

[2] The Plaintiff is an insurance company who entered into a policy of title insurance with Ryan Mortgage Income Funds Inc. (the “Title Insurance Policy”).

[3] There has already been a Tribunal Hearing before the Deputy Director of Land Titles where the true title holders sought and obtained an Order declaring the instrument reflecting the Mortgage to be a “fraudulent instrument” together with an Order deleting the Mortgage from title to the Property (“the Tribunal Hearing”).

[4] As a result of the Tribunal Hearing, the Plaintiff issued a loss payment to Ryan Mortgage in the amount of \$620,500.13 to satisfy its obligations under the Title Insurance Policy.

[5] The Plaintiff obtained bank records that showed that on April 1, 2021, net fraudulent mortgage proceeds in the amount of \$504,238.45 were deposited into a BMO bank account, and thereafter there were a number of transactions that involved the Defendants where monies were transferred to them or through them.

[6] On July 13, 2023, I granted the plaintiff, *inter alia*, an ex parte *Mareva* Injunction freezing accounts owned or controlled by certain Defendants, up to certain monetary limits. The *Mareva* Injunction was extended from time to time, while the plaintiff sought to locate and serve the various Defendants. At present, the *Mareva* Injunction applies to the following Defendants in the following amounts:

Xuan Dieu Vy Nguyen	\$585,000
2375046 Ontario Inc.	\$375,000
Cang Tran a.k.a. Van Cang a.k.a. Cang V. Tran a.k.a Cang Van Tran	\$375,000
Teng Chun Chao	\$50,000
Nguyen Hoang Duy	\$60,000
Ngoc Tran	\$20,000

[7] On this Motion, the Plaintiff seeks an Order extending the *Mareva* Injunction until final disposition of this matter.

Decision

[8] I grant the Order sought.

Analysis

[9] 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: *O2 Electronics Inc. v. Sualim*, 2014 ONSC 5050 at para 96. The plaintiff must persuade the Court that it is just and convenient in the circumstances to continue the Order. I will briefly review the grounds for the *Mareva* Injunction, taking into account additional evidence obtained by the plaintiff since the *Mareva* Injunction was obtained.

Strong Prima Facie Case

[10] At the time of the July 13, 2023, there were already strong grounds to make the order. After the *Mareva* Injunction was granted, none of the Defendants sought to set it aside.

[11] All Defendants to the Action save and except for Nguyen Hoang Duy (“Duy”) have been served and noted in default. Duy served his Statement of Defence on May 22, 2024, and is represented by counsel.

[12] Additionally, no Defendant filed any materials in opposition to this motion and most Defendants did not even appear. The only Defendants appeared who were Duy and Xuan Dieu Vy Nguyen (“Nguyen”).

[13] Mr. Juzkiw appeared today with Mr. Duy and advised that his client takes no position on the motion. There are apparently settlement discussions underway between Duy and the plaintiff feels that the issues with Duy will be resolved.

[14] The Defendant Nguyen appeared in person as a self-represented litigant but did not file any materials. She does not speak English and spoke through an interpreter which the court arranged. It is notable that the fraudulent mortgage proceeds were initially deposited directly into Nguyen’s BMO account and then transfers were made out of this account.

[15] I asked her if she took a position on this motion. She said that she did oppose the continuation because it froze money that she used as living expenses to support her three children. However, I already varied the *Mareva* Injunction Order on April 7, 2024, to permit her to withdraw \$2,000 a month for living expenses. Today she indicated that she had not received any living expenses and it appears that she thinks the money will just be sent to her. Counsel for the plaintiff had previously advised her that all she has to do is take the Order to the bank. She has apparently not done so but it was explained to her again.

[16] I direct that if Nguyen goes to her bank and she still has trouble accessing living expenses she may advise the plaintiff’s counsel by email and then he has agreed that he will convene an urgent case conference before me so that I can attempt to resolve this issue if he cannot do so directly with the bank.

[17] Nguyen also asked when she would be able to tell her side on the merits.

[18] I invited her to explain her position to me at the hearing even though she had not filed any materials. She said that she was innocent of the matters at issue. She said that she previously lived with her aunt Dung Ly who has changed her name to My Nguyen. She said that her aunt had asked to borrow her BMO account and that she had nothing to do with this. One day she simply saw all the money in her account.

[19] This is the first time that the plaintiff heard this name and Nguyen's aunt is not currently a defendant.

[20] As this takes the plaintiff by surprise, and because there is no corroborating evidence from Nguyen, and because the fraudulent mortgage funds were directly deposited into an account held by Nguyen, I am not prepared to vacate the *Mareva* Injunction as against her. Instead, I direct that she may bring a motion to set it aside at some point in the future at which point I will convene a hearing and allow her to provide oral evidence.

