

CITATION: Monaco v. Capalbo, 2024 ONSC 4333
COURT FILE NO.: CV-24-00718621-0000
DATE: 20240802

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MICHAEL MONACO, Plaintiff

– and –

13440800 CANADA INC., KLAUDIA CAPALBO aka KLAUDIA ZINATY aka KLAUDIA ZINATY-CAPALBO, THE WOMEN EMPOWERMENT FOUNDATION, and WOMEN’S EMPOWERMENT AWARD LTD., Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Benjamin Jeffries*, for the Plaintiff

David Nuri and Tanisha Merkle, for the Defendants

HEARD: August 2, 2024

MOTION FOR URGENT INJUNCTION

[1] The Defendant, Klaudia Capalbo (“Capalbo”), brings an injunction on an expedited basis. The Plaintiff, Michael Monaco (“Monaco”) is Capalbo’s business partner in 13440800 Canada Inc. (“134”) and in a charitable foundation, The Women Empowerment Foundation (“TWEF”). Capalbo and Monaco are, or were, romantic partners as well. They have had a falling out and are litigating against each other on both fronts.

[2] The injunction motion was scheduled with a short timeline, jumping well ahead of other motions in the queue, due to what has been characterized as its urgent nature.

[3] Pleadings in the action have only just closed. The Statement of Claim was issued on April 18, 2024 and the Statement of Defence and Counterclaim is dated June 3, 2024. The Reply and Defense to Counterclaim is dated June 28, 2024. Affidavits of documents have not been exchanged and examinations for discovery have not begun. The Notice of Motion for an interlocutory injunction was issued on June 13, 2024. The parties have exchanged affidavits, but there have been no cross-examinations.

[4] Some of the issues raised in the motion have now been addressed on an interim basis by a consent Order issued by Akazaki J. dated June 14, 2024. That Order addressed what appear to be

the most pressing of the financial issues raised in the motion. It regularized the bank account of TWEF and 134 into a single Royal Bank account under 134's name and gave both Monaco and Capalbo access to the account. It further authorized Capalbo to withdraw up to \$130,000 from the account to cover reasonable expenses for an upcoming awards event put on by 134 and/or TWEF, and required Capalbo to account for those expenses on a monthly basis. It also authorized Capalbo to pay outstanding tax liabilities from funds in the account, and required Capalbo to deposit all revenues from the upcoming event into the account.

[5] In her Notice of Motion, Capalbo seeks the following relief:

An interim and interlocutory injunction:

- a. restraining the Plaintiff from repeating, disseminating, publishing or causing to be published or re-published in any way the defamatory statements complained of in this proceeding and from disseminating, publishing or causing to be published or re-published further defamatory statements concerning the Defendants;
- b. requiring the Plaintiff to remove or cause to be removed from websites or other locations on the Internet all defamatory statements concerning the Defendants, and specifically Capalbo, that he has posted or caused to be posted on those websites or other locations;
- c. restraining the Plaintiff, his agents, associates, and heirs from discussing, disseminating, sharing, publishing, or writing about the matters that are before these Court proceedings or in the Court file CV-24-00712518-0000;
- d. restraining the Plaintiff from communicating directly or indirectly with Capalbo;
- e. restraining the Plaintiff from coming within 500 meters of Capalbo's home, workplace, or any place where he has reason to believe that Capalbo may be present;
- f. permitting Capalbo to deposit money into, and access the funds in the Royal Bank of Canada accounts of 13440800 Canada Inc. ('134 Inc.') ending in 7822, and The Women Empowerment Foundation ('TWEF') ending in 1642, the strictly for the purpose of:
 - i. paying herself a salary of \$35,000.00 for her efforts in putting together the 2023 Women Empowerment Awards show;
 - ii. paying her son compensation of \$5,000.00 for his efforts in assisting with the 2023 Women Empowerment Awards show;
 - iii. paying corporate income taxes with late penalty owed for 134 Inc. for the year 2023, which currently are estimated to be \$17,202.00 Federal Tax and \$6,116.00 for Provincial Tax;

iv. paying past and ongoing expenses for the September 2024 Women Empower Awards show, and subsequent shows, including payment for:

- a salary of \$35,000.00 per annum for herself for 2024;
- a salary to staff hired to assist with the awards;
- all expenses related to the hosting of the award show;
- expenses for professionals hired on behalf of 134 Inc.

[6] At the outset of the hearing, counsel advised me that the parties have reached a further settlement of part of the motion pertaining to the defamation issues. They have agreed to each “be restrained from sharing or publishing images, videos or information about one another, or from discussing, disseminating, sharing, or publishing/writing about the matters that are before these Court proceedings or in the Court file CV-24-00712518-0000, online, in print, or with sponsors of the Women Empowerment Awards.”

[7] This new agreement dispenses with the need to consider whether an interlocutory injunction on the defamation issues is warranted. I will therefore not address any of the allegedly libelous email correspondence or Instagram postings put in issue in the motion record.

[8] What remains are three discreet orders sought by Capalbo: a) an increase in access to funds in the Royal Bank account up to \$200,000, b) payment of Capalbo’s 2024 salary in the amount of \$35,000, and c) an injunction in the form of a restraining order prohibiting Monaco from having physical proximity to Capalbo.

[9] As I explained to counsel at the outset of the hearing, the topic for the moment is the urgent injunction. This is not a summary judgment motion, and not every issue in this combined personal and business dispute between the parties can or will be addressed in an interlocutory motion like this. The motion has been launched with a notice that reads “Notice of (Urgent) Motion”, and is to be considered in that light.

