

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL
TRADERS ENERGY LTD. and 2496750 ONTARIO INC.

Applicants

**FACTUM OF THE RESPONDENTS,
GLENN PAGE AND 2658658 ONTARIO INC.**
(MOTION FOR MAREVA INJUNCTION - RETURNABLE DECEMBER 21, 2023)

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TO: **SERVICE LIST**

PART I - OVERVIEW

1. This Mareva injunction motion is unprecedented. Over a year has passed since the allegations which form the basis of the injunction were first made. Since that time, the Respondents have consented to the freezing of over CDN\$13 million of assets, including the proceeds from their family home.

2. Both the inordinate delay and the frozen assets negate any argument that there is or could be irreparable harm. This Court can and should draw an inference from the delay that there is no legitimate apprehension of immediate risk on the part of the Respondents.¹ This is particularly true where significant assets are frozen primarily on the consent of the Respondents.

3. The allegations of fraud arise out of what was initially a shareholder dispute. The allegations ignore how the business was run on a day to day basis. The Monitor has failed to interview the other partners in the business to determine whether there was consent or agreement among the partners about many of the issues which are now alleged to be fraudulent. In these circumstances, a *prima facie* case cannot be established.

PART II - SUMMARY OF FACTS

4. OTE LP is in the business of blending and selling gasoline to independent gas stations on First Nation reserves.² OTE LP has three blending sites, all located on First Nation reserve lands.³

5. From 2018 to 2022, Glenn Page (“**Page**”), an experienced businessperson, worked with what he understood to be his trusted partners, Scott Hill (“**Scott**”), Miles Hill (“**Miles**”) and 2584861 Ontario Inc. (“**CCD**”), to build a successful business. The business was profitable, and

¹ *Hollinger Inc. et al. v. Radler et al.*, [2006 BCSC 1712](#) (CanLII), [at para 62](#).

² Affidavit of Glenn Page (“**First Page Affidavit**”), para 16, Motion Record of the Respondents dated November 24, 2023 (“**RMR**”), Tab 1, pg. [6](#).

³ First Page Affidavit, para 7, RMR, Tab 1, pg. [2](#).

all the partners benefitted from the success.⁴ Page was the President of OTE GP (Original Traders Energy Ltd.) until July 2022 when the relationship between the partners broke down.⁵

6. Notably, Miles did not participate in the business whatsoever, but nevertheless received distributions.⁶ Scott Hill was more active in the business and held the certificate of possession over the land on the Six Nations reserve which holds one of the blending sites, but does not seem to acknowledge that it is a OTE LP asset.⁷

7. CCD principals, Nick Capretta, Brian de Nobriga and Lou Cerutti, were active in the business. They also ran Claybar Contracting Inc (“**Claybar**”). Claybar was a supplier to the business, building the blending operations.⁸ CCD was one of the original limited partners of OTE LP.⁹ When the units were reassigned in 2019, it was understood that CCD would continue to provide consulting and financial services and be an “unpapered vote.”¹⁰

8. Pursuant to limited partnership agreement, each of the limited partners received distributions generally in accordance with their ownership interest. CCD also received a share pursuant to its Consulting Services Agreement.¹¹ There is no dispute that Scott, Miles and Claybar each received substantial distributions from OTE LP.¹²

9. The Monitor has impugned the recordkeeping at OTE, but fails to acknowledge that from 2019 to 2022, there were a number of individuals that were involved with the accounting and

⁴ First Page Affidavit, para 4, RMR Tab 1, pg. [2](#).

⁵ First Page Affidavit, para 69, RMR, Tab 1, pg. [19](#).

⁶ See, for example, Exhibits BB, DD, HH to First Page Affidavit, paras 29, 67, RMR, Tab 1BB,DD, HH, pg. [9](#), [19](#).

⁷ First Page Affidavit, para 27, RMR, Tab 1, pg. [9](#).

⁸ First Page Affidavit, para 31, RMR, Tab 1, pg. [10](#).

⁹ First Page Affidavit, paras 31, 34, 65, RMR, Tab 1, pg. [10](#), [11](#), [18](#).

¹⁰ First Page Affidavit, para 66, RMR, Tab 1, pg. [18](#).

¹¹ Limited Partnership Agreement, Exhibit B, Appendix A to First Page Affidavit, para 90, RMR, Tab 1, pg. [24](#).

¹² Sixth Report of the Monitor, (“**Sixth Report**”), Monitor’s Motion Record dated November 8, 2023 (“**MMR**”), Tab 5, pg. [57](#), Appendix “C”, p. 116 “Scott Hill” (\$3,160,752.36), Miles Hill (\$2,976,335).

financial management. In particular, Nick Capretta's responsibilities included recording the distribution payments to limited partners.¹³ There was a process in place for approving transactions, including distributions, which was agreed to by the responsible individuals, including Scott Hill who in fact co-signed off on disbursed cheques, including payments to Page.¹⁴

10. Page denies any fraud or misappropriation. It must be recognized that the business partners of the OTE LP used business profits for various personal expenses and did so transparently. While the business partners may now dispute whether various expenses were appropriate from a business perspective, Page never intended to deceive his business partners, who were aware of these transactions.¹⁵ There is no direct evidence to the contrary.

11. In late 2021, OTE LP's financial situation became more precarious due to high costs and lower fuel prices.¹⁶ The relationship between Miles and Page began to deteriorate once Miles started to threaten Page. In October 2022 after Page left in July, in a culmination of the dispute, OTE LP and the Hills initiated the action against Page which includes the same allegations from the CCAA Application, in the Yacht Mareva motion and in this motion. The threats continued against Page from Miles.¹⁷

¹³ First Page Affidavit, para 74, RMR, Tab 1, pg. [20](#); Exhibit U to First Page Affidavit, Tab 1U, p. [200](#); Exhibit V to First Page Affidavit, Tab 1V, p. [202](#).

¹⁴ First Page Affidavit, paras 73, 94, 99, RMR, Tab 1 pg. [20](#), [25](#); [27](#); Exhibit BB to the First Page Affidavit, Tab 1BB, pg. [264](#); Affidavit of Glenn Page, sworn December 6, 2023 ("**Second Page Affidavit**"), Respondents' Supplementary Motion Record ("**Supp. RMR**"), para 5, Tab 1, pg. [2](#); Exhibits A-E to the Second Page Affidavit, Tab 1A, 1B, 1C, 1D, 1E, pg. [15](#), [33](#), [51](#), [79](#), [93](#).

¹⁵ Second Page Affidavit, para 4, Supp RMR, Tab 1, pg. [2](#).

¹⁶ First Page Affidavit, para. 107, RMR, Tab 1, pg. [30](#).

¹⁷ Exhibit PP to the First Page Affidavit, RMR, Tab 1PP, pg. [361](#) (December 9, 2022 email from Miles Hill to Glenn Page).

(i) The Delay in Bringing this Motion

12. The allegations found in the Sixth Report of the Monitor¹⁸ are not new. This motion should be dismissed on the basis of delay alone. There can no real concern of dissipation of assets given the extensive delay.

13. All or virtually all of the allegations made on this motion were made:

- (a) in the OTE Statement of Claim in October 2022 (the “**Statement of Claim**”). Various causes of action including breach of fiduciary duty, theft and misappropriation of funds were made;¹⁹
- (b) in Scott Hill’s Affidavit on the Initial CCAA Application in January 2023²⁰; and
- (c) on OTE’s motion for a Mareva Injunction in respect of the Yacht in March 2013.²¹

(a) The October 2022 Statement of Claim Makes the Same Allegations

14. A comparison of the Sixth Report and Statement of Claim shows the many overlapping allegations:

- (a) AirSprint (Fractional Interest in Aircrafts);²²
- (b) Direct Cheques and Bank Wires;²³
- (c) Yacht and Marine Related Transactions;²⁴

¹⁸ Sixth Report, MMR, Tab 5, pg. [57](#).

