

CITATION: Wang v. Feng, 2023 ONSC 2315
COURT FILE NO.: CV-21-00658965-0000
DATE: 20230414

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B.16 and of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 and of the *Limited Partnerships Act*, R.S.O. 1990, c. L.16.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
HUIXIAN WANG aka ALICE WANG)
and CANADA GREAT CAPITAL INC.) *Stephen Barbier and Ben Tustain for the*
Applicants) Applicants
)
- and -)
)
JIUBIN FENG aka JIU BIN FENG aka)
JERRY FENG, SHU RONG ZHU, QIJIN) *H. Keith Juriansz and Akshay Sandhir for*
FENG, CIM KENNEDY CREEK INC.,) the Respondents
)
CIM DEVELOPMENT LP, CIM)
INVESTS DEVELOPMENT INC.,)
2376768 ONTARIO INC, 10502715)
CANADA INC., 1806856 ONTARIO)
LIMITED, ROYAL VICTORIA)
WINERY INC., CIM BAYVIEW)
CREEK INC. and BAYVIEW CREEK)
(CIM) LP) **HEARD:** March 23, 2023
)

Respondents

PERELL, J.

REASONS FOR DECISION

“No, no!: said the Queen. “Sentence first – verdict afterwards.” [Lewis Carrol, *Alice’s Adventures in Wonderland*.]

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A. Introduction

[1] The Applicants are Huixian (“Alice”) Wang and her closely held, wholly owned corporation Canada Great Capital Inc. I shall refer to the Applicants together as Ms. Wang.

[2] The Respondents are: (a) Jiubin (“Jerry”) Feng, (b) his wife, Shu Rong Zhu, (c) his adult daughter by a previous marriage, Qijin (“Cherry”) Feng, and (d) the following limited partnerships and corporations: Bayview Creek (CIM) LP, CIM Bayview Creek Inc., CIM Development LP, 10502715 Canada Inc., 1806856 Ontario Limited, 2376768 Ontario Inc., CIM Invests Development Inc., CIM Kennedy Creek Inc., and Royal Victoria Winery Inc., which I shall refer to as the “Feng/CIM corporate entities”.

[3] Ms. Wang’s Application is a complicated debt collection proceeding to recover an unsecured debt of \$1.0 million plus interest at somewhere between 15% to 24% per annum. (In her Notice of Application, she claims \$2.5 million as damages with respect to the loan.) It is a complicated Application because: (a) there is the uncertainty as to the nature of the indebtedness as a loan or as an equity investment; (b) there are at least five Debt Settlement Agreements for the same nebulous indebtedness; and (c) Ms. Wang and Mr. Feng are unreliable witnesses with incredible, irreconcilable, malleable, and inconsistent stories.

[4] Although it is just a debt collection proceeding, Ms. Wang throws everything but the kitchen sink at it. (In her Amended Notice of Application, she seeks 27 heads of relief.) She sues

the Respondents for fraud, oppression, breach of fiduciary duty, negligent misrepresentation, breach of contract, and unjust enrichment. She relies on the Ontario *Business Corporations Act*,¹ the *Canada Business Corporations Act*,² the *Courts of Justice Act*,³ and the *Limited Partnerships Act*.⁴ She also relies on the jurisprudence associated with the *Fraudulent Conveyances Act*⁵ and the *Assignments and Preferences Act*.⁶

[5] Two years ago, by application proceedings, Ms. Wang began her pursuit for repayment. She brought an interlocutory motion, and she obtained what was anticipated by my colleagues Justices Papageorgiou and Myers to be an interim *Mareva* injunction. Justice Myers' Order included a requirement that Mr. Feng disclose his assets. Justice Myers' Order was akin to a pre-judgment judgment-debtor examination.

[6] Now before the court, there is a motion and a cross-motion.

a. In the motion, Ms. Wang seeks: (a) a continuation of the *Mareva* injunction, which was granted by Justice Papageorgiou and continued by Justice Myers; (b) a timetable for the hearing of her Application; and (c) a declaration that Mr. Feng is in contempt of the disclosure Order that was part of Justice Myers' Order.

b. In the cross-motion, the Respondents seek Orders setting aside Justice Papageorgiou's and Justice Myers' injunctive Orders.

[7] For the more detailed reasons that follow, I dismiss Ms. Wang's motion and I grant the Respondents' cross-motion on terms. Ms. Wang's case has never satisfied the test for the extraordinary relief of a *Mareva* injunction against either the debtors or the guarantor, and she ought not to have been granted what is in effect pre-judgment execution for a debt claim. Pre-judgment execution and pre-discovery disclosure are highly exceptional orders that are not generally available for debt collection proceedings. Ms. Wang presented her case as if it was appropriate for those extraordinary remedies, and through a procedural misadventure, she secured pre-judgment execution against some of the Respondents and a pre-discovery disclosure order against Mr. Feng that she ought not to have obtained. Further, Ms. Wang's case was never appropriate for a proceeding by application, and it must be converted into an action.

[8] The cross-motion is granted on the following terms:

a. The Orders of Justice Papageorgiou and Justice Myers are vacated.

b. Ms. Wang's Application is converted into an action (this direction was unopposed) with Ms. Wang as plaintiff and the Respondents as defendants.

c. Ms. Wang shall deliver within 20 days of the release of these Reasons for Decision: (a) her Statement of Claim; and (b) her Affidavit of Documents with official translations

¹ R.S.O. 1990, c. B.16.

² R.S.C. 1985, c. C-44.

³ R.S.O. 1990, c. 43.

⁴ R.S.O. 1990, c. L.16.

⁵ R.S.O. 1990, c. F.29.

⁶ R.S.O. 1990, c. A. 33.

of any Chinese language documents.

d. Following the delivery of Ms. Wang's Statement of Claim, the Respondents shall deliver within 20 days: (a) their Statement of Defence and any Counterclaim on Ms. Wang's undertaking as to damages; and (b) their Affidavit of Documents with official translations of any Chinese language documents.

e. After the close of pleadings, the action shall proceed pursuant to the *Rules of Civil Procedure*.⁷

f. The costs of this application and of the motion and the cross-motion shall be in the cause of the action.

B. Methodology

[9] As I shall explain in detail below, Ms. Wang's application is a nebulous debt collection proceeding against debtors and an alleged guarantor to recover \$1.0 million plus interest at somewhere between 15% to 24% per annum. It is a debt collection action that has gone down the rabbit hole into Litigation Wonderland.

[10] The procedural background is a misadventure, and the evidentiary background is an amalgam of fiction and non-fiction. Ms. Wang and Mr. Feng are both unbelievable witnesses who do not tell a plausible, consistent, or candid story. Although there are some events about which there is no dispute, nevertheless for the dozen or so major incidents that benchmark their stories, they tell tales that contradict themselves and each other. Their respective multiple accounts of the events diverge extensively and none of the multiple accounts is internally consistent. Their cross-examinations on their affidavits expose variations on the variations.

[11] I do not envy the judge who will ultimately have to resolve Ms. Wang's claims, but fortunately for me, for present purposes, I do not need to decide which version of their stories is the true one. For present purposes all I need to do is: (a) to describe each sides' preferred version of the events leading up to the litigation without resolving who is telling the truth about those events; (b) to describe the subsequent procedural history in more detail, including describing the procedural misadventure by which Justices Papageorgiou and Myers made their respective Orders; (c) to describe what has happened procedurally since Justices Myers made his Order; (d) to describe a few miscellaneous facts that are relevant to determining the motion and the cross-motion; (e) to explain why I am dismissing the motion to punish Mr. Feng for contempt; and (f) to explain why I am vacating the injunctive Orders granted by my colleagues.

C. Factual Background

1. Introduction

[12] For the purposes of determining whether or not to grant a *Mareva* injunction, the court makes a "preliminary review" of the motion record to determine whether the moving party has

⁷ R.R.O. 1990, Reg. 194.

demonstrated a *prima facie* case. In the immediate case, the notion of a preliminary review is an oxymoron and because of the arguments of the parties I have had to undertake a deeper dive into the motion record and draw some conclusions. That said, nothing of what follows is intended to create any issue estoppels, and a trial judge may come to different conclusions.

[13] For the motion and the cross-motion, I shall describe the factual background in three parts. First, I shall introduce the parties and one major participant in the events. Second, I shall summarize the major material facts of Ms. Wang's case and of Mr. Feng's defence to it. It shall be helpful to the reader to keep in mind that the major factual battleground is about whether, when, when-not, why, where, and how Mr. Feng allegedly personally guaranteed the indebtedness of the Feng/CIM corporate entities. It is a true fact that Ms. Wang loaned or invested \$1.1 million. What is in doubt is who is primarily or secondarily liable to repay Ms. Wang. Third, I shall set out a few miscellaneous findings of fact that are relevant to the resolution of the motion and the cross-motion.

[14] As noted above, for the purposes of resolving the motion and the cross-motion, I do not have to make conclusive findings of fact about the underlying litigation in which Ms. Wang seeks to recover the principal sum of \$1.0 million plus interest of between 15% to 24% per annum. My findings of fact are exclusively for the purposes of deciding the motion and the cross-motion.

2. The Parties and the *Dramatis Personae*

[15] The Applicant **Huixian (“Alice”) Wang** is a Chinese Canadian who lives in Toronto. Ms. Wang owns the Applicant, Canada Great Capital Inc.

[16] Ms. Wang deposes that she knows very little English, which is undoubtedly true.

[17] Ms. Wang also deposes in her translated affidavits that she does not have a sophisticated grasp of Canadian business practices or legalities. That evidence is not necessarily true.

[18] As a review of the evidence on this application will reveal, Ms. Wang's business acumen is a contentious issue. Ms. Wang is a university educated Chinese immigrant to Canada who owns and manages her own private investment corporation, the co-Applicant, Canada Great Capital Inc. She has had access to professional legal assistance, which she has used when it suits her purposes. She has had the assistance of her former male companion Qing (Steven) Zhang, of whom more will be said below, but who is touted as having proficiency in the English language and with business documents.

[19] There are some quite astute and self-serving provisions in some of the five Debt Settlement Agreements that favour Ms. Wang, and the presence of those astute provisions suggest business acumen, and, of course, she owns and operates a privately held corporation presumably with legal and accounting and tax reporting assistance.

[20] And, as described below, Ms. Wang, amongst other business endeavours, assumed the chief executive officer position of CIM International Inc., a public company that was part of Mr. Feng's business enterprise, for a period of time. She, however, says that this was only a nominal appointment, and this confession of business incompetence is just one of the bizarre pieces of evidence in the immediate case.

[21] As the description of the factual background will reveal, I have many reasons to doubt the reliability, credibility, and believability of Ms. Wang. While aspects of her evidence are believable, other aspects of her evidence are inconsistent, implausible, unreasonable, guarded, misleading, or contradicted by documentary evidence.

[22] The Respondent **Jiubin (“Jerry”) Feng** also known as Jiu Bin Feng is a Chinese Canadian businessman who is a land developer and investment syndicator.

[23] Mr. Feng is the directing mind of the following Respondent limited partnerships: (a) CIM Development LP, through his control of its partner the Respondent 2376768 Ontario Inc., which he owns; and (b) Bayview Creek (CIM) LP, through his control of its general partner the Respondent 10502715 Canada Inc., which he owns.