[10] Although I understand its personal importance to Capalbo, her claim for payment of her annual salary does not fit the urgent injunction description. It is not urgent in a truly immediate sense, nor is it a matter of irreparable harm that “cannot be quantified in monetary terms or which cannot be cured”: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 31. Rather, it is part of the larger business and personal dispute that will be resolved after discoveries either by summary judgment or trial.

[11] In any case, the evidence is that in the past Capalbo’s “salary” has in the past been a quasi-dividend from 134, not payable bi-weekly or monthly with the usual tax, CPP and other deductions, but rather paid in one lump sum in November or December of the calendar year. It is dependent on the revenues of 134 and/or TWEF, which will only be known later in the fall after

the upcoming September awards event has come and gone and the income and expenses of that event are reconciled. It need not be decided now.

[12] As for an increase in the expenses for the upcoming event, that is a reasonable request that I see no reason not to grant. Counsel for Monaco complains that raising the expense limit from \$130,000 to \$200,000 makes this year's event more expensive than in previous years. Counsel for Capalbo explains that with the past successes of the annual awards event, sponsors have desired more upscale accommodations and activities. It sounds like a bit like some more investment in pleasing the sponsors will translate into increased revenue, which I see no reason to oppose. And anyway, everything is more expensive than it was a few years ago. Rhetorically, why should the 134/TWEF event be any different?

[13] Counsel for Capalbo advises that there is a \$200,000 balance now sitting in the Royal Bank account. Accordingly, I am prepared to raise the limit set out in Justice Akazaki's Order to \$200,000.

[14] That leaves as a final matter the request by Capalbo for a restraining order on Monaco. Her counsel cites three things on which this request is based. The first is a series of emails and texts written by Monaco to Capalbo and to third parties, several of which form the basis of the defamation claim already put to rest in this motion. All of those communications show that the parties are engaged in both a romantic breakup and a business dispute; that is not surprising, as that is the subject matter of the action. None of the communications are threatening. They are the foundation of a lawsuit, not the basis for an order requiring physical restraint or physical distancing of parties.

[15] Another piece of evidence put forward by Capalbo is a voicemail message left for her by Monaco on January 10, 2024. The recording is in the record and was played for me at the hearing. Capalbo's counsel describes it as a dangerous "murder-suicide" message.

[16] With all due respect, I do not hear in this voicemail what Capalbo's counsel seems to hear. The recording is of a person who is upset that his romantic relationship is breaking up. He sounds depressed, but not angry, and is mostly engaged on a long lament about the good times they had and voicing out loud some 'what could have been' type of meandering thoughts. There is nothing in Monaco's the message that threatens violence either to Capalbo or to himself. It is a sad love note, but as far as I can tell it is nothing more than a sad love note.

[17] Importantly, Monaco's voice message is now 7 months old – dating from when he and Capalbo first broke up – and has never recurred. Monaco appears to have had his emotional moment, and is now passed it and is focused on the business aspect of the litigation.

[18] In his submissions, Capalbo's counsel compares Monaco's message to the situation in *Prive v. Moghtadaei*, 2020 ONSC 8199 where, at para. 39, one party's restraining order was based on actual death threats issued by the other. I also note that in *Prive*, at para. 33, the threatening

communications were described as “overwhelming and continuing posts...specifically to harass”. Monaco’s one-time communication, containing no threatening language, does not compare to the *Prive* evidence.

[19] Lastly, Capalbo relates in her affidavit an incident that she says happened on the highway a number of months ago. It is her evidence that she saw Monaco driving near her on the highway and that he intentionally cut her off in traffic. She says that it was a dangerous situation that fortunately did not end in an accident, but that well could have.

[20]

[21] For his part, Monaco denies that any such encounter ever took place. Apparently, the police investigated him at Capalbo’s request as a result of this incident, but no charges were laid against him.

[22] In the absence of cross-examinations, it is difficult to assess credibility in the contradictory accounts. Again, however, even taking Capalbo’s account at face value, it happened months ago and has never repeated. Her counsel indicates that she is concerned that at around the same time Monaco left her a message saying that he had visited her home unannounced and uninvited. But a closer look at the complaint shows that he visited her home after a snowstorm in order to shovel her walk. There is no indication anywhere that he intended harm to come to her; quite the contrary.

[23] As Capalbo’s counsel described her concerns, it became clear to me that what Capalbo wants more than anything is for Monaco to stay away from the 134/TWEF awards event this coming September. She is afraid that he will make a scene at the business’ most productive time of year. She may or may not be right about that, but when pressed to described what kind of scene Monaco might make, Capalbo’s counsel fell back on the email messages which form part of the defamation claim as showing how antagonistic he can be.

[24] In other words, Capalbo is mostly worried not about the actions Monaco will take, but about the words he might speak. I sympathize with her concern. But it is difficult enough to get an injunction over allegedly defamatory publications: *Bagwalla v. Ronin*, 2017 ONSC 6693, at para. 19 (Div. Ct.); it is all the more difficult to get an injunction over anticipatory words that might potentially be spoken. And, in any case, what Capalbo is seeking here is a restraining order over Monaco’s physical presence rather than over his words, but she has presented no evidence that physical restraint is needed. I find no grounds for the kind of physical restraining injunction that Capalbo seeks.

[25] There will be an Order varying the limit of the funds in the Royal Bank account to which Capalbo has access for 134/TWEF expenses from \$130,000 to \$200,000. As set out in Justice Akazaki’s Order, all funds withdrawn from that account by Capalbo must be accounted for to Monaco on a monthly basis. Capalbo is to forthwith provide an accounting to date of any funds withdrawn from the Royal Bank account since Justice Akazaki’s Order.

[26] There will be a further Order incorporating the parties’ Consent described in para. 6 above.

[27] The balance of the motion is dismissed.

[28] The results of this motion are mixed. Costs of the motion will be in the cause.

Date: August 2, 2024

Morgan J.