¹⁹ Statement of Claim of the OTE Group (“**Statement of Claim**”), RMR, Tab 2R, pg. [745](#).

²⁰ Affidavit of Scott Hill, sworn January 27, 2023, paras. 10(a)-(g), 15, 69-78.

²¹ Second Report of the Monitor, dated March 13, 2023, at paras. 14-20, 27-28, Supplemental Report dated March 27, 2023, at paras. 3-13.

²² Statement of Claim, para. 63, RMR, Tab 2R, pg. [745](#); Sixth Report, paras. 21-26, 69(i), MMR, Tab 5, pg. [67](#); Appendix “C”, MMR, Tab 5, pg. [114](#).

²³ Statement of Claim, paras. 34, 55, 57(c), 59, RMR, Tab 2R, pg. [733](#) (Though the Hills’ Claim does not specify the amount, the Hills’ Claim alleges Glenn Page had ‘*de facto* exclusive control over all aspects of [the OTE Group’s business], including[...] banking”, that “suspicious wire transfers of OTE funds [had been] released on Glenn Page’s instructions”, and “Glenn Page... unlawfully created, approved and released wire transfers of monies from OTE LP’s bank account for personal use); Sixth Report, paras. 21-26, 69(i), MMR, Tab 5, pg. [67](#); Appendix “C”, MMR, Tab 5, pg. [114](#).

²⁴ Statement of Claim, paras. 57(d)-(f), 65-68, RMR, Tab 2R, pg. [733](#); Sixth Report, MMR, Tab 5, para. 69(iii), Appendix “C”, MMR, Tab 5, pg. [114](#).

- (d) Home Renovations;²⁵
- (e) Travel (St. Lucia Resort and Wedding);²⁶
- (f) RV Camping / Cottage Resort;²⁷
- (g) CRA Payments;²⁸ and
- (h) Pettinelli Financial Statements.²⁹

15. These allegations have been long outstanding. The fact that no motion was brought long ago and that Page has been active participant in these proceedings demonstrates no risk of dissipation.

(b) *The CCAA Initial Order Granted Investigatory Powers – January 2023*

16. The CCAA Initial Order in these proceedings included provisions granting the Monitor the right to investigate and compel production of information and to examine witnesses under oath. These provisions are expanded powers of the Monitor which do not appear in the form of the model order.³⁰

17. Despite these broad powers, KPMG asserts that it was only after it was granted “enhanced powers” in October 2023 that it was able to turn up “much new evidence”.³¹ The Monitor had all the necessary powers in January 2013 and failed to act.

²⁵ Statement of Claim, paras. 34, 55, 57(c), 59, RMR, Tab 2R, pg. [733](#); Sixth Report, MMR, Tab 5, para. 69(v)-(vi), Appendix “C”, MMR, Tab 5, pg. [114](#).

²⁶ Statement of Claim, paras. 62(a)-(o), 65; RMR, Tab 2R, pg. [742](#); Sixth Report, MMR, Tab 5, para. 69(vii)-(viii), Appendix “C”, MMR, Tab 5, pg. [114](#).

²⁷ Statement of Claim, paras. 34, 55, 57(c), 59; RMR, Tab 2R, pg. [733](#); Sixth Report, MMR, Tab 5, para. 69(ix) , Appendix “C”, MMR, Tab 5, pg. [114](#).

²⁸ Statement of Claim, paras. 34, 55, 57(c), 59; RMR, Tab 2R, pg. [733](#); Sixth Report, MMR, Tab 5, para. 69(x), Appendix “C”, MMR, Tab 5, pg. [114](#).

²⁹ Statement of Claim, paras. 57(a)-(b); RMR, Tab 2R, pg. [739](#); Sixth Report, para 30, MMR, Tab 5, pg. [69](#).

³⁰ OTE Group Application Record on CCAA Application, dated January 30, 2023, Tab 3, Blacklined Initial Order.

³¹ Factum of the Monitor dated December 16, 2023, at para. 73; pg. [30](#).

18. The Monitor’s Enhanced Powers Order dated October 12, 2023, came as a result of Glenn Page’s motion to appoint a CRO³² and resulted in the removal of Scott Hill as a Director and provided KPMG with certain enhanced powers to address governance concerns raised by Page and 265 and to run the revised bid process³³. The Enhanced Powers Order reiterated the investigative powers that KPMG was initially granted under the Initial Order.³⁴

(c) *The Initial Mareva – March 2023*

19. After months of investigation, on March 15, 2023, the OTE Group, supported by KPMG, moved for a limited *Mareva* injunction *only* over the Yacht (the “**Mareva Order**”).³⁵ The *Mareva* injunction was brought on two days’ notice. No evidence was filed by Page or 265.

20. Despite having knowledge of alleged fraud as described in its Statement of Claim, the OTE Group chose not to seek a *Mareva* injunction over the worldwide assets of Page and 265.

21. Pursuant to the Order, the Mareva Respondents were required to file, within 30 days, sworn statements providing information related to the Yacht and to be cross-examined.³⁶ Despite that investigative opportunity, the OTE Group agreed to extend and eventually eliminate the deadline to file the sworn statements.³⁷

³² Mr. Page’s concerns, especially with respect to the Hills’ conflict of interest, were set out in the Aide Memoire of Mr. Page and 265. Exhibit T to the Affidavit of Keely Kinley, sworn November 10, 2023 (“**Kinley Affidavit**”) RMR, Tab 2T, pg. [897](#) (Aide Memoire of Glenn Page and 265); Sixth Report at para 3, MMR, Tab 5, pg. [61](#).

³³ Kinley Affidavit at para 23, RMR, Tab 2, pg. [502](#).

³⁴ Monitor’s Enhanced Powers and Amended Bid Process Approval Order dated October 12, 2023, at para. 3, MMR, Tab 4, pg. [49](#).

³⁵ Order of Osborne J. dated March 15, 2023, (“**Mareva Order**”), pp. 39-44, MMR, Tab 3, pg. [39](#).

³⁶ Mareva Order, p. 41, MMR, Tab 3, pg. [39](#).

³⁷ Exhibit J to the Kinley Affidavit (Endorsement of Osborne J. dated April 28, 2023) (“**April 28 Endorsement**”), para. 18, RMR, Tab 2J, pg. [572](#); Kinley Affidavit at para. 13, RMR, Tab 2, pg. [500](#); Exhibit S and V to the Kinley Affidavit (Notice of Motion and October 4, 2023 Order – Motion to Set Aside Mareva Injunction), Tab 2S and 2V, pg. [608](#) and [908](#).

(d) The Yacht Sales Process and AirSprint Proceeds Order – July 2023

22. The Mareva Respondents moved to set aside the Mareva Order on July 17, 2023. The OTE Group sought: i) approval of a sales process to sell the Yacht; and ii) directing proceeds from the sale of fractional aircraft interests to be held in trust by KPMG (“**Yacht Sale Process and AirSprint Proceeds Order**”). Page agreed to that arrangement.

23. The Yacht remains under KPMG’s control and is undergoing a sales process which is anticipated to recover up to USD\$3.2 million (or CAD\$4,281,200 as of December 15, 2023).³⁸

24. In the same Order, Page agreed that USD\$5,482,779.85 (and any interest accrued) be remitted to the Monitor pending judicial determination of the AirSprint proceeds. This effectively recovers the bulk of the alleged improper transfers of \$9 million.³⁹

25. Prior to the CCAA Proceedings, Page and 265 entered into a Holding and Trust Agreement which provided that AirSprint would hold any funds in trust until the occurrence of certain triggering events.⁴⁰ Page and 265 consented to the disclosure of the AirSprint records on April 27, 2023 (the “**AirSprint Disclosure Order**”) which led to the production of this agreement.⁴¹

(e) The Urgent Injunction Motion Adjourned Twice

26. On August 14, 2023, Page and Cox publicly listed their home in Waterdown, Ontario. It sold on August 28, 2023. The original closing date was February 27, 2024 which was moved to

³⁸ Order of Justice Kimmel dated July 17, 2023, at para. 3; RMR, Tab 2M, pg. [584](#).