[24] Mr. Feng is the owner of the following corporate Respondents: (a) 1806856 Ontario Ltd; (b) 2376768 Ontario Inc.; (c) CIM Bayview Creek Inc., which owns the “Bayview Creek Lands”, a property municipally known as 10747 Bayview Avenue in Richmond Hill, Ontario; (d) CIM Invests Development Inc.; (e) CIM Kennedy Creek Inc., which owns the “Valleyview Lands”, a property municipally known as 3012 Kennedy Road in Scarborough, Ontario; and (f) Royal Victoria Winery Inc.

[25] Mr. Feng was a principal of CIM International Inc., which was a publicly traded company on the TSX until it was delisted by the Ontario Securities Commission, which was investigating fraud by Mr. Feng in respect of the company. CIM International Inc. is not a Respondent to this application.

[26] As the description of the factual background will reveal, I have many reasons to doubt the reliability, credibility, and believability of Mr. Feng. While aspects of his evidence are believable, other aspects of his evidence are inconsistent, implausible, unreasonable, guarded, misleading, or contradicted by documentary evidence.

[27] Ms. Wang and Mr. Feng are not reliable witnesses. It is not just that they provided self-serving testimony, which is to be normal and expected, it is that they both could not and did not provide a single narrative of the events that rang true on critical points. Although there were true facts about which they both agreed in their narratives, and although there were true facts that neither could avoid that emerged from their evidence, nevertheless, there was also evidence that was unbelievable on several critical matters about several critical events and as the factual background will reveal, there are a plethora of unreliable documents.

[28] I do not go so far as to find that Ms. Wang or Mr. Feng lied. Lying involves knowingly telling a falsehood, and as I have already mentioned for the purposes of the motion and the cross-motion, it is not necessary for me to determine who is telling the truth and who speaks falsely or mistakenly. It is also unnecessary to determine if there is premeditation or intent in their accounts of their malleable stories. For present purposes, I can assume that Ms. Wang and Mr. Feng both recalled events in a self-serving way but honestly believed their own reconstruction notwithstanding other evidence or documents that belied the reliability if not the sincerity of their testimony.

[29] For present purposes, without deciding which version of the events is true, I shall, however,

need to discuss Mr. Feng's argument that Ms. Wang failed in her legal obligations when seeking an injunction without notice to the opposing side and Ms. Wang's argument that Mr. Feng is the cheater and should be held in contempt for not complying with Justice Myers' disclosure Order.

[30] **Shu Rong Zhu** is Mr. Feng's second wife. She is a licensed real estate salesperson. Ms. Zhu and Mr. Feng have a young daughter, whom I understand is around ten or eleven years of age. As the stories below will reveal, it seems that Ms. Zhu has been joined as a party because Mr. Feng pledged their matrimonial home on Penwood Crescent, which is registered in her name, in the May 2019 Debt Settlement Agreement.

[31] **Qijin ("Cherry") Feng** is Mr. Feng's adult daughter by his first wife. It seems that she has been joined as a party because of Ms. Wang's belief that there has been a fraudulent conveyance, a gift of a condominium on Bay Street, Toronto by Mr. Feng to his daughter with the intent to put assets beyond the reach of his creditors, including Ms. Wang.

[32] **Qing (Steven) Zhang** is the former male companion of Ms. Wang and the former executive assistant to Mr. Feng and an executive in his corporate entities. Mr. Zhang is a Chinese Canadian who was a physician in China and whom I am told has language skills in both Chinese and in English.

[33] According to Mr. Feng, Ms. Wang had a romantic relationship with Mr. Zhang. Mr. Feng said that he was introduced to Mr. Zhang by Ms. Wang and at her suggestion, in 2016, he hired Mr. Zhang, who had excellent skills in Chinese languages and in English, as a personal assistant. Mr. Zhang was subsequently appointed as the Secretary of the CEO of CIM International Group Inc. As the following description of the background facts will reveal, Mr. Zhang played a major role in the drama.

3. The Parties' Stories: A Tale of Two or More Tales

[34] The parties cannot agree about how they first met, but apart from being a collateral issue to test their testimonial reliability and credibility, nothing turns on this part of their stories, and so I can begin the parties' stories by saying, once upon a time, Ms. Wang met Mr. Feng.

[35] Ms. Wang and Mr. Feng became neighbours in the tony Bridle Path area of Toronto. Mr. Feng lived at 35 Penwood Crescent with his wife and young daughter. Nearby at 136 Denlow Avenue lived Ms. Wang with her two children. Mr. Feng believes that Mr. Zhang and his son also resided at 136 Denlow Avenue during his romantic liaison with Ms. Wang, whose husband lives and works in China and only occasionally visits his family in Toronto.

[36] The parties do agree that in **2015**, Ms. Wang made a \$100,000 unsecured loan to Mr. Feng with interest at 24% per annum. Ms. Wang understood that Mr. Feng was using the money with respect to CIM Kennedy Creek Inc.'s development of a property on Bayview Avenue in Richmond Hill.

[37] It is Ms. Wang's evidence that after the \$100,000 unsecured loan, in **November 2016**, she and Mr. Feng made an oral agreement in which she agreed to lend \$1.0 million in two \$500,000 tranches. She says that both tranches were with respect to the Valleyview Lands in Scarborough, Ontario. The Valleyview Lands was a property being developed through CIM Kennedy LP and

CIM Elgin Mills Creek LP.

[38] It is Ms. Wang's evidence that the first tranche of the Valleyview property loan was a three-year \$500,000 loan with interest at 20% per annum, payable monthly. The second tranche was a \$500,000 demand loan with interest at 24% per annum, payable monthly. She says that there was no security for the loan save for Mr. Feng's oral agreement to guarantee the loan.

[39] I pause to point out that an oral guarantee is unenforceable pursuant to s. 4 of the *Statute of Frauds*,⁸ which states:

Writing required for certain contracts

4 No action shall be brought [...] to charge any person upon any special promise to answer for the debt, default or miscarriage of any other person, [...], unless the agreement upon which the action is brought, or some memorandum or note thereof is in writing and signed by the party to be charged therewith or some person thereunto lawfully authorized by the party.

[40] Mr. Feng does not dispute that in **December 2016**, Ms. Wang advanced \$1.0 million. The motion record includes cheques to CIM Invests Development Inc. and CIM Development LP, whose general partner was the Respondent 2376768 Ontario Inc. More precisely, on **November 10, 2016**, Ms. Wang advanced \$500,000 to CIM Invests Development Inc. and between **December 1, 2016** and **December 16, 2016**, Canada Great Capital advanced \$500,000 to CIM Invests Development Inc. What is disputed is what was the destination and purpose of these funds.

[41] Mr. Feng's evidence diverges considerably about the alleged \$1.0 million loan. He agrees that there was an oral agreement. He agrees that there was a \$500,000, three-year term loan with interest at 24% made to CIM Development LP with respect to the Valleyview Lands. However, he denies that he personally guaranteed the loan.

[42] With respect to the so-called second tranche, Mr. Feng says that the additional \$500,000 paid by Ms. Wang through her corporation was not a loan but was an investment in the units of the limited partnerships for the Valleyview Lands. He says that in **May 2017**, Ms. Wang received but did not sign the Limited Partnership Agreement for 300 Class A units and 200 Class C units in the limited partnerships developing the projects. He says that she received the written agreement in 2017 but that she did not sign it until May 2019, in circumstances that I shall describe below.

[43] There is in the Motion Records for the motion and the cross-motion some documentary corroboration that the Valleyview Lands project involved: (a) CIM Kennedy LP, in which Ms. Wang or her corporation may have invested \$300,000, and (b) CIM Elgin Mills Creek LP, in which Ms. Wang's corporation may have invested \$200,000. There is in the Motion Records an unexecuted CIM Elgin Mills Creek LP limited partnership agreement dated November 16, 2016, which notes a \$200,000 investment by Ms. Wang's corporation. The November 16, 2016 agreement refers to a Schedule "B" which is a limited partnership agreement dated November 16, 2016 but only the signature pages of Schedule "B" are annexed in the Motion Record. The signature pages include a signature of Ms. Wang. Her evidence, as described below, however, is

⁸ R.S.O. 1990, c. S.19

that she was coerced to sign this document in May 2019, in the circumstances described below.

[44] In her cross-examination, Ms. Wang admitted that on **May 5, 2017**, she received a copy of a Limited Partnership Agreement with CIM Elgin Mills Creek LP. There seems to be no dispute that she did not sign this agreement until May 2019 in the circumstances described below.

[45] After investing \$1.0 million in some way or another, Ms. Wang's story continues and she says that by **December 2017** both the \$100,000 loan and the \$1.0 million (two tranche) loan were in default. Mr. Feng's version is that the \$100,000 loan and the \$500,000 loan were in default, and no return had been made on Ms. Wang's \$500,000 investment in the Valleyview Lands project.

[46] Thus, whatever the nature of her investment may have been in December 2016, it seems to be undisputed that throughout **2018** and **2019**, Ms. Wang unsuccessfully pressed for payment. She says that she was put off by assurances that Mr. Feng was selling off assets in his development business enterprise to repay the loan and trying to keep the CIM/Feng corporate entities from the shoals of financial disaster. That state of affairs brings the respective stories to the contested versions of the events of **May 2019**.

[47] In late May 2019, Ms. Wang is visiting China, an uncontested fact. Back in Canada is Mr. Feng and Ms. Wang's boyfriend Mr. Zhang, who is Mr. Feng's assistant, also uncontested facts.

[48] Ms. Wang says that around **May 21, 2019**, she received an urgent call from Mr. Feng who told her that her \$1.0 million loan would be lost unless she agreed to become a limited partner of CIM Kennedy LP, the owner of the Valleyview Lands. She says that although she was out of the country, with limited experience in the English language, and no opportunity or ability to seek legal advice, she agreed to become a partner in exchange for Mr. Feng signing a Debt Settlement Agreement, which she had drafted.

[49] The Chinese version of the agreement drafted was given to Mr. Zhang for transcription into English. The English language version of the Debt Settlement Agreement is prepared in Canada by Mr. Zhang for signature by Mr. Feng. Amongst the terms of the debt settlement agreement, which is set out below, is Mr. Feng's agreement to provide a personal guarantee.

[50] Ms. Wang says that she signed the Debt Settlement Agreement when she returned to Canada in August 2019 to become a limited partner as implored by Mr. Feng. She said that she only later discovered to her surprise that she had signed only the signature page of a 2017 Limited Partnership Agreement. She says that she was surprised to see that the partnership was with CIM Elgin Mills Creek LP because she says that it does not own the lands constituting the Valleyview Project, which surprise may be any of true, false, or irrelevant because other evidence suggests that Elgin Mills Creek LP was one of several entities developing the Valleyview Project along with CIM Kennedy LP.

[51] From Ms. Wang's version of the creation of the May 2019 Debt Settlement Agreement, it is uncontested, and it is uncontestable that both she and Mr. Feng signed Chinese and English language versions of the agreement.

[52] Mr. Feng's version of the events leading up to the May 2019 Debt Settlement Agreement bears only a passing resemblance to Ms. Wang's version. He deposed that he did contact Ms. Wang in China. He said that she was holding up a refinancing of the Valleyview project and that if she

did not sign the limited partnership agreement, he told her that he would sue her. He said that the bank was insisting on her signature which he said was outstanding since 2017. He testified that she agreed to provide that signature only if he signed the May 2019 Debt Settlement Agreement, which she had prepared in Chinese. He says that in her giving instructions to Mr. Zhang in preparing the May 2019 Debt Settlement Agreement as an English language document, she had added, without his knowledge, a personal guarantee from Mr. Feng.

