are currently 47 declarations from alleged victims; at the time of the hearing, there were 41).[30]

25. But even without this legal fiction, it is self-evident that the Applicant will suffer more inconvenience than Defendant Miller.[31] With respect to any prejudice suffered by Defendant Miller, it is either negligeable or nonexistent. Oftentimes, when a Mareva order is granted, a defendant loses its access to funding; this inevitably leads to a motion to vary the order to allow a defendant to receive an allowance for living expenses and sometimes to cover legal fees. In the present case, Defendant Miller is a notorious billionaire, who will soon accrue an additional CA$5.2 billion; setting aside $200 million will in no way affect Defendant Miller's standard of living. In addition, the request is to freeze, not seize, the money; consequently, Defendant Miller could make arrangements to retain his $200 million in a Canadian-chartered bank and earn interest. In a worst case scenario, Defendant Miller could obtain an irrevocable letter of credit from a financial institution for an annual fee of 0.75%–1.5% of the total value; this sum will be negligible considering the interest that will be generated annually.

26. As for the urgency criterion, the exact date that the sale of Future Electronics will close is unpredictable; however, it is known that it "is expected to close in the first half of 2024". Urgency may result from the fact that an apprehended act can be taken in an unpredictable manner and that once taken, cannot be remedied.[32] With each passing day, the urgency grows. The Applicant needed 5 weeks to research and draft the 22-page complex Mareva Motion, which is very fact-specific, and includes 35 exhibits – this is indicative of how seriously the Applicant took this issue and not a sign that this situation lacks urgency. When the

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[28] *4463251 Canada inc.* c. *Duo-Regen Technologies Canada inc.*, 2011 QCCS 4043, para. 16.
[29] *Desjardins Assurances générales inc.* c. *9330-8898 Québec inc.*, 2019 QCCA 523, para. 49; *Cinar Corp.* c. *Weinberg*, 2005 CanLII 27867 (QC CS), para. 10-11.
[30] "[39] … 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."
[31] *Groupe CRH Canada inc.* c. *Beauregard*, 2018 QCCA 1063: « [34] … il faut rechercher laquelle des deux parties subira le plus grand préjudice selon que l'injonction interlocutoire sera accordée ou refusée dans l'attente d'une décision sur le bien-fondé du dossier au mérite. »
[32] *Ubi Soft Divertissements Inc.* c. *Champagne Pelland*, 2003 CanLII 528 (QC CS).

Mareva Motion was filed on October 23, 2023, the Applicant attempted to present it at the next scheduled motions hearing set for November 2, 2023 – but the case-management judge deemed that the agenda was too full to allow it to be heard that day.

27. The Judge erred by eliminating the Impleaded Parties from her analysis because "there are no allegations relating to the lifting of the corporate veil"[33] for 3 reasons: (a) there was no purpose to name the Impleaded Parties as defendants in the AforA – the necessity only began when Defendant Miller began dissipating assets; (b) the Impleaded Parties are corporate *alter egos* of Defendant Miller; it is through them that Defendant Miller acts to exert ownership of his real estate and his operating company, Future Electronics – if the Mareva order does not implicate these parties, there will be no way for the Applicant to enforce her rights, as the proceeds of the sale may never flow through to Defendant Miller; and (c) the caselaw allows for non-parties to be affected by a Mareva order, where necessary. It is true that this generally is applied to financial institutions, but there is no reason why the same principle would not apply here. Consequently, the Judge committed a reviewable error.

> "[33] The same logic underlies *Mareva* injunctions, which can also be issued against non-parties. *Mareva* injunctions are used to freeze assets in order to prevent their dissipation pending the conclusion of a trial or action. A *Mareva* injunction that requires a defendant not to dissipate his or her assets sometimes requires the assistance of a non-party, which in turn can result in an injunction against the non-party if it is just and equitable to do so… Banks and other financial institutions have, as a result, been bound by *Mareva* injunctions even when they are not a party to an underlying action." [34]

28. Lastly, the Judge should have erred on the side of caution; if the Mareva Motion is rejected, it ends today, but if it is granted, it can be properly contested at a later date with a complete record – this is truly an exceptional circumstance meriting this Court's intervention.

29. Therefore, the Applicant will ask this Honourable Court of Appeal to:

a) **ALLOW** the appeal;

b) **SET ASIDE** the judgment in first instance;

c) **GRANT** the conclusions as set out in the Mareva Motion dated October 23, 2023;

d) **CONDEMN** the Respondents to pay the Applicant the legal costs both in first instance and on appeal.

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[33] Judgment at para. 41.
[34] *Google Inc.* v. *Equustek Solutions Inc.*, 2017 SCC 34.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT this Application for Leave to Appeal;

AUTHORIZE the Applicant to institute an appeal from the judgment rendered on November 27, 2023, by the Honourable Eleni Yiannakis of the Superior Court, District of Montreal, in file number 500-06-001225-230;

DISPENSE the Applicant from any need to serve Alonim Investments Inc., Robmilco Holdings Ltd., Multiform Properties Inc. (formerly Robert Gerald Miller Holdings Inc.), 4306805 Canada Inc., 11172247 Canada Inc., and Rodney Miller with the present Application;

SET an immediate hearing date for the appeal due to urgency and an expedited schedule for the parties to produce their Briefs as soon as practicable;

THE WHOLE, with legal costs to follow the outcome of the appeal.

Montreal, December 8, 2023

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APPLICANT

v.

ROBERT GERALD MILLER, *et al.*

RESPONDENTS – Defendants

APPLICATION FOR LEAVE TO APPEAL A JUDGMENT RENDERED IN THE COURSE OF A PROCEEDING
(Articles 30, 31, 32 and 357 *C.C.P.*)
Applicant
Dated December 8, 2023

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