³⁹ Order of Justice Kimmel dated July 17, 2023, at paras. 4-5, RMR, Tab 2M, pg. [584](#).

⁴⁰ Sixth Report, Appendix “Q”, MMR, Tab 5, pg. [57](#).

⁴¹ Endorsement of Osborne J. dated April 28, 2023, at para. 3, RMR, Tab 2J, pg. [574](#).

November 30, 2023 by the buyer.⁴² Page had no obligation to provide any updates about his movements to the Monitor and the Monitor had asked him no questions about his real property.

27. In the late evening of November 8, 2023, KPMG delivered its Motion Record for an urgent *Mareva* injunction hearing with a return date of November 10, 2023 at 11:30 a.m.

28. On November 9, 2023, Page offered to place proceeds of sale of the Waterdown house into his counsel's trust account, which offer the Monitor rejected.⁴³

29. At the first return of the motion, this Court found that the urgency was tied to the closing of the sale of Page and Cox's home located in Waterdown, Ontario. This Court adjourned the motion on the condition that it be heard on December 7th and that the net sale proceeds be directed into the trust account of Lenczner Slaght.

30. After the Respondents' served their motion records on November 24, 2023, the Monitor chose to adjourn its motion. The hearing was rescheduled for a second time to December 21, 2023.⁴⁴ If there had been any urgency or real risk of dissipation of assets, the Monitor would not have sought a one month adjournment of the motion.

(f) The Monitor Fails to Investigate

31. On February 6, 2023 the Monitor wrote to counsel for Page, outlining their enhanced powers and asked Page for all information related to the OTE Group.⁴⁵

⁴² First Page Affidavit at paras. 47-49, RMR, Tab 1, pg. [14](#).

⁴³ First Page Affidavit at para 48, RMR, Tab 1, pg. [14](#).

⁴⁴ Endorsement of Kimmel J., December 1, 2023.

⁴⁵ Exhibit C to the Kinley Affidavit (February 6, 2023 Letter), RMR, Tab 2C, [548](#).

32. Counsel for Page wrote to the Monitor, indicated Page's intention to cooperate, produced certain documents and sought a "more specific list of information" the Monitor was seeking to "help Mr. Page to prioritize his searches and respond more quickly."⁴⁶

33. Following the *Mareva* motion, counsel for Page wrote again to the Monitor, producing documents and again seeking particulars:

Lastly, as we previously discussed with Mr. Sahni, we would be grateful for additional information as to the specific types of documents being sought by the Monitor. As we noted, the request is unparticularized and general. We continue to await a response from Mr. Sahni in that regard.⁴⁷

34. Notwithstanding the allegations about the Pettinelli statements in the Statement of Claim and Mr. Hill's affidavit, the Monitor made its first inquiry of the Pettinelli firm on April 21, 2023.⁴⁸ If the Pettinelli statements formed the basis for a *Mareva* injunction, the investigation should have happened earlier and should have been advanced by at least April 2023.

35. The Monitor was provided with the Notice of Sale with respect to the AirSprint aircraft interests in May 2023. The allegations relating to AirSprint had been live since October 2022.⁴⁹ If the Notice of Sale was evidence which would trigger a *Mareva* motion, then the motion could and should have been brought in May.

36. On July 5, 2023, Page's counsel provided the Monitor with a USB with a copy of Page's OTE email account.⁵⁰ There is no evidence that the Monitor took any steps to review the USB key once it was received.

⁴⁶ Exhibit D to the Kinley Affidavit (March 8, 2023 Letter), RMR, Tab 2D, pg. [548](#).

⁴⁷ Exhibit E to the Kinley Affidavit (June 5, 2023 email), RMR, Tab 2E, pg. [552](#).

⁴⁸ Monitor's Responses to Further Questions, December 9, 2023, p. 8, q. 24; p. 13, Q. 8.

⁴⁹ Monitor's Responses to Further Questions, December 9, 2023, p. 13, Q. 12.

⁵⁰ First Page Affidavit at para 10, RMR, Tab 1, pg. [3](#); Exhibit A to the First Page Affidavit, RMR, Tab 1A, pg. [51](#).

37. The Monitor alleges that Page “directed the deletion and archiving of the OTE group email boxes [...] the supposedly archived emails have never been found and are not available to the Monitor.”⁵¹ The Monitor appears to ignore evidence obtained from Silverline Solutions, which hosts the server.⁵² Silverline Solutions advised they had **not** been instructed to delete the accounts, and that email accounts for the Pages could still be made accessible. It does not appear the Monitor made any further inquiries in that regard:

The account for Glenn Page was converted from a regular mailbox to a shared mailbox for archival purposes, but no one was given member access for the account, so it has been inaccessible since August 2022 but is still active. Because the accounts for Glenn Page and Brian Page are still active in some form, they can still be made accessible...We were not given instruction to delete the accounts for Glenn Page or Brian Page at the time of the transition, only to make them inaccessible to the original users and turn off any forwarding...⁵³

38. Although the Monitor had the right under the Initial Order to “have full and complete access...including data in electronic form, and other financial documents of the OTE Group, to the extent that is necessary to adequately assess the OTE Group’s business and financial affairs” the Monitor chose not to access OTE’s financial records through BookWorks directly until after October 2013.⁵⁴ The Monitor initially claimed that this was because it did not get enhanced powers until October 2023.⁵⁵

39. Through Page’s persistence, the Monitor learned that Scott Hill limited access to books and records (e.g. BookWorks) of the OTE Group. The Monitor was advised by OTE USA’s counsel that Scott Hill advised KeyInfoTech, which hosts the BookWorks data, to prevent anyone

⁵¹ Factum of the Monitor at paras, 44-55, pg. [19](#).

⁵² Silverline Solutions provides cloud-based servers to the OTE Group, which stores its systems and data.

⁵³ Production of Monitor in Response to Questions of the Mareva Respondents, Email from Silverline Solutions support to Duncan Lau, dated November 30, 2023 (**emphasis added**).

⁵⁴ Monitor’s Responses to Further Questions, December 9, 2023, p. 5, Q.17.

⁵⁵ Sixth Report at para 27, MMR, Tab 5, pg. [69](#).

from accessing the accounting files including the Monitor.⁵⁶ Upon being confronted, Scott Hill apparently told the Monitor that “Jeff Lixie from KeyInfoTech to keep all BookWorks information strictly confidential.”⁵⁷

40. The Monitor did not even seek a copy of the email to RBC enclosing the alleged fraudulent financial statements until December 2023.⁵⁸

41. Although the Monitor had the right to conduct examinations under oath, the Monitor did not interview or examine Page or Cox until this motion and did not interview most of the key players related to its allegations. Instead, the “Monitor has either engaged in discussions or corresponded with [Scott Hill, Miles Hill, Nick Capretta, Pettinelli, Sandra Smoke and Brian de Nobriga]. The Monitor has not formally interviewed these individuals.”⁵⁹ Much of the information in the Sixth Report is hearsay, unsubstantiated and untested.⁶⁰

(ii) Page and 265 Have Already Agreed to Preserve Significant Funds/Assets

42. The Sixth Report attributes suspicious payments of approximately \$16.3 million dollars to Page and related entities. Those transactions, which are largely duplicative of the claims made in the October 2022 Statement of Claim, are the only amounts even partially substantiated on this motion.