[53] Mr. Feng says that Mr. Zhang presented English and Chinese versions of the May 2019 Debt Settlement Agreement to him for signature, and he signed. Mr. Feng said that Mr. Zhang told him the contracts had been prepared at Ms. Wang's direction and that the documents simply acknowledged the amounts that were owing to Ms. Wang. Mr. Feng says that Mr. Zhang said that Ms. Wang would not sign the limited partnership agreement unless Mr. Feng signed the May 2019 Debt Settlement Agreement. Mr. Feng says that when he signed, he did not read the document prepared by Mr. Zhang. Mr. Feng says he was not aware of the guarantee in the document notwithstanding that his signature is in close proximity to the personal guarantee in the document.

[54] I pause here to say that the evidentiary value of this hearsay evidence will be a problem for another day for the trial judge. For present purposes, I have Mr. Feng's evidence of what he heard and saw Mr. Zhang do. Neither party summoned Mr. Zhang as a witness for the purposes of the motion or the cross-motion. A trial judge will need to hear evidence from Mr. Zhang.

[55] Returning to the stories, it is admitted by Mr. Feng that on **May 23, 2019**, he signed the May 2019 Debt Settlement Agreement, which Ms. Wang says she signed in August 2019. (During cross-examination, it emerged that she was unclear about when she signed.) The terms of the Debt Settlement Agreement are set out below.

Debt Settlement Agreement

This agreement is made effective as of the 23rd day of May, 2019

BETWEEN:

JIUBIN FENG, (hereinafter "Jerry")

AND

HUIXIAN WANG (hereinafter "Alice")

(Collectively the "parties" and individually, a "Party")

Since January 2015, Jerry has borrowed a total of \$1,100,000 dollars in succession from Alice for the development of his multiple real estate projects. Some of the loans have been mature or will be mature soon. Alice has required the repayment for several times via verbal and written (WeChat) messages during the past several months, while none has been realized. The accumulated interest arrears at the current is \$144,000, as detailed below:

Date	Loan (CAD)	Interest owing	Note
2015/01/23	50,000	12,000	Short term loan, return after receiving a notice from lender, interest rate 24% annually
2015/01/27	50,000	12,000	
2016/12/01	450,0000	108,000	
2016/12/16	50,000	12,000	
2016/11/10	500,000		Loan to Valleyview Garden, 3 years term, 20% annual interest rate
Summary	1,100,000	144,000	

On May 22, 2019, Jerry urgently needed Alice to sign the CIM Kennedy LP Agreement and Jerry did some internal transactions of the fund usage of Alice's loans. Jerry requested Alice to sign this document within 24 hours, but Alice is currently in China. Alice doesn't speak English, also Alice doesn't have a chance to entrust a lawyer to review the contents of this agreement. Avoid delaying Jerry's work progress, the following items are discussed and determined between the parties:

- 1 Alice cooperates with Jerry to sign the CIM Kennedy LP Agreement;
2. Jerry guarantees and ensures the following:
 - (1) to pay out Alice's interest of \$144,000 before May 31, 2019;
 - (2) on November 24, 2019 (the three-year loan maturity date), the liquidation of the \$500,000 CAD loan with its interests, which Alice invested to the Valleyview Garden project, will be repaid to Alice;
 - (3) Jerry is selling some of his land projects. During this period, Jerry will pay Alice \$50,000 CAD as her daily living expenses. After the land transfer closed successfully and the bank loan to be repaid, Jerry will list Alice as the most priority to be paid for her the principal and interests on the above-mentioned loans;
 - (4) in the case of having a debt crisis, Jerry agrees to use his existing self-occupied property as the repayment guarantee for Alice's above loans.

Alice has the right to entrust professional legal personnel to dispose of the secured property including auction, the address of the pledged property is **35 Penwood Cres., Toronto, ON M3B3B1**. [bold in the original]

Due to the arrears and extension of the above-mentioned various borrowings and interest payments, the original signed agreement (some borrowing agreements have not been signed) has not been adjusted accordingly, and both parties agree to confirm and execute the terms signed in this agreement regarding the loans listed above. The original signed agreements are still valid, but if the terms in the prior agreement are inconsistent with this current agreement, this current agreement will prevail.

IN WITNESS WHEREOF this Agreement has been executed by the Parties effective as of the date first above written.

JIUBIN FENG

By: *Jiubin Feng* Date: *May 23, 2019*

HUIXIAN WANG

By: *Huixian Wang* Date: *May 23, 2019*

[56] Pausing here in the story telling, on the one hand, the terms of the **May 2019 Debt Settlement Agreement** would appear to support Ms. Wang's story that there was \$1.1 million in loans; however, on the other hand, she prepared the obviously self-serving document and the recitals in the agreement support some of Mr. Feng's story; i.e., that he signed the agreement in order to obtain Ms. Wang's signature on the limited partnership agreement and that circumstance rather supports his version that there was a \$500,000 loan and a \$500,000 purchase of units in a limited partnership or partnerships.

[57] Returning to the narratives, in **August 2019**, after her return from China, Ms. Wang consulted a lawyer, and she says that she was informed that Mr. Feng was not the owner of the property at 35 Penwood Crescent, which she says had been pledged as security in the May 2019 Debt Settlement Agreement. She was told that the Penwood Crescent property was actually registered in the name of Ms. Zhu. This revelation precipitated a storm of events in late August and, once again, Ms. Wang's version and Mr. Feng's version of what happened next diverge exponentially and there are incredible versions of the accounts of the events of August 2019.

[58] There also is a dispute about when Ms. Wang discovered who was the registered owner of the Penwood Crescent property that I cannot reconcile. Turning to Ms. Wang's account, she says that upon her discovery that Mr. Feng was not the owner of the property as promised under the May 2019 Debt Settlement Agreement, she asked Mr. Feng to arrange for Ms. Zhu's signature. Ms. Wang says that Mr. Feng agreed to obtain his wife's signature and that he took away the original copy of the agreement for that purpose. Ms. Wang says, however, he later refused to return the document, but she had kept a copy.

[59] However, Mr. Feng’s version is that Ms. Zhu’s ownership of the Penwood Crescent property has nothing to do with Ms. Wang handing over her copies of the May 2019 Debt Settlement Agreement because Ms. Wang only found out about the ownership situation much later in the year because of inquiries made by her lawyers. Mr. Feng’s version of the events is that he had just discovered that he had given a personal guarantee in the May 2019 Debt Settlement Agreement that had been prepared by Ms. Wang’s boyfriend and his personal assistant, Mr. Zhang. Mr. Feng said that when he realized what he had signed, he confronted Ms. Wang and he retrieved the Chinese and the English versions of the May 2019 Debt Settlement Agreement. He took them away because Ms. Wang had agreed to revoke the agreement. He said that they agreed to enter into two replacement Debt Settlement Agreements.

[60] I pause to say that Ms. Wang’s pleaded version of the capture of the May 2019 Debt Settlement Agreement is inconsistent with her other versions of the event and an illustration of how difficult it is to keep a straight story. In her Amended Notice of Application, she pleads: “Upon learning that Zhu owns 35 Penwood Crescent, Wang raised the ownership of 35 Penwood Crescent with Feng, who then attempted to disclaim the [May 2019 Debt Settlement Agreement]” which version belies her version that Mr. Feng took away the documents for his wife’s signature.

[61] Returning to the stories, there are indeed two August Debt Settlement Agreements that arose around the time that Mr. Feng took away the May 2019 Debt Settlement Agreement; however, Ms. Wang says that the two Debt Settlement Agreements were not replacements but were supplementary agreements that did not negate the May 2019 Debt Settlement Agreement. She says that these supplementary agreements were in furtherance of the assurances given by Mr. Feng that he would arrange the repayment of the monies invested by Ms. Wang, which assurances she calls Mr. Feng’s “Second Proposal” to secure repayment of the money she had placed with Mr. Feng. Thus, depending on which version of the factual nexus is true, the two August 2019 agreements are either supplementary agreements or were replacement Debt Settlement Agreements.

[62] What is definitely true is that (be they replacement agreements or be they supplementary agreements), the August 2019 Debt Settlement Agreements were prepared by Ms. Wang’s lawyers.

[63] One of these lawyer-prepared Debt Settlement Agreements is with respect to CIM Kennedy Creek Inc., CIM Development LP and 2376768 Ontario Inc. This agreement concerns the Valleyview Lands. This agreement along with an amending agreement states:

DEBT SETTLEMENT AGREEMENT

This agreement is made effective as of the day of August 2019

Between:

CIM Kennedy Creek Inc., CIM Development LP and its General Partner 2376768
Ontario Inc,

And

Huixian Wang

WHEREAS CIM Kennedy Creek Inc., CIM Development LP and 2376768 Ontario Inc. are affiliated companies with their headquarters at [...] (hereinafter jointly referred as the "Debtors") as joint venture to own, Invest and develop real estate development project located at 3000 Kennedy Road, Toronto, ON (the "Valleyview Project").

AND WHEREAS Huixian Wang (the "Creditor") an individual residing York Region, advanced the sum of \$500,000.00 on December 16, 2016 to the Debtor as a short-term loan to the Valleyview Project (the "Loan" or the "Debt"). The purpose of the Loan is to develop and maintain the Valleyview Project, including payment for construction, mortgage, vendor bills, and property tax.

AND WHEREAS both the Debtors and Creditor, prior to funds advanced, agreed that (1) the interest rate was 24% per annum and interest payable quarterly, and (2) the loan was due on demand.

AND WHEREAS the Debtors stopped interest payment after December 2017.

AND WHEREAS The Creditor has repeatedly requested for repayment of the principal and accrued interest. The Debtors, however, are not able to repay the loans and accrued interest. To avoid immediate litigation, the Parties have now settled the sum of the principal and interest rate and repayment schedule as follows:

1. The parties hereto confirm the truth of the above recitals.
2. The total loan amount is \$768,800 as of December 16th, 2019. The Debtors acknowledge themselves indebted to and promises to pay to the Creditor the same principal amount subject to the terms and conditions hereinafter provided.
3. The interest rate for the Loan Amount is 24%;
4. The principal amount outstanding shall be repaid in full the earlier of:
 - a. December 31, 2019, or
 - b. The date that the Debtors sell more than 30% of their interest in the Valleyview Creek Project,
5. If the Debtors fail to repay the loan in full on or before December 31, 2019, the Debtors shall consent, without any defence, to a court order that:
 - a. CIM Kennedy Creek Inc., CIM Development LP and 2376768 Ontario Inc. (the Defendants or Debtors) shall repay Huixian Wang (the Plaintiff or Creditor) the sum of \$768,800 for liquidated damages;
 - b. the sum of \$5,000 for the costs; and

c. The judgment bears interest at the rate of 24 per cent per annum commencing the judgment date.

6 The Debtors undertake not to file an assignment or a petition in bankruptcy, as the case may be, or a petition to take advantage of any insolvency statute.

7. This Agreement may be executed by the parties on the same or separate counter parts and transmitted by facsimile or email pdf, each of which shall constitute an original and all of which shall together constitute one and the same instrument.

TO WHICH AGREEMENT the parties below have affixed their signatures in agreement with the above.

Borrowers: CIM Kennedy Creek Inc., CIM

Development LP and 2376768 Ontario Inc.

Name: JIUBIN FENG

I have the authority to bind the above companies.

Lender:

Name. HUIXIAN WANG

{.....}

[...]