[21] With respect to the other Defendants, as a result of Norwich Orders made, the plaintiff has obtained evidence that the proceeds were distributed as follows out of Nguyen's BMO account:

- The Defendant 2735046 Ontario Inc. ("273") received funds in the amount of \$375,000.
- The Defendant Cang Tran was at all material times, the principal and directing mind of 273.
- 273 then issued a bank draft to the Defendant Ngoc Tran in the amount of \$20,000. Notably, Tran testified at the Tribunal Hearing and produced 273's records that showed that the money was deposited into 273's account and then withdrawn although the records do not identify where the bulk of the fund went from Tran's account.
- The Defendant Duy received \$60,000.
- The Defendant Teng Chun Chau received \$50,000.

[22] Additionally, a police investigation has revealed that the Defendants Albert Baird and Kerry James were the individuals who misrepresented that they were the owners of the Property and who initially arranged for the mortgage loan. They appeared on video footage when the fraudulent mortgage was arranged and have been arrested.

[23] I am satisfied that the plaintiff has established a strong prima facie case of fraud as against all the Defendants against whom the *Mareva* Injunction was made.

Assets in the Jurisdiction

[24] The bank records produced pursuant to the Norwich Orders made show that the Defendants have bank accounts in Ontario.

Risk of Removal or Dissipation

[25] I am satisfied that there is a sufficient inference of risk of removal or dissipation from the circumstances of the fraud itself, taking in the context of all of the surrounding circumstances: *Sibley & Associates LP v. Ross et al.* 2011 ONSC 2951 at para 63. I am satisfied that the evidence before me reveals classic badges of fraud including false statements: *Kutlesa v. Kotsiou*, 2016 ONSC 3435 at para 63.

Balance of Convenience

[26] The *Mareva* Injunction is limited as to each Defendant based upon amounts that they were shown to have received. No one has come to complain about hardship, apart from Nguyen and there is already an allowance for living expenses for her.

[27] The balance of convenience favours the plaintiff in all the circumstances since there is a strong risk that any funds remaining in the Defendants' accounts will be further dissipated and that the plaintiff will then be unable to enforce any judgment.

[28] I add that the plaintiff's evidence in support of the *Mareva* Injunction has only grown stronger since the initial Order was made given productions the plaintiff obtained as a result of a Norwich Order and given that all Defendants except Duy have been noted in default with the effect that the allegations in the Statement of Claim as against them are deemed admitted.

Undertaking as to Damages

[29] The plaintiff has provided the usual undertaking as to damages.

Further Steps

[30] The plaintiff advises that it intends to move for default judgment. The plaintiff may bring this motion to be heard by me. Although they asked that it be in writing, as indicated, Nguyen is self-represented, does not speak English and has indicated that she wishes to present her side. Based upon her submissions, she does not have the money to hire a lawyer or money to have her evidence translated into an affidavit in English.

[31] As such, I am directing that the motion be heard orally so that Nguyen has an opportunity to give evidence and so that I can provide the required assistance in accordance with the Canadian Judicial Counsel's Statement of Principles on Self-Represented Litigants and Accused Persons which have been endorsed by the Supreme Court in *Pintea v. Johns*, 2017 SCC 23.

[32] The plaintiff may arrange a case conference to schedule this motion before me.

[33] Although it is unclear to me that she will be able to fully read and understand it, I am attaching a Guideline for Self-Represented Litigants. I note that Nguyen must have had some

understanding of communications she receives because she did attend today and so was able to read whatever communication she received at least to that extent.

[34] I also note that it was the plaintiff who raised, proposed and arranged for the living expenses for Nguyen because of concerns it had and so there have obviously been some communications between Nguyen and the plaintiff.

[35] I am directing that if Nguyen may arrange a case conference with me if she wishes to obtain any direction from me with respect to any default judgment motion scheduled by the plaintiff. Further, if she advises the plaintiff that she wishes to bring a motion to set aside the *Mareva* Injunction or the noting in default or has issues she wishes to raise with the court, and she has difficulty arranging a case conference the plaintiff shall arrange a case conference through my assistant.

[36] Costs of today's attendance are reserved.

Papageorgiou J.

Released: August 29, 2024

CITATION: Chicago Title Insurance v. John Doe, 2024 ONSC 4793

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHICAGO TITLE INSURANCE COMPANY

Plaintiff

– and –

JOHN DOE, JANE DOE, XUAN DIEU VY NGUYEN,
2735046 ONTARIO INC. o/a LPR GLOBAL, CANG
TRAN a.k.a. TRAN VAN CANG a.k.a. CANG V.
TRAN a.k.a. CANG VAN TRAN, TENG CHUN
CHIAO a.k.a TENG CHUN CHAO, THUY DOAN
QUANG, NGUYEN HOANG DUY, ALBERT BAIRD
and KERRY JAMES

Defendants

REASONS FOR JUDGMENT

Papageorgiou J.

Released: August 29, 2024