⁵⁶ Affidavit of Glenn Page, sworn December 6, 2023 (“**Second Page Affidavit**”) at paras. 22-24, Respondents’ Supplementary Motion Record (“**Supp. RMR**”), Tab 1, pg. 7; Exhibit H to the Second Page Affidavit, Tab 1H, pg. 133; Monitor Responses to the Questions of the Mareva Respondents, December 9, 2023, p. 9, Q. 21.

⁵⁷ Monitor Responses to the Questions of the Mareva Respondents, December 9, 2023, p. 8, Q. 17.

⁵⁸ Monitor’s Responses to Further Questions, December 9, 2023, p. 6, Q. 13.

⁵⁹ Monitor’s Responses to Further Questions, December 9, 2023, p. 20, Q. 55.

⁶⁰ *Farber v. Goldfinger*, [2011 ONSC 2044](#) at paras. 30-38.

43. Over \$13 million has already been frozen:

- (a) \$7,331,079.77⁶¹ (AirSprint Fractional Interests);
- (b) \$4,281,200⁶² (Yacht); and
- (c) \$1,874,058.28 (Proceeds of Sale of Matrimonial home).⁶³

44. Even if the Monitor could overcome the hurdle of establishing a strong *prima facie* case and risk of dissipation (notwithstanding the delay), there must be a cap to the amount claimed.

Each element of the \$16.3 million must be assessed in determining the *Mareva* cap:

Item	CAD Amount Claimed
AirSprint	\$9,032,298
Direct Cheques and Bank Wires	\$1,281,426
Pride Marine	\$4,227,335
Alleged Personal Expenses	\$1,963,002
Receiver General/CRA	\$79,000
Total	\$16,583,061⁶⁴

45. The total amount of \$16.3 million should be reduced by amounts that cannot be proven, have been explained or already paid back. For example, the Pride Marine figure of \$4.2 million includes \$1.3 million that was transferred into the OTE bank account by a financing company (Essex Financial) and out to Pride Marine.⁶⁵ Those funds do not belong to OTE.

46. The Commercial List Model Order contains a standard clause capping the amount of assets to be frozen.⁶⁶ The Monitor must, but has not, provided an explanation for deleting this clause.

⁶¹ USD\$5,482,779.85 (converted as of December 15, 2023) frozen pursuant to the July 17, 2023 Yacht Sales Process & AirSprint Proceeds Order, RMR, Tab 2N, pg. [586](#).

⁶² USD\$3,200,000 (converted as of December 15, 2023) frozen pursuant to the July 17, 2023 Yacht Sales Process & AirSprint Proceeds Order, RMR, Tab 2N, pg. [586](#).

⁶³ Paid into the Lenczner Slaght Trust account on November 30, 2023, pursuant to the November 10, 2023 Endorsement of Kimmel J.

⁶⁴ Paragraph 14 of the Supplemental Sixth Report reduces this figure by \$325,000 resulting in the total of \$16.3 million.

⁶⁵ First Page Affidavit at paras. 133-134, RMR, Tab 1, pg. [39](#); Exhibit VV. RMR, Tab 1VV, pg. [429](#); Exhibit S to the Second Page Affidavit, Supp. RMR, Tab 1, pg. [159](#); Sixth Report, Appendix “C” indicates an amount of \$1,371,100, MMR, Tab 5, pg. [114](#).

⁶⁶ [Commercial List Forms](#), Mareva Model Order Form, at para. 3.

47. While KPMG refers to certain other amounts over and above the \$16.3 million, such as alleged and unproven tax liabilities by the CRA and Ministry of Finance (“MOF”), they are unproven claims which have not been adjudicated. There is no evidence to support the claim other than letters from the CRA and MOF asserting the claim.

48. A *Mareva* injunction must be carefully tailored in order to achieve its objective. The injunction must not be issued on a theoretical or a punitive basis. The maximum amount of a *Mareva* should be the amount claimed by the plaintiff from the defendant.⁶⁷ Here, the moving party is the Monitor and the Monitor ought to have to establish a strong *prima facie* case for the total amount claimed on the *Mareva*.

49. If an order is granted, the cap should reflect what claims, if any, where a strong *prima facie* case has been established (no more than \$16.3 million), less the amounts already frozen.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

A. A Mareva Injunction is Neither Appropriate Nor Necessary

(i) The Law

50. A *Mareva* injunction is an extraordinary remedy and should only be imposed in the clearest of cases.⁶⁸ It is available to freeze assets where there is a serious risk of harm through either dissipation or removal of assets to avoid judgment.⁶⁹

⁶⁷ [Massa v. Sualim](#), 2013 ONSC 7926 at paras. 9-10.

⁶⁸ [Shaw Communications Inc. v. Young](#), 2021 ONSC 7918 at [para 9](#); The Monitor’s 30-page factum appears to erroneously suggest that the issue on this motion is an interim and not an interlocutory injunction.

⁶⁹ [Promo-Ad v Keller](#), 2013 ONSC 1633 at [para 51](#).

51. The test for granting a *Mareva* injunction is to be applied flexibly. Each case is to be decided on its own factual matrix and the relevant factors to be considered may differ from one case to another.⁷⁰

52. KPMG bears the onus of proving each aspect of the test:⁷¹

- (a) establish a strong *prima facie* case on the merits;
- (b) provide particulars of the claim, the grounds of the claim, and the amount thereof, and fairly stating the points that could be made by the defendant;
- (c) provide grounds for believing that the defendant has assets in the jurisdiction;
- (d) give grounds for believing that there is a real risk of the asset being removed out of the jurisdiction or disposed of within the jurisdiction or otherwise dealt with so that the plaintiff will be unable to satisfy a judgment awarded to him or her;
- (e) establish irreparable harm if the relief is not granted;
- (f) show in all circumstances that the balance of convenience favours the granting of the injunction pending trial of the issues between the parties; and
- (g) provide an undertaking as to damages.⁷²

53. Ultimately, as a *Mareva* is an equitable and discretionary remedy, the Court may refuse to grant an order if it has concerns about the case.⁷³ In particular, where there is a finding of delay, there is necessarily a finding of lack of any risk of dissipation of assets and lack of irreparable injury. Where that is the case, an extraordinary remedy is not justified.

(ii) Delay

54. On these facts, the significant delay in bringing this motion precludes a finding of risk of dissipation and the existence of irreparable harm. It is well-established that delay will be fatal to any injunction application if the plaintiff fails to act in a reasonable time, and injunctions should

⁷⁰ [Shakeri-Saleh v Estate of Ahmadi-Niri](#), 2022 BCSC 700 at [para 13](#).

⁷¹ [Trade Capital Finance Corp. v. Cook](#), 2015 ONSC 3745 at [para 55](#).

⁷² [Neville v. Sovereign Management Group Corp.](#), 2022 ONSC 3466 at [para 30](#).

⁷³ [Allen v. Gerstel](#), 2023 ONSC 107 at [para. 4](#).

not be awarded to parties who show no sense of urgency.⁷⁴ As stated by Sharpe J. in *Injunctions and Specific Performance*:

On interlocutory applications, delay has somewhat different implications. The evidentiary factor becomes much more significant. To succeed, the plaintiff must show a substantial risk of irreparable harm in the period leading up to trial. **The very fact of delay by the plaintiff, quite apart from any question of prejudice to the defendant, may often serve as evidence that the risk is not significant enough to warrant interlocutory relief.**⁷⁵

55. In *Hollinger Inc v Radler*, the Chambers Judge dismissed an application to extend the *Mareva* order, finding that while there was a strong *prima facie* case respecting the claims in fraud and breach of fiduciary duty, it was “not enough”⁷⁶—Hollinger failed to show there was a real risk Radler would remove or dispose of the assets. The Chambers Judge found past conduct did not, alone, establish a basis for a *Mareva* injunction,⁷⁷ and the proceedings giving rise to the application had been commenced 11 months prior. The Chambers Judge agreed that the delay was evidence the risk of dissipation of assets was not immediate or significant enough to warrant relief:

The obvious question arising from this chronology is why Hollinger Inc. has waited so long to bring the injunction application. Where is the “immediate risk” of dissipation of assets? [...]