Both the Debtors and Creditors have now agreed that the interest rate decreased from 24% per annum (original) to 15% per annum (current), the effective date is January 1, 2019.

[...]

[64] As appears from a reading of the agreement, it does not speak to one or two loans for an aggregate principal sum of \$1.0 million. It speaks to a \$500,000 loan that with interest arrears is calculated to be \$768,800 liquidated damages. The agreement does not have a guarantee from Mr. Feng in his personal capacity. Under the agreement, the CIM Kennedy Companies are indebted to Ms. Wang for \$768,800 plus interest at the rate of 15% per annum. The agreement specifies that the principal would be repaid the earlier of December 31, 2019 or when the CIM Kennedy Companies sold more than 30% of their interest in the Valleyview Project. In the event of a default, the CIM Kennedy Debt Settlement Agreement stated that the CIM Kennedy Companies will consent to a judgment if there is a default in payment.

[65] The second August 2019 Debt Settlement Agreement is with respect to Bayview Creek

(CIM) LP, 10502715 Canada Inc., and Royal Victoria Winery Inc. This agreement states that these companies are indebted to Ms. Wang in the amount of \$141,360 with interest at 15% per annum. Its terms are similar to the agreement about the Valleyview Lands but are about the properties on Bayview Avenue in Toronto. This agreement includes the provision that the debtor companies will consent to judgment if there is default in repaying the indebtedness.

[66] Pausing here, it may be observed that neither of the August 2019 Debt Settlement Agreements speaks to the alleged second \$500,000 tranche of a \$1.0 million loan. Thus, it will be for the trial judge to determine: (a) whether a \$1.0 million loan ever existed; (b) whether if it existed, it was confirmed by a 2019 Debt Settlement Agreement; (c) whether the 2019 Debt Settlement Agreement was voided and replaced by two replacement Debt Settlement Agreements; and (d) whether the 2019 Debt Settlement Agreement was not voided and was supplemented by two supplementary Debt Settlement Agreements.

[67] Returning to the stories, it seems that by **December 2019**, Ms. Wang still had not recovered anything from her chase for repayment. How many agreements there may have been, they were all in default. The saga thus continues, and Ms. Wang says that she was still pressing for payment and that Mr. Feng continued to either put her off or he urged her to sign new agreements under the guise of the assurances or warnings that this was the only pathway to repayment. Ms. Wang says that although she couldn't understand them, she signed the documents at Mr. Feng's insistence. She received a promissory note and prescription units for the Valleyview Lands.

[68] In **January 2020**, there is an event that is only indirectly related to Ms. Wang's pursuit of repayment, but it fuels the fire to the contentious issues of whether it is true that Ms. Wang lacks business acumen and whether Ms. Wang was not just a lender but was some sort of business partner with an equity interest in Mr. Feng's development projects. Ms. Wang says that around this time, she agreed to what she describes in her factum as "one odd request" from Mr. Feng. Her own version of what happened in January 2020 through to the autumn of 2022 is set out in paragraphs 24 and 26 of her factum, which state:

24. One odd request for help from Feng came in January of 2020, when he asked Wang to step in as Chief Executive Officer of CIM International, his publicly traded company. Feng made the request with Amanda Zhao ("Zhao"), a creditor, as part of an effort to appease a large group of creditors, who were threatening to push CIM International into insolvency. Wang understood that even though she did not speak English and had no experience directing a publicly traded company, she was being asked because she was a neutral party with an interest in making sure that CIM International overcame its challenges without prejudicing creditors.

25. Wang accepted Feng's invitation and became the temporary chief executive officer of CIM International until October of 2020. In that capacity, she simply signed the forms put to her by Feng and Zhao, even though she did not speak English and had no understanding of how to run a publicly traded company. Wang thought that she was preserving Feng's ability to repay her by staying in this role. However, Wang stepped down in October of 2020 when she was visited by investigators with the Ontario Securities Commission (the "OSC"), who were

looking into Feng's management of CIM International. The OSC later initiated a proceeding against Feng and CIM International, alleging that he had engaged in a scheme to solicit investments and loans from 36 members of the public under fraudulent pretences. No action was taken against Wang by the OSC and a decision in the proceeding against Feng remains outstanding following the completion of final submissions in late 2022.

25. Before stepping down as the CEO of CIM International, Wang continued to pressure Feng to repay the Loans, which were in default. Feng had already lost his Mackenzie Creek project through a power of sale-like procedure authorized by an Order of Justice Kimmel in 2019. The situation for Feng was becoming worse after Tracy and Jojo Hui on their own behalf and on behalf of a committee of creditors obtained a *Mareva*-injunction against the Bayview Creek Lands on September 18, 2020 and the investigation by the OSC unfolded as CIM International was removed from the Toronto Stock Exchange.

[69] I pause here to say that in March 2023 just before the motion and the cross-motion were argued, the OSC released its decision finding Mr. Feng culpable for some wrongdoing in the affairs of the public company. He is appealing the decision. For present purposes, all that I need say is that Ms. Wang thought the OSC's prosecution of Mr. Feng is relevant to the issue of whether a *Mareva* injunction should be granted in the immediate case because it provides evidence that Mr. Feng used money authorized by the investors exclusive for one project for different land development projects.

[70] Returning to the stories, to understand the situation in the fall of 2020, it is necessary to expand upon the information provided by paragraph 25 of Ms. Wang's factum. The situation in the fall of 2020 was that the financial disaster of Mr. Feng's enterprise was metastasizing. Mr. Feng's public company was being investigated by the OSC, and according to Ms. Wang, in order to stave off the creditors and save her own stake in the CIM/Feng enterprise she agreed to become the CEO of the public company. Meanwhile the CIM/Feng enterprise had lost a project known as the Mackenzie Creek project. The Bayview Creek lands, which were the subject matter of the second August 2019 Debt Settlement Agreement were being tied up by a *Mareva* injunction obtained by other creditors.

[71] It is at this juncture, that Ms. Wang says that on **October 7, 2020**, she and Mr. Feng negotiated another Debt Settlement Agreement with respect to the Bayview Creek corporate entities. This is the fifth Debt Settlement Agreement. Ms. Wang says that Mr. Feng entered into it to avoid her enforcing the August 2019 Debt Settlement Agreement with respect to the Bayview Creek entities.

[72] Mr. Feng's bizarre account of the creation of the October 7, 2020 Debt Settlement Agreement is that during the fall of 2020, Ms. Wang threatened a murder/suicide to kill Mr. Feng, his wife, his children, her own children, and herself unless he repaid her. Mr. Feng says that Ms. Wang went to his home on October 2, 2022 and threatened his wife. (He was not there.) His wife called the police. Mr. Feng says that in these circumstances, he prepared a handwritten document - another Debt Settlement Agreement - in Chinese and presented it to Ms. Wang. Ms. Wang made

changes to the Agreement in Chinese in her own handwriting. Mr. Feng says that she added a third document attachment to the two that Mr. Feng had attached to the new Debt Settlement Agreement and that she initialed all of the changes to the agreement and labelled and initialed all of the attachments.

[73] Exhibit “II” to Mr. Feng’s Affidavit dated June 7, 2021 is a certified English translation of the Chinese language Debt Settlement Agreement of October 7, 2020 with the handwritten deletions and interlineations made by Ms. Wang marked. Exhibit II states, with Ms. Wang’s interlineations underlined:

Agreement

Party A: WANG, HUIXIAN

Party B: FENG, JIUBIN

Whereas:

1. Party A lent a temporary loan of \$100,000 to the Bayview project in 2015 (attachment 1);
2. Party A invested \$200,000 in the inferior shares and \$300,000 in the preferred shares of the Valleyview Garden project in 2016;
3. Party A lent \$500,000 to the Valleyview Garden project in 2017;
4. Party A and Party B signed a debt repayment agreement in May 2020 (attachment 2) [sic 2019] and Party A replaced Party A’s \$200,000 creditor’s rights in the Bayview project with the \$200,000 inferior shares in the Valleyview Garden. Now that the Bayview project is about to be auctioned, there are uncertainties in the investment and creditor’s rights;

After consultations between Party A and Party B, the following agreement was reached:

1. Both parties agree to revoke the agreement of offsetting the \$200,000 inferior shares and the creditor’s rights. The \$200,000 creditor’s rights in Bayview shall be returned to Party B, and the \$200,000 inferior shares in the Valleyview Garden shall be returned to Party; if necessary, Party A agrees to hold on behalf of Party B;
2. Party B agrees to use his property located at 305-5 St. Joseph in Toronto at the price of \$300,000 in exchange for Party A’s loan to the Bayview project in 2015. The existing mortgage balance of \$129,482.81 will be paid by Party A, and the monthly net equity of \$170,517.19 will be used to offset the creditor’s rights in attachment 1;
3. There are multiple versions of Party A’s \$500,000 loan agreement in the Valleyview Garden. ~~All are hereby declared to be null and void. It will be necessary~~

~~to re-sign factually correct and without guarantee agreement as drafted by the project's lawyer. Attachment 3 prevails, and all other versions are invalid. {initials}. Party A agrees to settle in accordance with legal procedures when accounting for the project is complete, and promises that before accounting for the project is complete, any intent to exercise her rights must have Party B's written consent, this promise is an irrevocable promise shall not register the project with CPL but reserves other rights {initials}.~~

4. Both parties are aware of the risks in investment, no matter what happens, each shall assume its corresponding risks and gains or losses, and are mutually exempt from any economic, legal and other responsibilities.

5. Under no circumstances shall Party A disclose this agreement and any holding agreement information to any third party;

6. Upon execution of this agreement ~~and associated agreement~~, the purchase and sale agreement for the property will take effect.

Party A: WANG, HUIXIAN {signature}

Party B: FENG, JIUBIN {signature}

October 7, 2020.

[74] Ms. Wang does not deny signing the October 7, 2020 Debt Settlement Agreement, but she interprets it as changing little other than settling her claim for the \$100,000 loan, which is part of the narrative of this case but is not a substantive part of her claim to recover \$1.0 million plus interest at some rate between 15% and 24%.

[75] In other words, her version is that this Debt Settlement Agreement settled only the amount of the indebtedness of the CIM Bayview entities, but the \$1.0 million loan remained outstanding, including Mr. Feng's personal guarantee.

[76] Mr. Feng's position is that with the signing of the October 7, 2020 Debt Settlement Agreement, the only Debt Settlement Agreements were the October 7, 2020 Agreement itself and the August 2019 agreement with respect to the Valleyview Lands, which had set the total amount of the lending at \$768,800 as of December 16th, 2019. Mr. Feng says there were no personal guarantees outstanding. Further, Mr. Feng says that pursuant to the October 7, 2020 Debt Settlement Agreement, Ms. Wang received a condominium unit worth \$600,000 encumbered by a \$130,000 mortgage to resolve an approximately \$171,000 indebtedness. He claims a credit against the \$768,800 indebtedness.)

[77] There is obviously much more involved with respect to the circumstances of the October 7, 2020 Agreement, which, however, for present purposes I need not describe. Rather, I shall describe Ms. Wang's version of the events following the October 7, 2020 Agreement and leading to the March 17, 2021 commencement of this action and the *Mareva* injunction misadventure.

[78] After the October 7, 2020 Agreement, Ms. Wang continued to press for payment and in **January 2021**, Mr. Feng sent Ms. Wang a Notice of Sale and a draft Agreement of Purchase and

Sale. This notice went out to the investors in the Valleyview project. It seems that Mr. Feng was trying to sell the Valleyview project lands. Ms. Wang says that this was a precipitous and rushed sale. The documents revealed that there was a proposal to sell the lands for \$22 million. Mr. Feng asked Ms. Wang's consent for the sale. She did not give consent. The sale fell through in any event.

[79] Following the Notice of Sale, Ms. Wang instructed her lawyers to search for properties owned by Mr. Feng. The lawyers advised Ms. Wang that Mr. Feng had been the owner of a condominium at 711 Bay Street and two associated parking spaces, which had been purchased in 2009 but recently conveyed on March 12, 2021 to his daughter for no consideration. The Bay Street property had recently been privately mortgaged for \$546,000 and it was subsequently learned that his daughter had mortgaged the property and was using the funds to assist Mr. Feng in paying his legal expenses in the various proceedings being brought against him and his enterprise. Ms. Wang submits that this condominium gift is a fraudulent conveyance.

[80] In this action with Ms. Wang, Mr. Feng, however, denies that he or his daughter were involved in a fraudulent conveyance. He deposed that he had transferred the property to his daughter in furtherance of the matrimonial settlement with his former wife in divorce proceedings in Ontario that had occurred a decade earlier.

[81] Ms. Wang's lawyers also advised Ms. Wang that Mr. Feng was the owner of 1806856 Ontario Limited, which in turn was the owner of a property at 359 Spadina Avenue, in Toronto, Ontario. Ms. Wang said that she was concerned that Mr. Feng would take steps to shelter this property from his creditors. Ms. Wang sought her *Mareva* injunction to stop any conveyancing of this property. In this litigation, Mr. Feng deposed that the Spadina Avenue property was being held in trust for his daughter and his wife pursuant to a 2020 trust agreement.

[82] Meanwhile, on February 15, 2021, Mr. Feng circulated another notice of sale - but apparently not to Ms. Wang - and he advised the investors that the Valleyview Lands were being sold for \$21 million, which would cover the encumbrances and the expenses of the sale including brokerage fees. There would be nothing left for the investors.

[83] The sale of the Valleyview Lands was completed on **March 19, 2021**, which came two days after Ms. Wang had commenced her application in the immediate case.

4. Miscellaneous Facts

[84] The above description of the background facts is not meant to be comprehensive but should be sufficient for the purposes of the motion and the cross-motion. To the above description, there are a few miscellaneous facts that should be noted.

[85] Amongst the many contested facts in the immediate case, there is a contest about whom is the more illiterate in their command of the English language and about whom is the most naïve about legal matters. Both Ms. Wang and Mr. Feng accuse the other of taking advantage of their capabilities to contract and do business in other than their native tongue, which is not English.

[86] The affidavits of both Ms. Wang and Mr. Feng were translated into English by sworn

interpreters. Mr. Feng says that he relied on Ms. Wang's boyfriend, Mr. Zhang, to prepare the legal documents in English as apparently did Ms. Wang. Once again, it will be for a trial judge to determine the truth of this disputed but important fact in the immediate case.

[87] As noted above, there is the circumstance, which fairly might be regarded as suspicious that Mr. Feng made a gift of the condominium on Bay Street to his daughter while numerous lawsuits were being aimed at him and the Feng/CIM corporate entities and also his public company. Mr. Feng's answer to this was to say that he was acting in pursuance of the settlement of his matrimonial dispute with his former wife. That may or may not be the truth, but it is another matter that will have to be resolved by a trial judge. There is a similar situation with respect to the property on Spadina Rd. which may or may not be a fraudulent conveyance.

D. Evidentiary and Procedural Background

[88] On **March 17, 2021**, Ms. Wang and Canada Great Capital commenced this application. Ms. Cherry Feng was not initially named as a co-Respondent.

[89] On **March 18, 2021**, Ms. Wang moved without notice for a *Mareva* injunction. Her Motion Record was comprised of Ms. Wang's affidavit dated February 17, 2021 and exhibits. Justice Papageorgiou adjourned the *ex parte* motion. In her endorsement, she said:

9. While *Mareva* injunctions are important tools to address fraud in the civil context, they are a very narrow exception to the rule against prejudgment execution. I am not satisfied on the materials before me that such order should be made in the absence of the defendants.

10. I am directing that the plaintiffs provide notice to the defendants and that this matter be heard on notice before me on March 22, 2021 by zoom. [...]

[90] On **March 22, 2021**, Mr. Feng appeared in person, self-represented. Justice Papageorgiou granted a temporary partial *Mareva* injunction, and she adjourned the matter to March 29, 2021, so that Mr. Feng could retain counsel.

[91] A review of Justice Papageorgiou's endorsement for this hearing reveals that Mr. Feng attended unrepresented and asked for and was given a short adjournment to retain counsel. Ms. Wang consented to the adjournment, but she asked for an interim injunction. Justice Papageorgiou then treated the motion as an *ex parte* motion and recognizing that she only had the plaintiff's version of the events, she concluded that the requirements for a *Mareva* injunction were satisfied including the moving party's obligation to make full and frank disclosure of all matters in his or her knowledge which are material to the judge to know. In this regard, in her endorsement, Justice Papageorgiou stated:

43. The record is very detailed, outlines what appears to be all aspects of the dealings between the parties and is supported by documentary evidence. The plaintiffs have provided an undertaking as to damages. It appears that the plaintiffs have complied with these obligations.

[92] I shall return to this topic below in the discussion and analysis, but while Ms. Wang's record for the motion was very detailed, it fell very far short of telling all aspects of the dealings between the parties. A great deal of her own story of her dealings with Mr. Feng was missing and very little of Mr. Feng's conflicting version of which she was well aware was disclosed. The numerous inconsistencies in the documents were not pointed out. Although Justice Papageorgiou could not possibly be aware of it, she was being told a small fraction of the story and she was being provided with incomplete and cherry-picked documentary evidence, which had numerous internal contradictions that were not pointed out to her.

[93] On **March 29, 2021**, Mr. Feng again appeared in person, self-represented. This time, the motion was heard by Justice Myers. At this hearing, Mr. Feng presented an unsworn chronology of facts, which Justice Myers said was not admissible evidence. Justice Myers extended Justice Papageorgiou's temporary Order and adjourned the matter to April 1, 2021 to allow Mr. Feng to obtain counsel for himself and his corporate entities and for his wife and daughter to obtain counsel. For present purposes, the pertinent part of Justice Myers' endorsement was as follows:

Mr. Feng delivered a lengthy document that he called "Statement of Fact." No witness swore to the truth of the information contained in the document. It contained copies of other documents that were not authenticated under oath, and it contained translations of documents written in Mandarin language that were not prepared by an official translator. The document is therefore not properly evidence that the court can use today.

The essence of Mr. Feng's position is that Ms. Wang made an investment rather than a loan. He does not understand why he would be liable for a failed investment although he has tried to assist Ms. Wang he says. He also does not accept that his wife or daughter are proper parties. He asks me to remove the order today.

I understand Mr. Feng's concern and it highlights his need for a lawyer. The claims made by the plaintiff do raise legal bases for relief against Mr. Feng's spouse and daughter as alleged recipients of fraudulently taken funds and parties to alleged fraudulent conveyances.

There was more than sufficient evidence before Papageorgiou J. to support the order that she granted. As there is no further admissible evidence before me today, I extend the order until 4:00 PM on April 1, 2021 subject to it being extended further after the hearing that day. I am satisfied that on the current evidence, the plaintiffs have a strong *prima facie* case, has proven a serious risk of dissipation, irreparable harm, and that the balance of convenience is in her favour. It is open to the defendants to produce evidence that may change that outcome after a full hearing. In addition, the defendants may cross-examine the plaintiffs' witnesses and the plaintiffs will be entitled to cross-examine any witnesses for the defendants. Both sides can be required to produce their relevant documents concerning the matters in issue. If the claim goes ahead on a contested basis, there is a significant amount of work to be done before a full decision is made on an injunction.

[94] Once again, I shall return to this topic below, but I pause here to note that Justice Myers' decision was based on the same deficient evidentiary record as was presented to Justice Papageorgiou. Justice Myers appreciated that the outcome might be different on a fully contested motion, for which he anticipated a great deal more work needed to be done. Justice Myers appears to have treated the hearing before him on March 29, 2021 as if it were a hearing made without notice with an opportunity for Mr. Feng to have the resulting order set aside.

[95] On **April 1, 2021**, the parties appeared again before Justice Myers. This time, Mr. Feng and the Respondents were represented by counsel, namely Mr. Juriansz. However, Mr. Feng's lawyers were not appearing on the record, because the terms of their retainer had not been settled. In these circumstances, Justice Myers further extended the interim injunctive Order, and he adjourned the matter to a Case Conference on April 14, 2021 for scheduling of the hearing of the contested injunction motion.

[96] On **April 14, 2021**, at the case management conference, the Respondents appeared with Mr. Juriansz now officially on the record for the Respondents. However, no affidavit material had been delivered to tell the Respondents' side of the story. At the case management conference, Justice Myers made an Order continuing Justice Papageorgiou's Order until further notice, and he granted a *Norwich* Order against Royal Bank in respect of financial records concerning the Respondents.

[97] Justice Myers' Order also required the Respondents, i.e. Mr. Feng, to provide disclosure to the Applicants about their assets.

[98] Justice Myers' endorsement stated:

On April 1, 2021, I adjourned the applicants' motion to continue the order made by Papageorgiou J dated March 22, 2021 to a case conference today. The adjournment was to give the respondents' new counsel time to get up to speed and to allow the applicants to move forward with an amendment to the title of proceeding. I extended the order until today subject to further extension.

This morning the applicants delivered a further affidavit. The respondents' counsel objects and submits that the applicants should be held to the material that was before Papageorgiou J. However, the matter before her was on notice – albeit limited notice. But the whole point of requiring some notice was to avoid the issues associated with *ex parte* proceedings. In my view, in cases in which events unfold in real time updating affidavits are perfectly appropriate. Moreover, given the allegations of fraud, it is not surprising that an applicant will learn more as time passes.

The respondents had notice that the motion was returnable today and that an extension order would be sought. My prior endorsement noted that an extension was on the table at the case conference expressly.

Like Papageorgiou J, I'm satisfied for interim purposes that the applicants have demonstrated a strong *prima facie* case with sufficient impropriety to support an

inference of likely dissipation of assets. I appreciate Mr. Juriansz's submission that a disclosure order is not required in view of the respondents' willingness to make disclosure quickly. I would not question counsels' understanding of the obligations on the clients. However, Mr Wang's [sic] efforts to make disclosure are subject to legitimate question. Moreover, the applicants' evidence readily makes out the relevant tests for a *Norwich Pharmacal* order against Royal Bank of Canada.

Mr. Juriansz needs 30 days to provide responding materials. He advises that he intends to move to convert the application to an action in order to obtain discovery rights. It seems to me that the return of the interlocutory injunction hearing will therefore be a long motion. The following long motion dates are currently available without the need for a hearing in Civil Practice Court: August 11, 24, 27. They should let me know ASAP if they agree on one of these dates. Other dates may be available if none of these dates work for counsel. They can speak to the Motion's Coordinator and attend Civil Practice Court to look for other dates.

The respondents responding motion material and their own motions, if any, shall be served by May 14, 2021. The applicants may respond by May 31, 2021. The respondents may reply on their own motions, if any, by June 7, 2021.

Cross examinations and any examinations under summons shall be held before the end of June, 2021.

The applicants' factum is due two weeks before the motion return date. The respondents' factum is due one week before the motion return date. The parties are limited to one factum each for all motions that may be before the court.