I accept the argument of Mr. Radler’s counsel that evidence delay is more significant in the context of interlocutory applications. The very fact of the delay may be evidence that the risk is not immediate or significant enough to warrant relief until trial. **The inference I draw from the inordinate delay is that there is no legitimate apprehension of immediate risk of dissipation on the part of Hollinger Inc.** (emphasis added)⁷⁸

56. In *Lee v. Chang*, the Divisional Court dismissed a motion for an urgent *Mareva* pending the hearing of a motion for leave to appeal which had occurred six weeks prior.⁷⁹ Myers J. held:

⁷⁴ Sharpe J, Interlocutory injunctions, *Injunctions and Specific Performance* at § 1:28 (Online: [WL](#)); *Lee v. Chang*, 2018 ONSC 2091 at para. 3 (Div Ct.); *Erie Manufacturing Co. (Canada) v. Rogers*, 1981 CarswellOnt 417 (Ont. H.C.) at paras. 2-4; *Hollinger Inc. et al. v. Radler et al.*, 2006 BCSC 1712 at para. 26, aff’d [2006 BCCA 539](#) at para. 31; *Union Bank of Switzerland v. Batky*, 1998 CanLII 14887 at paras. 33, 76 (Div Ct.); *Chiu v. Jao*, 1998 CanLII 6693 at paras. 15-16 (BCSC).

⁷⁵ Sharpe J, Interlocutory injunctions, *Injunctions and Specific Performance* at § 1:28 (Online: [WL](#)).

⁷⁶ *Hollinger Inc. et al. v. Radler et al.*, 2006 BCSC 1712 at para. 26, aff’d [2006 BCCA 539](#) at para. 31.

⁷⁷ *Hollinger Inc. et al. v. Radler et al.*, 2006 BCSC 1712 at para. 37, aff’d [2006 BCCA 539](#) at para. 31.

⁷⁸ *Hollinger Inc. et al. v. Radler et al.*, 2006 BCSC 1712 at paras. 35, 62 (emphasis added).

⁷⁹ *Lee v. Chang*, 2018 ONSC 2091 at para. 1 (Div Ct.).

“There is no urgency. Six weeks have elapsed. If harm was urgently feared, it would have happened by now [...] There is nothing an injunction can do to help the plaintiffs today.”⁸⁰

57. KPMG relies on various documentary records and discussions with certain individuals, which it vaguely asserts is “more recent evidence”⁸¹ it has obtained. KPMG knew or could have known that information many months ago, and in some cases, over a year ago. All of the transactions identified in Appendix “C” of the Sixth Report⁸² are reflected in OTE’s own banking records from RBC.⁸³ Whatever concerns KPMG says it has, they failed to or chose not to act on them at an earlier time.

58. The timeline set out above and in more detail in Page’s Compendium demonstrates that since October 2022, KPMG has known or ought to have known of every piece of evidence or allegation it now raises on this motion.

(iii) No Strong *Prima Facie* Case

59. A “strong *prima facie* case” requires the applicants to show that they are “clearly right, or even that they are almost certain to win.”⁸⁴ On this record, the Monitor has not met that high threshold for each of the impugned transactions.⁸⁵ As explained below, a majority of the impugned transactions (many of which date back to early 2019) were paid for with 265’s distribution payments from OTE LP.

⁸⁰ *Lee v. Chang*, 2018 ONSC 2091 at paras. [1-3](#) (Div Ct.).

⁸¹ Factum of the Monitor, at para. 5, pg. [2](#).

⁸² Sixth Report at para. 57, MMR, Tab 5, pg. [77](#); Appendix “C”, MMR, Tab 5, pg. [114](#); Appendix “C” of the Sixth Report is also extracted at the Factum of KPMG, at para. 27.

⁸³ Sixth Report, Appendix “C”, MMR, Tab 5, pg. [114](#). The Supplemental Sixth Report also includes a single email from RBC at Appendix C.

⁸⁴ *10390160 Canada Ltd. v. Casey*, 2022 ONSC 628 at [para 3](#); see also *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 at [para. 17](#).

⁸⁵ Reply Motion Record of the Monitor dated December 4, 2023 (“**Supp. MMR**”), Supplemental Sixth Report of the Monitor (“**Supp. Sixth Report**”) at para 14, Supp. MMR, Tab 1, pg. [12](#).

(a) Distributions from OTE LP Were Approved and Distributed

60. The Monitor raises two points relating to the propriety of the distribution payments. The first is that distributions were not approved and the second is that OTE LP was not solvent. The Monitor has not presented evidence to sufficiently substantiate these points.

61. With respect to distribution approval and amount, the Monitor seeks to rely on findings made by Osborne J. in the context of the *Mareva* over the Yacht. Importantly, no evidence was filed given that there were only two days' notice of the motion.

62. Justice Osborne held that i) there were no documents or correspondence suggesting that the amounts were paid as distributions of profit or income; and ii) there was no evidence of corresponding distributions to other partners.⁸⁶ On this record, neither of these findings apply.⁸⁷

63. On this motion, the uncontroverted evidence regarding approvals include:

- (a) Each of the limited partners were paid significant distributions between 2019- 2022.⁸⁸
- (b) In May 2019, the limited partners held the first quarterly meeting. They agreed that distributions would be released beginning in June 2019.⁸⁹ Page advised that his share would be directed to vendors. There were no objections.⁹⁰
- (c) Following that board meeting, Page delivered board meeting notes to Miles, Scott and Nick showing approvals of the going forward release of distributions.⁹¹
- (d) In 2019 until the pandemic, the distributions to limited partners were paid with cheques. These cheques were signed by both Scott and Page.⁹²

⁸⁶ *Original Traders Energy Ltd. (Re)*, 2023 ONSC 1887 at para. 34.

⁸⁷ *Save-A-Lot Holdings Corp. v Christensen*, 2019 BCSC 115 at para. 34.

⁸⁸ Exhibit II to the First Page Affidavit (Payment Manager Activity Report dated February 2, 2021); RMR, Tab 1II, pg. 292; Exhibit III (Payment Manager Activity Reports dated August 18, 2020), RMR, Tab 1III pg. 491; Sixth Report, Appendix "F", p. 181 (Email re distributions), MMR, Tab 5, pg. 149.

⁸⁹ First Page Affidavit, para. 95, RMR, Tab 1, pg. 26; Exhibit Y (Email from Glenn Page to Nick Capretta re Agenda), RMR, Tab 1Y, pg. 240.

⁹⁰ First Page Affidavit, para. 104, RMR, Tab 1, pg. 30.

⁹¹ First Page Affidavit, para. 98, RMR, Tab 1, pg. 26; Exhibit BB (email from Glenn Page to all dated May 8, 2019), RMR, Tab 1BB, pg. 264.

⁹² First Page Affidavit, para. 98, RMR, Tab 1, pg. 26.

- (e) An email from February 25, 2021 shows that Page suggested a \$1 million distribution to Miles, Scott, and CCD. Nick then confirms the amount for each of them.⁹³ Next month, Page confirms again to Scott, Miles and Nick release of the February 2021 distribution and to expect an uptick in July.⁹⁴

64. Page produced OTE LP's RBC business account payment records (i.e. for 2021) which show distributions to each of the limited partners, *except* that 265 is not a recipient in most cases.⁹⁵

65. KPMG asserts that other limited partners received grossly less distributions. That statement is not reflected in the record. While the available records are incomplete to determine the exact payment to each of Scott, Miles and Page, the available records do reflect payments of similar and significant amounts.⁹⁶ The available records show that each of the limited partners received approximately \$1 million in 2019, \$2 million in 2020, \$1.5 million in 2021 and \$100,000 in 2022.⁹⁷

66. As a cross-reference, Nick Capretta produced a spreadsheet of income collected by CCD which is consistent with the amounts received by the limited partners. Between 2019 and 2022, CCD appears to have received \$3.8 million from OTE LP.⁹⁸

67. 265 has produced its tax returns which reflects income from the years 2019 and 2020 in the amount of \$3.2 million. For 2021 and 2022, adjustments will be necessary for the income received from OTE LP in 2021 and 2022 once records are in order.⁹⁹

⁹³ First Page Affidavit, Ex. U (Email from Nick Capretta to Glenn Page dated Feb 25, 2021), RMR, Tab 1UU, pg. [429](#)

⁹⁴ First Page Affidavit, Ex .DD (Email from Glen Page to Nick Capretta et al dated March 8, 2021), RMR, Tab 1DD, pg. [268](#).

⁹⁵ First Page Affidavit, Ex. II (Payment Manager Activity Report dated February 2, 2021), RMR, Tab 1II, pg. [292](#).

⁹⁶ Production of Monitor in Response to Questions of the Mareva Respondents, Email Exchange dated October 29, 2019 re: dividends.

⁹⁷ Cross-Examination of Glenn Page, December 11, 2023, Ex. 2; First Page Affidavit, Ex. JJ (Financial Statements for OTE 2019), RMR, Tab 1JJ, pg. [308](#); Ex. KK (Financial Statements for OTE 2020), RMR, Tab 1KK, pg. [323](#).

⁹⁸ Production of Monitor in Response to Questions of the Mareva Respondents, Email of N. Capretta to KPMG dated April 13, 2023 and enclosed Spreadsheet.

⁹⁹ Second Page Affidavit, para. 44, Supp. RMR, Tab 1, pg. [13](#); Response to under advisement of Cross-Examination of Glenn Page.

68. With respect to solvency, the Monitor further relies on the CRA and MOF's untested claims to suggest that no distributions should have been paid. Besides CRA and MOF correspondence that were largely sent to OTE LP following the departure of Page, there does not appear to be any support for those claims. The Monitor has not provided any of its own independent investigation and has not adjudicated the claims by the tax authorities. Simply attaching the correspondence is insufficient to establish a *prima facie* case on the merits for any of the causes of action.

69. Finally, the Monitor impugns the accounting treatment and recording of expenses. For each of the limited partners, their distributions were variously expensed.¹⁰⁰ Ultimately, the net income remains the same.

(b) Transactions Paid Through Distributions

70. The Monitor has broken down its alleged improper transactions into various categories. Page has testified – in many cases uncontradicted – with respect to the purpose of the expenses. For simplicity, Schedule “C” reflects the evidence on the record.

(c) Aircraft

71. In the event there remains confusion over entitlement to AirSprint fractional interests, Page testified that those aircraft interests were purchased following agreement by the board and that the interest would be held by 265. The reason was because Scott and Brian de Nobriga were concerned that Miles, who had other personal interests, would recklessly use the flight hours.¹⁰¹

¹⁰⁰ Sixth Report, MMR, Tab 5, Appendix F, pg. 181;

¹⁰¹ First Page Affidavit, para. 161, RMR, Tab 1, pg. 45.

72. Individual flights were invoiced by AirSprint to 265, and 265 sought reimbursements accordingly. If the flight was for a business purpose, OTE would be charged back. All of the limited partners (except Miles) and CCD used the aircrafts for personal purposes.¹⁰²

73. Months before litigation commenced, Page assigned the aircraft interests to a different company to keep it separate from his other businesses.¹⁰³ Once litigation commenced, Page entered into the Holding and Trust Agreement to secure the funds from the sale of any aircraft interests.¹⁰⁴

(d) Yacht

74. The Yacht cost approximately CAD\$4.2 million, which was purchased with 265 distribution payments and a loan of approximately CAD\$1.3 million from Essex.¹⁰⁵ That loan has since been paid off by a non-OTE related company, Gen 7 Brands.¹⁰⁶ The impugned amount on this motion relating to the Yacht is approximately \$2.9 million.

75. The Monitor accuses Page of making clandestine ownership changes to the Yacht. The evidence is to the contrary. Shortly after the Yacht was purchased, Page decided to enter the chartering business. He learned that a larger yacht was required to be successful but he was unable to sell the Yacht. He stuck with the plan.¹⁰⁷

76. For business reasons, in or around August 2022, Page took steps to incorporate a new Caymans company, CWC International, for the sole purpose of owning and operating a vessel.¹⁰⁸

¹⁰² First Page Affidavit, para. 163, RMR, Tab 1, pg. [45](#).

¹⁰³ Cross-Examination Transcript of Glenn Page, December 11, 2023 (“**Page Transcript**”), QQ. 15-17.

¹⁰⁴ Second Page Affidavit, paras. 39-41, Supp. RMR, Tab 1; pg. [12](#); Page Transcript, QQ. 430-431.

¹⁰⁵ First Page Affidavit, paras. 133-134RMR, Tab 1, pg.; Second Page Affidavit, Exhibit S, Supp. RMR, Tab 1, Sixth Report, MMR, Tab 5, Appendix “C” indicates an amount of \$1,371,100.

¹⁰⁶ First Page Affidavit, paras. 133-134, RMR, Tab 1, pg. [39](#).

¹⁰⁷ First Page Affidavit, paras. 144-145, RMR, Tab 1, pg. [41](#).

¹⁰⁸ First Page Affidavit, paras. 144-145, RMR, Tab 1, pg. [41](#).

Incorporation was completed before any litigation commenced.¹⁰⁹ Subsequent transfers of ownership did not affect attachment of the Mareva Order, impede physically securing the Yacht, or interrupt the progress of the subsequent sale process.¹¹⁰

77. The Monitor points to the Yacht's movement at the time of the *Mareva* motion as evidence of risk of dissipation. Justice Osborne did not find that the Yacht set sail because of the motion. It is undisputed that the Yacht was set to sail from Florida to St. Lucia by March 2023. Page and the Captain did not stay in constant communication. Once the *Mareva* was obtained, Page instructed the Captain to return to Florida.¹¹¹ The Yacht has been secure since then.

(e) *The 2021 OTE LP Financials*

78. None of the \$16.3 million that KPMG alleges was misappropriated is attributed to the allegations relating to the nature of the 2021 financial statements for OTE LP.

79. There is no dispute that the 2021 financial statements are not real, but it remains unknown how they were fabricated. Page's recollection is that he tasked the team, a "group of very capable people" to complete those statements during a busy time in his life. When he received the electronic statements shortly before his wedding, he forwarded them to the representative at RBC and Marathon.¹¹² He did not know at that time that the statements were inaccurate.¹¹³

80. Page acknowledged that he did not have a strong recollection of the sequence of events, but believed that "Kerri [Hildebrandt] sent [him] the email with the draft financial statements".¹¹⁴

¹⁰⁹ First Page Affidavit, paras. 144-145, RMR, Tab 1, pg. [41](#).

¹¹⁰ Mareva Order, para. 4, MMR, Tab 3, pg. [41](#).

¹¹¹ First Page Affidavit, para. 143, RMR, Tab 1, pg. [41](#).

¹¹² Page Transcript, Q. 590.

¹¹³ Page Transcript, QQ. 565-566.

¹¹⁴ First Page Affidavit, para. 112, RMR, Tab 1, pg. [32](#).

Ms. Hildebrandt was an accounting employee of GPMC2 and closely involved in finalizing the 2021 financial statements.