[99] Once again, it appears that Justice Myers was treating Ms. Wang's interlocutory motion as the basis for an interim order capable of being set aside when the Respondents' side of the story was told, but he was not treating it any longer as a motion made without notice. Justice Myers did not set a date for the return of a contested motion but as appears from his endorsement, he envisioned that the parties would agree to a date in the late summer of 2021.

[100] On **June 7, 2021**, Mr. Feng delivered his responding affidavit to the *Mareva* injunction motion.

[101] On **June 10, 2021**, Mr. Feng's Counsel sent Ms. Wang's Counsel information about Mr. Feng's assets.

[102] On **July 15, 2021**, Mr. Feng delivered a supplementary affidavit about the Bay Street property.

[103] By letter dated **July 16, 2021**, Mr. Feng's Counsel requested dates for purposes of scheduling a hearing of a long motion with respect to the *Mareva* injunction. No reply letter was sent by Ms. Wang's counsel. Rather, on **July 26, 2021**, Ms. Wang brought a motion for a contempt order. Ms. Wang's motion record included the affidavit of Anna Honore, the legal assistant to Ms. Wang's Counsel and Ms. Wang's affidavit dated July 23, 2021.

[104] On **August 31, 2021**, counsel for both parties attended Civil Practice Court to schedule Mr. Feng's cross-motion to set aside the *Mareva* Injunction and Ms. Wang's motion for a contempt Order. The motions were scheduled for April 12, 2022.

[105] On **September 10, 2021**, Mr. Feng served the Respondents' motion for an Order setting aside the Orders of Justices Papageorgiou and Myers. The Respondents' motion was supported by a Motion Record comprised of Mr. Feng's affidavits dated June 7, 2021 and July 15, 2021 and the affidavit dated September 10, 2021 of Cindy Ho, a law clerk of Mr. Feng's Counsel.

[106] By letter dated **March 22, 2022**, Mr. Feng's Counsel provided Ms. Wang's Counsel with additional disclosure and productions.

[107] On **April 5, 2022**, Mr. Feng's Counsel wrote and advised Ms. Wang's Counsel that the Respondents' position was that the disclosure order had been satisfied. Counsel requested Ms. Wang's Counsel's position in regard to the pending contempt motion.

[108] It would appear that Ms. Wang's Counsel did not agree that Mr. Feng had complied with Justice Myers' order and on **April 6, 2022**, counsel for both parties attended Civil Practice Court, at which time, the parties consented to a hearing date of July 21, 2022 for the contempt motion and the cross-motion to set aside the *Mareva* injunction.

[109] For the rescheduled motions, Ms. Wang delivered a Reply Motion Record comprised of Ms. Wang's affidavit dated May 5, 2022 and Mr. Feng delivered a Responding Motion Record comprised of Mr. Feng's affidavits dated June 7, 2021, July 15, 2021, and May 27, 2022.

[110] On **June 6 and 7, 2022**, Ms. Wang was cross-examined.

[111] Once again, the motion did not proceed as scheduled in July 2022, because the cross-examinations had not been completed, and in **July 2022**, the motions were adjourned to **March 23, 2023**.

[112] On **January 19, 2023**, Ms. Wang failed to attend at the scheduled resumption of her cross-examination. Counsel for the Applicants was present, but Ms. Wang did not appear.

[113] On **January 20, 2023** and **February 7, 2023**, Mr. Feng was cross-examined.

[114] On **February 8, 2023**, Ms. Wang's cross-examination resumed, and it was completed.

[115] The motion and the cross-motion were argued on **March 23, 2023**. The evidentiary record filed on Ontariocourts.caselines.com totaled well over 4,000 pages.

E. Discussion and Analysis

1. The Contempt Motion

[116] It is convenient to discuss Ms. Wang's contempt motion first. It is convenient because Mr. Feng was obliged to comply with Justice Myers' Order notwithstanding that I shall be setting that Order aside for the reasons discussed later in these Reasons for Decision. A person who deliberately and wilfully breaches a court order, other than an order for payment of money,

commits civil contempt of court.⁹

[117] The offence of contempt consists of the intentional doing of an act which is prohibited by court order.¹⁰ Where the alleged contempt is the failure to comply with a court order, a three-pronged test is applied: (1) Did the order alleged to have been breached clearly and unequivocally state what should and should not be done? (2) Did the party alleged to have breached the order have actual knowledge of it? and (3) Did the party allegedly in breach intentionally do the act that the order prohibits or did he or she intentionally fail to do the act the order compels?¹¹ In assessing contempt allegations, courts should consider the totality of the evidence.¹²

[118] In the immediate case, it is beyond a reasonable doubt that Justice Myers' Order clearly and unequivocally stated what were Mr. Feng's disclosure obligations, and it is beyond a reasonable doubt that Mr. Feng was aware of Justice Myers' Order. However, what has not been proven in the immediate case beyond a reasonable doubt is that Mr. Feng's performance of his disclosure obligations was non-compliant. And in the immediate case, it has not been proven beyond a reasonable doubt that if Mr. Feng's performance of Justice Myers' Order was non-compliant, he was wilfully non-compliant.

[119] My review of the evidentiary and procedural record was that Mr. Feng endeavoured to comply with the disclosure order and although his compliance may not have been perfect, it was not wilfully non-compliant. While Ms. Wang did not have to accept Mr. Feng's position that he had been compliant, her remedy was a refusals motion, and it was an overreach to persist in a contempt motion in the circumstances of the immediate case.

[120] Ms. Wang's Counsel investigations of court records of other proceedings brought against Mr. Feng and his corporations reveal several instances of alleged failures by Mr. Feng to disclose significant assets. For example, on February 16, 2022, Justice Wilson made an Order by which Cimberg Developments Inc., which is a non-party to this application, received an \$11.0 million settlement. Typically, the assets of a corporation belong to the corporation and not its shareholders, and typically the shareholders' claims to the value of their corporation stand behind the security holders or trade creditors of the corporation; therefore, it is debatable whether or not Mr. Feng was obliged to disclose this asset as his own asset, a debate that could have been resolved on a refusals motion; however, if there was any hiding of assets here, it was a hiding in the plain sight of court proceedings open to public scrutiny and after the Royal Bank had dutifully responded to an *Anton Pillar* Order. These instances of Mr. Feng's failures to disclose are not proof beyond a reasonable doubt that he wilfully breached Justice Myers' Order.

[121] I dismiss the contempt motion.

⁹ Rule 60.11. *Chiang (Trustee of) v. Chiang* (2009), 93 O.R. (3d) 483 at para. 9 (C.A.), var'g (2007), 85 O.R. (3d) 425 (S.C.J.).

¹⁰ *Geremia v. Harb*, [2007] O.J. No. 305 at para. 24 (S.C.J.); *Re Sheppard and Sheppard* (1976), 12 O.R. (2d) 4 at 8 (C.A.).

¹¹ *Greenberg v. Nowack*, 2016 ONCA 949 at para. 25; *N-Krypt International Corp. v. Zillacomm Canada Inc.*, 2016 ONSC 3317; *Carey v. Laiken*, [2015] 2 S.C.R. 79 at paras. 33–35; *Catalyst Group Inc. v. Moyse*, 2015 ONSC 4388.

¹² *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 4006; *Sweda Farms Ltd v. Ontario Egg Producers*, 2011 ONSC 3650.

2. The Cross-Motion to Vacate the Orders of Justices Papageorgiou and Myers

Introduction

[122] Turning to the motion to continue Justice Myers' Order and the cross-motion to vacate Justice Papageorgiou's Order from which Justice Myers' Order was derived, as foreshadowed in the introduction, these Orders should be vacated.

[123] As I shall explain in some detail below, the Orders should be vacated for two reasons.

a. First, treating Justice Myers' Order as having been obtained *ex parte*, which practically speaking was the case at bar, notwithstanding that Mr. Feng had counsel at the hearings and case management conference before Justice Myers, it has been demonstrated that Ms. Wang did not make adequate disclosure to ground the extraordinary remedy of a *Mareva* injunction.

b. Second, contrary to the above conclusion and assuming that proper disclosure was made to justify Justice Myers' interim Order pending a full hearing, on the record now before the court, Ms. Wang fails the test for the granting of a *Mareva* injunction.

[124] The discussion and analysis of these two reasons shall be in three parts. First, I shall outline the applicable law about motions for a *Mareva* injunction. Second, I shall address the matter of whether Ms. Wang fulfilled her disclosure obligations on a motion made without notice. Third, I shall address the matter of whether Ms. Wang's case satisfied the test for a *Mareva* injunction.

(a) Legal Background

[125] Section 101 of the *Courts of Justice Act*¹³ provides the court with the jurisdiction to grant interlocutory injunctions including *Mareva* injunctions. Section 101 states:

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.

[126] Rule 40 of the *Rules of Civil Procedure*,¹⁴ provides that an injunction may be obtained on motion, and rule 40.02 (1) provides that an interlocutory injunction may be granted on motion without notice for a period not exceeding ten days. Rule 40 states:

¹³ R.S.O. 1990, c. 43.

¹⁴ R.R.O. 1990, Reg. 194.

RULE 40 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.

WHERE MOTION MADE WITHOUT NOTICE

Maximum Duration

40.02 (1) An interlocutory injunction or mandatory Order may be granted on motion without notice for a period not exceeding ten days.

[127] A *Mareva* injunction is an injunctive order that restrains the defendant from dissipating assets or from conveying away his or her own property pending the court's determination in the proceedings. For a *Mareva* injunction, the plaintiff must satisfy the requirements for an interlocutory injunction as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*¹⁵ and typically a plaintiff must establish: (1) a strong *prima facie* case; (2) irreparable harm if the remedy for the defendant's misconduct were left to be granted at trial; (3) the balance of convenience favours granting an interlocutory injunction; (4) the defendant has assets in the jurisdiction; and (5) that there is a serious risk that the defendant will remove property or dissipate assets before judgment.¹⁶ A strong *prima facie* case is one that will probably prevail at trial or is likely to succeed at trial.¹⁷ Upon a preliminary review of the case, the application judge must be satisfied that there is a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice.¹⁸ Absent unusual circumstances, the plaintiff must provide the undertaking as to damages normally required for any interlocutory injunction.

[128] The risk of removal or dissipation of assets can be established by inference and the defendant's prior fraudulent activities and improper conduct and the circumstances of the fraud itself including concealment, deception, evasion, and clandestine behaviour may support an

¹⁵ [1994] 1 S.C.R. 311.

¹⁶ *Woods v. Jahangiri*, 2020 ONSC 7404; *Ndrive v. Zhou*, 2020 ONSC 4568; *Crawford v. Standard Building Contractors Limited.*, 2020 ONSC 687; *Voysus Connection Experts Inc. v. Shaikh*, 2019 ONSC 6683; 2092280 Ontario Inc. v. Voralto Group Inc., 2018 ONSC 2305 (Div. Ct.); *Kashechewan First Nation v. Kirkland*, 2018 ONSC 3014; *SFC Litigation Trust (Trustee of) v. Chan*, 2017 ONSC 1815 (Div Ct.); *East Guardian SPC v. Mazur*, 2014 ONSC 6403; *United States of America v. Yemec* (2005), 75 O.R. (3d) 52 (C.A.); *DeMenza v. Richardson Greenshields of Canada Ltd.* (1989), 74 O.R. (2d) 172 (Div. Ct.); *Aetna Financial Services Ltd. v. Feigelman*, [1985] 1 S.C.R. 2; *Chitel v. Rothbart* (1982), 39 O.R. (2d) 513 (C.A.).