(iv) No Risk of Dissipation

81. The Monitor has failed to show something more than a real risk that a judgment would go unsatisfied. The Monitor must advance solid supporting evidence that Page and/or 265 is removing or that they are about to remove assets to avoid judgment, or that they are disposing of assets in a manner distinct from their ordinary course of business so as to render future tracing impossible.¹¹⁵

82. Even if this Court finds a strong *prima facie* case on the merits has been met, an inference of risk of dissipation is not automatically available. This Court must carefully take into account the surrounding circumstances to decide whether such an inference is supportable.¹¹⁶ The Monitor's narrative is one-sided, ignores surrounding circumstances and completely ignores its own delay.

83. In considering risk of dissipation, this Court should consider:

- (a) **The Monitor's Delay:** As noted above, there has been unreasonable delay in bringing this motion. Risk of dissipation cannot be established.
- (b) **St. Lucia is Not a Risk:** KPMG has characterized Page's ties to St. Lucia as a "getaway attempt". What they fail to acknowledge is that those ties have been in place and known by the OTE Group long before any litigation ensued.

Much, if not all, of the information regarding St. Lucia comes from Page. Page voluntarily disclosed that he is a St. Lucian citizen, which he applied for in late 2021 (a year before litigation) and obtained it in July 2022.¹¹⁷ Becoming aware 1.5 years later and finding no evidence of dissipation should be reassuring.¹¹⁸

¹¹⁵ [663309 Ontario Inc. v. Bauman](#), 2000 CanLII 22640 (ONSC) paras [41-42](#).

¹¹⁶ [Voysus Connection Experts Inc. v. Shaikh](#), 2019 ONSC 6683 paras [86-97](#).

¹¹⁷ First Page Affidavit, para. 50, RMR, Tab 1, pg. [14](#).

¹¹⁸ The Statement of Claim references Page's plans to retire in St. Lucia at para. 52.

- (c) **Strong Personal Connection to Ontario:** Page is married to Cox and they both have significant family ties in Ontario, including dependents. Their elderly parents, kids and grandkids live in Ontario.¹¹⁹
- (d) **Future Personal Plans in Ontario:** Page and Cox were forced to sell their home due to being approached by unwanted guests at the property as a result of the underlying litigation. They are now looking for a different lot to build a house and currently sublease a condo in Burlington from his brother, Brian Page.¹²⁰
- (e) **Strong Business Connection to Ontario:** Page and Cox own and manage successful, well-established businesses in Ontario, including many Gen 7 gas stations.¹²¹
- (f) **Active Participation in CCAA Proceedings:** Page has cooperated and actively participated in the CCAA Proceedings. He has produced significant documents¹²² and agreed to certain reasonable demands of the Monitor. His involvement is not conduct of someone “poised” to leave but someone with skin in the game.
- (g) **Continuing to Build Ties in Ontario:** Page is an indirect shareholder of OTE USA which, along with affiliates, and with the expert assistance of KSV Advisory, provided the Monitor with a copy of a comprehensive proposed CCAA Plan on November 6, 2023.¹²³ Page continues to try and build ties in Ontario.
- (h) **Funds In Trust:** Page and 265 have already consented to freezing a significant amount of funds. This is antithetical to a fraudster on the run.

84. The Monitor then points to 265’s trial balance for 2022 that show advances of \$3.8 million made to “related parties”. Evidence of related company transactions, even offshore ones, does not constitute a risk of dissipation of assets.¹²⁴ KPMG never cross-examined on these loans of which only a tiny portion was to Gen 7 Brands International.

¹¹⁹ First Page Affidavit, paras. 54, RMR, Tab 1, pg. [15](#).

¹²⁰ First Page Affidavit, paras. 53-54, RMR, Tab 1, pg. [15](#).

¹²¹ First Page Affidavit, para. 54, RMR, Tab 1, pg. [15](#).

¹²² Kinley Affidavit, Ex. E (Correspondence from Lenczner Slaght LLP dated June 5, 2023), RMR, Tab 2E, pg. [557](#); Ex. F (Correspondence between Lenczner Slaght LLP and Monitor’s counsel dated July 5-7, 2023), RMR, Tab 2F, pg. [559](#), Ex. G, (Correspondence between Lenczner Slaght LLP and Monitor’s counsel dated September 8, 2023), RMR, Tab 2, [563](#).

¹²³ Kinley Affidavit, Ex. L, M (Letter to Counsel for the Monitor, Enclosed Redacted Draft CCAA Plan term Sheet), RMR, Tab 2, pg. [579](#).

¹²⁴ [663309 Ontario Inc. v. Bauman](#), 2000 CanLII 22640 (ONSC) [paras 41-42](#); *Chicago Title Insurance Company v. Nova Diamonds Inc. et al.*, 2023 ONSC 6971 at [para. 72](#).

(v) No Irreparable Harm

85. Irreparable harm is harm which either cannot be quantified in monetary terms, or which cannot be cured. The probability of irreparable harm increases as the probability of recovering damages decreases.¹²⁵ Given the delay, the adjournments and lack of risk of dissipation, there is no risk of harm.

(vi) Balance of Convenience Does Not Favour an Injunction

(a) Availability of Alternative Remedy

86. Where there is an alternative remedy available to protect the interests of stakeholders, a *Mareva* injunction is not necessary. In *Access Human Resources v. Earl*, an existing *Mareva* order was set aside because the Applicant had filed a CPL, which already protected the subject asset.¹²⁶ Here, Page has already agreed to freeze significant funds.

(b) Prejudice

87. A *Mareva* injunction is a drastic remedy which is by definition prejudicial to those who are subject to the order. In addition to the day to day impact of a *Mareva* Order, Page is a beneficial owner of various Gen 7 gas stations which employ many people. He is also a service provider and consultant to those gas stations through GPMC2 and other entities.

88. If the relief is granted, there is a serious risk that Gen 7 gas stations will be irreparably impacted because gas station bank accounts may be frozen by association or banks may no longer wish to do business with them. The other Indigenous limited partners and the First Nations employees of the gas stations will be harmed.

¹²⁵ *PPI Management Inc. v. Zhou*, 2023 ONSC 3603 at para 88.

¹²⁶ *Access Human Resources v. Earl*, 2018 BCSC 2347 at para 38.

(c) Undertaking as to Damages

89. Although an undertaking as to damages may not be required in the context of a Monitor seeking a *Mareva* injunction, the failure to deliver an undertaking as to damages must be considered in the context of the balance of convenience.

90. A *Mareva* is an extraordinary remedy. There is a presumption of inconvenience to any person who is subject to one. An undertaking as to damages is typically strictly required because it can have a devastating impact. Page has agreed to freezing significant assets and provided explanations for the impugned transactions. The Monitor still proposes to put Page at risk of significant damage without the benefit of an undertaking. It is patently unfair.

PART IV - ORDER REQUESTED

91. The Respondents request that the motion be dismissed, with costs. In the alternative, if an Order is granted, this Court should impose a cap reflecting only those amounts where a strong *prima facie* case has been established, less the amounts already frozen.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of December 2023.



LENCZNER SLAGHT LLP

SCHEDULE “A” - LIST OF AUTHORITIES

Case Law

1. [*Hollinger Inc. et al. v. Radler et al.*](#), 2006 BCSC 1712 (CanLII)
2. [*Farber v. Goldfinger*](#), 2011 ONSC 2044
3. [*Massa v. Sualim*](#), 2013 ONSC 7926
4. [*Shaw Communications Inc. v. Young*](#), 2021 ONSC 7918
5. [*Promo-Ad v Keller*](#), 2013 ONSC 1633
6. [*Shakeri-Saleh v Estate of Ahmadi-Niri*](#), 2022 BCSC 700
7. [*Trade Capital Finance Corp. v. Cook*](#), 2015 ONSC 3745
8. [*Neville v. Sovereign Management Group Corp.*](#), 2022 ONSC 3466
9. [*Allen v. Gerstel*](#), 2023 ONSC 107
10. [*Lee v. Chang*](#), 2018 ONSC 2091 (Div. Ct.)
11. [*Erie Manufacturing Co. \(Canada\) v. Rogers*](#), 1981 CarswellOnt 417 (Ont H.C.)
12. [*Union Bank of Switzerland v. Batky*](#), 1998 CanLII 14887 (Div. Ct.)
13. [*Chiu v. Jao*](#), 1998 CanLII 6693 (BCSC)
14. [*10390160 Canada Ltd. v. Casey*](#), 2022 ONSC 628
15. [*R. v. Canadian Broadcasting Corp.*](#), 2018 SCC 5
16. [*Original Traders Energy Ltd. \(Re\)*](#), 2023 ONSC 1887
17. [*Save-A-Lot Holdings Corp. v Christensen*](#), 2019 BCSC 115
18. [*663309 Ontario Inc. v. Bauman*](#), 2000 CanLII 22640 (ONSC)
19. [*Chicago Title Insurance Company v. Nova Diamonds Inc. et al.*](#), 2023 ONSC 6971
20. [*Voysus Connection Experts Inc. v. Shaikh*](#), 2019 ONSC 6683
21. [*663309 Ontario Inc. v. Bauman*](#), 2000 CanLII 22640 (ONSC)
22. [*PPI Management Inc. v. Zhou*](#), 2023 ONSC 3603
23. [*Access Human Resources v. Earl*](#), 2018 BCSC 2347

Secondary Sources

24. Sharpe J, Interlocutory injunctions, *Injunctions and Specific Performance* (Online: [WL](#))

SCHEDULE “B” - TEXT OF STATUTES, REGULATIONS & BY-LAWS

R.R.O. 1990, Reg. 194: RULES OF CIVIL PROCEDURE

Evidence by Affidavit

Generally

39.01 (1) Evidence on a motion or application may be given by affidavit unless a statute or these rules provide otherwise.

Contents — Motions

(4) An affidavit for use on a motion may contain statements of the deponent’s information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

Full and Fair Disclosure on Motion or Application Without Notice

(6) Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application.

Interlocutory Injunction or Mandatory Order

How Obtained

40.01 An interlocutory injunction or mandatory order under section 101 or 102 of the Courts of Justice Act may be obtained on motion to a judge by a party to a pending or intended proceeding.

Costs of Proceedings

General Principles

Factors in Discretion

57.01 (1) In exercising its discretion under section 131 of the Courts of Justice Act to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

(b) the apportionment of liability;

(c) the complexity of the proceeding;

(d) the importance of the issues;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(f) whether any step in the proceeding was,

(i) improper, vexatious or unnecessary, or

- (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted;
- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
 - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
 - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;
- (h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under rule 1.08; and
- (i) any other matter relevant to the question of costs.

Costs Against Successful Party

(2) The fact that a party is successful in a proceeding or a step in a proceeding does not prevent the court from awarding costs against the party in a proper case.

COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43

Interlocutory Orders

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

SCHEDULE “C” – PAGE POSITION ON EXPENSE CATEGORIES

Expense	CAD\$	Page/265 Evidence
AirSprint	\$9,032,298	Funds relating to the purchase of the fractional aircraft interests are already frozen. Page does not contest that the funds used to purchase the aircraft interests are OTE funds.
Direct Cheques and Bank Wires	\$1,281,426	Page testified that OTE Logistics issued cheques to him for management fees and business expenses which total \$30,415 . The remainder of the expenses were advanced as business expenses, distributions, or tax payments. ¹²⁷ The Monitor filed no evidence on the purpose of the transfers and did not cross-examine Page. The Monitor admits that it continues to “investigate these disbursements to ascertain ... if they were made for legitimate purposes of the OTE Group”. ¹²⁸
Yacht/Pride Marine	\$4,227,335	The Yacht is being preserved and in the process of being sold by the Monitor. ¹²⁹ USDS\$1,000,000 (or CAD\$1,371,000) was obtained through financing with Essex Lease Financial Corporation. Those funds were transferred from Essex Lease to OTE and then to Pride Marine. Gen 7 Brands then repaid Essex Lease. Accordingly, the total impugned amount is actually CAD\$2,856,335 . ¹³⁰
Marine Related Transactions	\$207,930	Page testified that yacht-related expenses were paid for using his distributions. This totals \$61,994.68 . ¹³¹ The remainder of the payments were related to project management work performed by ICBM Inc. which is the operating company for an individual named GL Harvie. Mr. Harvie was paid for his work on the research and design of a solar farm at the blending sites. ¹³² This totals \$168,969.48 .

¹²⁷ First Page Affidavit, paras. 53-54, RMR, Tab 1, Exhibit R, pg. [193](#).

¹²⁸ First Page Affidavit, para. 165, RMR, Tab 1, pg. [46](#).

¹²⁹ First Page Affidavit, Ex. M (July 17, 2023 Yacht Sales Process & AirSprint Proceeds Order), RMR, Tab 1.

¹³⁰ First Page Affidavit, paras. 133-134, RMR, Tab 1, pg. [39](#); Second Page Affidavit, Exhibit S, Supp. RMR, Tab 1, pg. [159](#); Sixth Report, MMR, Tab 5, Appendix “C” indicates an amount of \$1,371,100.

¹³¹ First Page Affidavit, para. 150, RMR, Tab 1, pg. [42](#).

¹³² First Page Affidavit, para. 152, RMR, Tab 1, pg. [43](#).

Custom Home Builders	\$500,306	Page testified that these expenses were paid in lieu of his distributions. ¹³³
Furnishing / Pool / Decking / Fence / Contracting	\$325,627	Page testified that these expenses were paid in lieu of his distributions. ¹³⁴ Many were co-signed by Scott Hill. ¹³⁵
St. Lucia	\$638,579	\$582,158.23 relates to the OTE employee and client retreat held in St. Lucia at BodyHoliday. Page extended his stay which he paid with his distributions. Part of this amount was also lost due to late cancellations arising from COVID. Records are not available to determine the breakdown for this amount. ¹³⁶ Conservatively, for this motion, \$250,000 has been attributed to distributions. Page testified that \$56,420.77 were from his distributions for the purchase of appliances for his house in St. Lucia. ¹³⁷
Wedding	\$147,692	Page testified that these advances were made as part of distributions he was entitled to. ¹³⁸
RV Camping	\$142,868	Page testified that payments were advanced as distributions. ¹³⁹
CRA Payment	\$79,000	Page testified that the limited partners agreed to cover the cost as compensation to him given the other's comparative tax advantages. ¹⁴⁰

¹³³ First Page Affidavit, para. 152, RMR, Tab 1, pg. [43](#).

¹³⁴ First Page Affidavit, para. 166, RMR, Tab 1, pg. [46](#).

¹³⁵ Second Page Affidavit, para. 5, Supp RMR, Tab 1, pg. [2](#); Exhibits A-E of the Second Page Affidavit, Supp RMR, Tab 1, pg. [15](#).

¹³⁶ First Page Affidavit, para. 156, RMR, Tab 1, pg. [44](#).

¹³⁷ First Page Affidavit, para. 157, RMR, Tab 1, pg. [44](#).

¹³⁸ First Page Affidavit, para. 168, RMR, Tab 1, pg. [46](#).

¹³⁹ First Page Affidavit, para. 169, RMR, Tab 1, pg. [46](#).

¹⁴⁰ First Page Affidavit, para. 169, RMR, Tab 1, pg. [46](#).

ORIGINAL TRADERS ENERGY LTD. et al.
Applicants

GLENN PAGE et al.
Respondents
Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE RESPONDENTS,
GLENN PAGE AND 2658658 ONTARIO INC.
(MOTION FOR MAREVA INJUNCTION -
RETURNABLE DECEMBER 21, 2023)**

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