¹⁷ *Woods v. Jahangiri*, 2020 ONSC 7404; *Kashechewan First Nation v. Kirkland*, 2018 ONSC 3014; *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5; *Modry v. Alberta Health Services*, 2015 ABCA 265.

¹⁸ *Woods v. Jahangiri*, 2020 ONSC 7404; *Kashechewan First Nation v. Kirkland*, 2018 ONSC 3014; *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5; *Modry v. Alberta Health Services*, 2015 ABCA 265.

inference that the defendant will remove or dissipate property.¹⁹

[129] Since the general principle of the common law is that there shall not be execution before judgment,²⁰ a *Mareva* injunction is both an exception to a general rule and an exceptional exercise of the court's jurisdiction to grant interlocutory relief. A *Mareva* injunction is granted only sparingly and in the clearest cases.²¹ A *Mareva* injunction is an extraordinary remedy because as a general policy of civil procedure, a remedy that allows prejudgment execution against the defendant's assets is not favoured, but where there is a strong case that the defendant has defrauded the plaintiff the law's reluctance to allow prejudgment execution yields to the more important goal of ensuring that the civil justice system provides a just and enforceable remedy against such serious misconduct.²²

[130] On a motion for an interlocutory injunction made without notice, there must be full and fair disclosure of all material facts including the reasons for moving without notice.²³ The moving party must state his or her case fairly and must make a balanced presentation of the facts and law including any points of fact or law that favour the opposing party.²⁴ The moving party is under high obligations of candour and disclosure on a motion without notice.²⁵ A material fact is one that the judge may need to know in coming to his or her decision and that if not disclosed may affect the outcome of the decision.²⁶ A material fact is determined objectively, and it is not based on the subjective understanding of the moving party as to what is known or material.²⁷ The moving party on a motion must inform the court of any points of fact or law known to it that favour the other side.²⁸ Thus, a party moving for an interlocutory injunction without notice must fully set out in the material all relevant facts both favourable and unfavourable to its position. It is not sufficient to simply attach relevant documentary evidence as an exhibit to the applicant's supporting affidavit

¹⁹ *Riar v. Khudal*, 2020 ONSC 6238; *Kashechewan First Nation v. Kirkland*, 2018 ONSC 3014; *Electromart (Ontario) Inc v Fabianiak*, 2016 ONSC 5266; *Sibley & Associates LP v. Ross*, 2011 ONSC 2951.

²⁰ *OSF Industries Ltd. v. Marc-Jay Investments Inc.*, (1978), 20 O.R. (2d) 566 (H.C.J.); *Bedell v. Gefaell (No. 2)*, [1938] O.R. 718 (C.A.); *Lister & Co. v. Stubbs* (1890), 45 Ch. D. 1 (C.A.).

²¹ *Aetna Financial Services Ltd. v. Feigelman*, [1985] 1 S.C.R. 2.

²² *2092280 Ontario Inc v. Voralto Group Inc*, 2018 ONSC 2305 (Div. Ct.); *SFC Litigation Trust (Trustee of) v. Chan*, 2017 ONSC 1815 (Div. Ct.); *Aetna Financial Services Ltd v. Feigelman*, [1985] 1 SCR 2.

²³ *Hazelton Homes Corporation v. Mehta*, 2020 ONSC 849; *Voysus Connection Experts Inc. v. Shaikh*, 2019 ONSC 6683; *Hostman-Steinberg Ltd. v. 2049669 Ontario Inc.*, [2009] O.J. No. 2380 at paras. 20–23 (S.C.J.); *Sherwood Dash Inc. v. Woodview Products Inc.*, [2005] O.J. No. 5298 (S.C.J.); *Robert Half Canada Inc. v. Jeewan* (2004), 71 O.R. (3d) 650 (S.C.J.); *Parallel Medical Services Ltd. v. Ward*, [2002] O.J. No. 1498 at paras. 15–19 (S.C.J.); *Prodigy Graphics Group Inc. v. Fitz-Andrews*, [2000] O.J. No. 1203 (S.C.J.); *United States v. Friedland*, [1996] O.J. No. 4399 (Gen. Div.); *Yang v. Mao* (1995), 23 O.R. (3d) 466 (Gen. Div.); *Pulse Microsystems Ltd. v. SafeSoft Systems Inc.*, [1996] M.J. No. 217 (C.A.); *Chitel v. Rothbart* (1982), 39 O.R. (2d) 513 (C.A.).

²⁴ *Moses v. Metro Hardware and Maintenance Inc.*, 2020 ONSC 6684; *United States v. Friedland*, [1996] O.J. No. 4399 (Gen. Div.).

²⁵ *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368 at para. 95; *Re. CanaSea Petrogas Group Holdings Ltd.*, 2014 ONSC 6116 at para. 28; *Bank of Montreal v. Dimitri's Service Center Inc.*, [2008] O.J. No. 3689 (Div. Ct.).

²⁶ *An v. Ko*, [2005] O.J. No. 2000 (S.C.J.); *Pazner v. Ontario* (1990), 74 O.R. (2d) 130 (H.C.J.).

²⁷ *Bennett Estate v. Iran*, 2013 ONSC 6832 at paras. 16–18; *Euro United Corp. (Interim Receiver of) v. Rehani*, [2003] O.J. No. 2426 at para. 11 (Master); *United States v. Friedland*, [1996] O.J. No. 4399 at para. 36 (Gen. Div.).

²⁸ *United States of America v. Yemec* (2005), 75 O.R. (3d) 52 (Div. Ct.); *United States v. Friedland*, [1996] O.J. No. 4399 (Gen. Div.); *B.G. Schickendanz (Peel) Inc. v. Salna*, [1997] O.J. No. 2421 (Gen. Div.).

without revealing or highlighting the material facts.²⁹

[131] An interlocutory motion made without notice remains within the context of an adversary system, and while a party moving without notice cannot take unfair advantage of the absence of his or her adversary in arguing the facts and the law, and it goes without saying that the moving party cannot intentionally deceive or mislead the court, he or she is not obliged to argue against his or her own case or to argue both sides of the case; rather, he or she is obliged to fairly present his or her case and to fairly present the material facts that may favour the opponent.³⁰

[132] If the plaintiff or applicant has not disclosed all the facts in his or her knowledge material to the case, the court may vacate the injunction or refuse to extend it.³¹ The injunction may be set aside, notwithstanding that had full disclosure been made, the injunction would have been granted in the first instance.³² Forgetfulness of facts or even misapprehension of the importance of the facts not disclosed is no excuse for the party who has proceeded without notice to his or her opponent.³³

[133] However, the duty of full and frank disclosure is not enforced in a mechanical manner because motions without notice are usually brought urgently with little time for preparation and because a plaintiff should not be deprived of a remedy because there are imperfections in the affidavit or because inconsequential facts have not been disclosed; the challenged defects must be relevant and material to the discretion to be exercised by the court.³⁴

[134] The court has some discretion and may continue the interlocutory injunction if the undisclosed facts were not material or the non-disclosure was not intentional. In exercising its discretion to continue the injunction in circumstances of non-disclosure, the court should consider: (a) the practical realities that there is often urgency or an emergency that explains why the motion is made without notice; (b) whether facts were intentionally suppressed or whether simple carelessness or ignorance was the cause of the non-disclosure; (c) the pervasiveness of the non-disclosure; (d) the difficulty of determining what is a material or an immaterial non-disclosure; and (e) the significance to the outcome of the motion of the matters that were not disclosed to the court.³⁵

[135] On a motion to continue a *Mareva* injunction obtained without notice, the plaintiff has the burden of satisfying the court that the order should stand.³⁶ The motion to continue the order made without notice is not an appeal of the original order but is a substantive hearing to determine

²⁹ *L'Unita Development Corp. v. 505369 Ontario Ltd.*, [2001] O.J. No. 3581(S.C.J.); *830356 Ontario Inc. v. 156170 Canada Ltd.*, [1995] O.J. No. 687 (Gen. Div.); *Cimaroli v. Pugliese*, [1987] O.J. No. 2464 (H.C.J.).

³⁰ *Boal v. International Capital Management Inc.*, 2018 ONSC 2275 at para. 87.

³¹ *Voysus Connection Experts Inc. v. Shaikh*, 2019 ONSC 6683; *Jiaying Economic Co-operation Co. v. 2438866 Ontario Inc.*, 2017 ONSC 3214; *United States of America v. Yemec* (2003), 67 O.R. (3d) 394 (S.C.J.).

³² *Forestwood Co-operative Homes Inc. v. Pritz*, [2002] O.J. No. 550 (Div. Ct.).

³³ *R. v. Kensington Income Tax Commissioners*, [1917] 1 K.B. 486.

³⁴ *Sakab Saudi Holding Company v. Al Jabri*, 2021 ONSC 1772; *Bennett Estate v. Iran*, 2013 ONSC 6832; *Euro United Corp. (Interim Receiver of) v. Rehani*, [2003] O.J. No. 2426 (S.C.J.); *United States v. Friedland*, [1996] O.J. No. 4399 (Gen. Div.).

³⁵ *Bell ExpressVu Limited Partnership v. Rodgers*, [2007] O.J. No. 4569 (S.C.J.); *Robert Half Canada Inc. v. Jeewan* (2004), 71 O.R. (3d) 650 (S.C.J.); *Ontario Realty Corp. v. P. Gabriele & Sons Ltd.*, [2000] O.J. No. 4341 (S.C.J.).

³⁶ *Regalcraft Homes Inc. v. Salvadori*, 2014 ONSC 6990; *Vannatto Estate v. Smith (c.o.b. Bayview Contractors)*, [1999] O.J. No. 2264 at para. 8 (S.C.J.).

whether the original order should be rescinded, continued, or varied.³⁷ The motion for continuation is a hearing *de novo*.³⁸

(b) Did Ms. Wang Meet Her Disclosure Obligations on a Motion without Notice?

[136] In the immediate case, the source of Justice Myers' Order was Justice Papageorgiou's Order of March 18, 2021, which unquestionably was an Order made on a motion without notice. In my opinion, from the outset Ms. Wang did not make adequate disclosure.

[137] Indeed, in the circumstances of the immediate case, she ought to have known that she would be unable to make adequate disclosure. In other words, she knew that she should never have even sought to obtain an injunction without notice and there was no particular reason for her to do so. This is not to say that she should not have sought a *Mareva* injunction, only that there was no need to move without notice. There were a plethora of disclosures that she would need to make if she moved without notice but which she did not need to make if she had moved on notice and given Mr. Feng an opportunity subject to being cross-examined to tell his side of the story.

[138] In other words, she ought not to have ever taken on the obligation to make adequate disclosure knowing what she did of the highly contested events from 2015 to 2021. There was no evidence that Ms. Wang was induced by false representations to invest with Mr. Feng's enterprise. There were real, not phantom, development projects that were floundering. There is no evidence that there was a real risk that Mr. Feng was removing assets from the jurisdiction. Ms. Wang had no security for her indebtedness. Mr. Feng's development properties were not generating income, and he had sought Ms. Wang's consent to sell a major remaining asset in the hope of repaying her and other creditors. It appears that even if he tried, the assets were in land that was heavily encumbered with little to no equity for Mr. Feng to remove and dissipate.³⁹

[139] Ms. Wang did not adequately disclose pertinent facts and documentary evidence about numerous material facts that might have significantly affected Justice Papageorgiou's or Justice Myers' decision to grant injunctive interlocutory relief. Visualize, there were materially important facts that were not disclosed about:

- a. the circumstances of the creation of the May 2019 Debt Settlement Agreement, including the fact that the agreement was prepared on her instructions by her then boyfriend Mr. Zhang and that she knew that Mr. Feng was alleging that he had been deceived into signing this document;
- b. the circumstances by which Mr. Feng had retrieved both the Chinese language version and the English language version of the May 2019 Debt Settlement Agreement and his position that the agreements were revoked and that he had not given a personal guarantee;

³⁷*Robert Half Canada Inc. v. Jeewan* (2004), 71 O.R. (3d) 650 at paras. 30–35 (S.C.J.); *Howland v. Dominion Bank* (1892), 15 P.R. 56 (Ont. C.A.), aff'd (1893), 22 S.C.R. 130.

³⁸*Lee v. Chang*, 2018 ONSC 930; *NAC Air, LP v. Wasaya Airways LP* (2007), 88 O.R. (3d) 194 at paras. 16–17 (S.C.J.).

³⁹ See *1839392 Ontario Limited v. 1839314 Ontario Inc. et al.*, 2020 ONSC 2244.

- c. the circumstance that the August Debt Settlement Agreements were prepared by Ms. Wang's lawyers, which substantially undermines her narrative that she unknowingly signed documents at the urgent insistence of Mr. Feng;
- d. the fundamental difference between the parties about whether these August agreements were substitutes for the May 2019 Debt Settlement Agreement or supplements to that agreement;
- e. the circumstances of the repayment of \$100,000 loan by the conveyance of a condominium unit worth \$600,000 encumbered by a \$130,000 mortgage to resolve a \$170,000 indebtedness;
- f. the circumstance that she had changed the language of the October 7, 2020 Debt Settlement Agreement that had been drafted by Mr. Feng and that there was a serious dispute about the meaning of that contract and about what was attached to it; and
- g. the circumstance that Mr. Feng and his immovable property were not leaving the country and the disposal of assets was either on the initiative or insistence of trade creditors or in the normal course of a floundering business.⁴⁰

[140] I acknowledge that as matters procedurally evolved after Justice Papageorgiou's initial Order, it is arguable that Ms. Wang's obligation to make adequate disclosure of the opponent's position, which is required on a motion without notice, was no longer extant and thus it is arguable that it had become Mr. Feng's responsibility to make his own case for resisting a *Mareva* injunction. In this last regard, Mr. Feng's difficulties in securing counsel does not nullify that in the period between March 22, 2021 and April 14, 2021 (22 days), he did not come to court with even a short affidavit denying Ms. Wang's allegations and at least clarifying that he was not dissipating assets other than in the normal course of business. It was not until June 7, 2021 that Mr. Feng gave his version of the events. Justices Papageorgiou and Myers were never given any reason to doubt Ms. Wang's version of the material facts and 22 days was enough time to at least raise a doubt about the propriety or the necessity of a *Mareva* injunction.

[141] However, it is also arguable in the curiouser and curiouser Litigation Wonderland circumstance of the immediate case that Ms. Wang's obligations to make disclosure on a motion made without notice were never removed and were never satisfied in the circumstances of the immediate case. All may not be fair in love, war, and contested *Mareva* injunctions and Ms. Wang's counsel was present when the self-represented Mr. Feng presented his Statement of Facts, which revealed that there was another side of the story to tell. Ms. Wang was being opportunistic in allowing the motions to proceed based on an evidentiary record that she knew was not balanced in presenting her opponent's case.

[142] In her factum, Ms. Wang makes excuses for her failure to adequately disclose evidence. She submits: "Moreover, to the extent that the Applicants did not disclose evidence on an *ex parte* attendance that ought to have been disclosed, that non-disclosure can be explained by Wang's language difficulties and the very methods that Feng used to perpetuate his fraud." Neither excuse has any merit. Ms. Wang's affidavit was sworn in her native tongue and translated and there is no

⁴⁰ See *1839392 Ontario Limited v. 1839314 Ontario Inc. et al.*, 2020 ONSC 2244.

reason that her story could not be told with due regard to her disclosure obligations. The excuse of “the very methods that Feng used to perpetrate his fraud” makes no sense. When she swore her affidavit, she was aware of Mr. Feng’s methods, and they were no impediment to her making proper disclosure.

[143] In her factum, she makes the further excuse that she would not be aware that Mr. Feng would assert that the May 2019 Debt Settlement Agreement had been voided by him and so she can hardly be faulted for not disclosing a counterargument that Mr. Feng took for the first time in his filed materials. I do know which version of why Mr. Feng took away Ms. Wang’s copies of this agreement is true, but what I do know is that Ms. Wang knew and did not disclose a great deal more about the circumstances of the removal of that agreement and she knew and did not disclose a great deal more about the circumstances before and after the May 2019 Debt Settlement Agreement. She might not have had to disclose what she knew if her motion was made on notice; however, that is not how she initiated the motions, and in my opinion, she did not fulfill her obligations to provide fair disclosure on a motion made without notice.

[144] In the circumstances of the immediate case, it is understandable that Justices Papageorgiou and Myers made the decisions that they made; however, in my opinion, their Orders should be treated as Orders made on a motion without notice. If they are treated in that manner, I further conclude that they should be vacated because of Ms. Wang’s failure to provide adequate disclosure.

(c) Did Ms. Wang’s Case Satisfy the Test for an Interlocutory Injunction?

[145] I acknowledge that as matters procedurally evolved after Justice Papageorgiou’s initial Order, it is at least arguable that the obligation to make adequate disclosure of the opponent’s position that is required on a motion without notice was removed and it had become Mr. Feng’s responsibility to make his own case for resisting a *Mareva* injunction. It is for this reason that I shall provide a second reason for vacating Justices Papageorgiou’s and Myers’ Orders.

[146] As noted above, the first element of the test for a *Mareva* injunction is that the plaintiff show a strong *prima facie* case. In the immediate case, unlike most cases, where there is at least one believable witness, I am not satisfied that Ms. Wang has met the onus of showing a strong *prima facie* case.

[147] Ms. Wang’s case largely depends upon the May 2019 Debt Settlement Agreement, but the circumstances of the creation of that agreement and the question of whether it has been superseded by subsequent Debt Settlement Agreements that do not clearly make Mr. Feng a personal guarantor is very contestable. In this regard, it should be noted that both parties accuse the other of perpetrating fraud in the preparation and the alleged revocation of that agreement.

[148] In her factum, Ms. Wang argues that Mr. Feng cannot void the May 2019 Debt Settlement Agreement because unawareness of the terms of a contract freely signed is not, absent fraud or misrepresentation, a reason to invalidate it. The difficulty in the immediate case – and a trial judge will have to decide - is that given the involvement of Mr. Zhang who prepared the May 2019 Debt Settlement Agreement based on Ms. Wang’s requiring it as ransom for signing the limited

partnership agreement that both parties say Mr. Feng desperately needed, it is not clear who was defrauding whom in the immediate case.

[149] There is little doubt that Ms. Wang has a strong *prima case* that the Feng/CIM corporate entities are liable to her; however, her case against Mr. Feng as a guarantor or based on piercing the corporate veil and as against Ms. Zhu and Ms. Feng are much weaker cases and they do not rise to the level of a strong *prima facie* case in the sense of there being a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice. Thus, Ms. Wang does not satisfy the first branch of the test for a *Mareva* injunction.

[150] As I said at the outset of these Reasons for Decision, the case at bar is essentially a debt collection case by an unsecured creditor. I can now add that upon reviewing the fulsome record that although Ms. Wang has reason for grief about making a loan or investing in Mr. Feng's land development business, there was little evidence that she was induced by some fraudulent representation or that it was a bogus scheme. Ms. Wang apparently was impressed with Mr. Feng's development business, and so she wished to use it as a means to generate a very high rate of return for herself. Her complaints about misrepresentations largely concern matters that arose after she entered into her alleged loans and concern her efforts to be repaid or to obtain security for repayment, which, by the way, may take her sorry tale into the territory of not only fraudulent conveyances by also attempted fraudulent preferences. In the immediate case, both parties were accusing the other of fraudulently prepared documents and clandestine behaviour, but there was no fraud that induced Ms. Wang to advance monies to the Feng/CIM enterprise in the first instance. There is a big difference between being disappointed and being defrauded.

[151] I have done more than a preliminary review of the case, and I am not satisfied that there is a strong likelihood on the law and the evidence presented that, at trial, Ms. Wang will be ultimately successful in proving the allegations set out in her Notice of Application. Given the circumstance that neither party can keep their stories straight, neither party has a strong likelihood of success when this matter goes to trial.

[152] It is true that Mr. Feng has assets in the jurisdiction; however, in the main, the evidence is that he was disposing of them, or secured creditors were disposing of them in the normal course of a failing real estate venture.

[153] Ms. Wang's allegation that Mr. Feng's gift conveyance of the condominium on Bay Street was a fraudulent conveyance and a badge of Mr. Feng's fraudulent behaviour makes a weak case at this juncture, but, in any event, that is a claim that would enure to the benefit of all the unsecured creditors and once again there is no basis to obtain pre-judgment execution of an unproven claim.

[154] As for Ms. Zhu, Mr. Feng's wife, Ms. Wang's case rests on no more than the fact that Ms. Zhu is married to Mr. Feng, who pledged the Penwood Crescent property, which is registered in her name, as security for Ms. Wang should he default in the May 2019 Debt Settlement Agreement. At this juncture that is a very weak foundation for a claim against Ms. Zhu, who may have not known of her husband's pledge of her property.

[155] However, if I am wrong in that regard about the strength of Ms. Wang's case, I shall move

on and if I assume that Ms. Wang has satisfied the first branch of the test, then, in my opinion, she does not satisfy the remaining elements of the test. She has a very weak case for a *Mareva* injunction. The evidence for the *Mareva* injunction motion is that in 2016, Ms. Wang knowingly and willingly put out over \$1.0 million into what was obviously a risky but real business venture in order to obtain interest at 24% per annum, which she actually achieved for about year. It was not until 2019 that there was any documentation of a personal guarantee by Mr. Feng under the May 2019 Debt Settlement Agreement. But the existence of the May 2019 Debt Settlement Agreement and all of the highly contested subsequent agreements do not change the reality that Ms. Wang was pursuing repayment of an unsecured liquidated debt and *Mareva* injunctions are only rarely available for a debt claim.

F. Conclusion

[156] For the above reasons, I make the Order set out in the Introduction to these Reasons for Decision.

Perell, J.

Released: April 14, 2023.

CITATION: Wang v. Feng, 2023 ONSC 2315
COURT FILE NO.: CV-21-00658965-0000
DATE: 20230414

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**HUIXIAN WANG aka ALICE WANG and
CANADA GREAT CAPITAL INC.**

Applicants

- and -

**JIUBIN FENG aka JIU BIN FENG aka JERRY
FENG, SHU RONG ZHU, QIJIN FENG, CIM
KENNEDY CREEK INC., CIM DEVELOPMENT
LP, CIM INVESTS DEVELOPMENT INC.,
2376768 ONTARIO INC, 10502715 CANADA INC.,
1806856 ONTARIO LIMITED, ROYAL VICTORIA
WINERY INC., CIM BAYVIEW CREEK INC. and
BAYVIEW CREEK (CIM) LP**

Respondents

REASONS FOR DECISION

PERELL J.

Released: April 14, 2023