SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Lori-Anne Christine Elizabeth Price aka Lori-Anne Christina Elizabeth Price aka Christina Price and Christos Price by his litigation guardian Lori-Anne Christine Elizabeth Price aka Lori-Anne Christina Elizabeth Price aka Christina Price, Plaintiffs

-and-

State Farm Insurance Company, Matteo Costanza by his litigation guardian Bozana Skojo, Sheila Evans, Nadine Lejambe, and the Estate of Dean Joseph Costanza aka Dino Costanza, Defendants

BEFORE: MacNeil J.

COUNSEL: *J. Brown* – Lawyer for the Plaintiffs/Moving Party

D. Schafer – Lawyer for the Defendant, Matteo Costanza by his litigation guardian Bozana Skojo/Responding Party

HEARD: August 9, 2024

DECISION ON MOTION

INTRODUCTION

[1] The plaintiffs make this motion seeking various relief regarding the estate of the late Dean Joseph Costanza ("Dean Costanza"), including a suspensory order pursuant to s. 59(1) of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26; a *Mareva* injunction restraining the defendant, Bozana Skojo ("Ms. Skojo"), from dissipating or selling the proceeds received from a life insurance policy payout; and an order that Ms. Skojo pay the life insurance policy proceeds to her law firm, to be held in trust pending further court order or agreement between the parties.

[2] The main dispute centres on the payout of a life insurance policy obtained by Dean Costanza from State Farm Insurance Company, now Desjardins Financial Security Life Assurance Company ("Desjardins"), to the minor defendant, Matteo Costanza by his litigation guardian, Ms. Skojo.

BACKGROUND

[3] On February 9, 2012, a life insurance policy for a benefit of $500,000 was issued to Dean Costanza by State Farm, now Desjardins; Dean Costanza had designated his son, Matteo Costanza, as the primary beneficiary of the policy ("the Life Insurance Policy").

[4] The plaintiff, Christina Price ("Ms. Price"), attests that she was involved in a common law relationship with Dean Costanza and that they lived together for approximately four years, from Spring 2014 until his death in December 2017. It is Ms. Price's evidence that, during this time, Dean Costanza acted as a parent to her son, the minor plaintiff, Christos Price ("the Minor Price").

[5] There are a number of ongoing proceedings in relation to the estate of Dean Costanza:

(a) the within action, which was commenced by way of Notice of Action dated February 9, 2018, bearing Court File No. 18-64445;

(b) an application commenced on February 27, 2018 in Milton by Ms. Skojo and Matteo Costanza against Ms. Price, bearing Court File No. 18-05904, which was subsequently converted to an action by a court order made by Kurz J. on July 25, 2018 (the "Skojo Action");

(c) an action commenced in Milton, on September 12, 2018, by Ms. Skojo and Matteo Costanza against Ms. Price, Nadine LeJambe (daughter of the deceased) and Sheila Evans (mother of the deceased), bearing Court File No. CV-18-08391;

(d) an application commenced in Milton, on May 21, 2019, by the plaintiffs in this matter bearing Court File No. CV-19-02198 (the "Price Application"); and,

(e) an application commenced in Milton, on September 20, 2019, by Matteo Costanza against Desjardins, bearing Court File No. CV-19-03913 (the "Insurance Application").

[6] On July 25, 2018, Kurz J. also made an order appointing Sheila Evans as the Estate Trustee during litigation for her son, Dean Costanza, upon filing the appropriate documents with the court.

[7] In the Insurance Application, Matteo Costanza sought a declaration that the Life Insurance Policy was valid, subsisting, and binding on Desjardins. Desjardins argued that the policy was *void ab initio* due to purported fraud on the part of Dean Costanza. By her decision dated January 18, 2022, Chozik J. held that Desjardins had not met its burden of showing that Dean Costanza's failure to disclose or misrepresentation of fact in his application of life insurance was fraudulently made. She concluded that the Life Insurance Policy was valid and payable to Matteo Costanza.

[8] Desjardins appealed from the judgment of Chozik J. to the Ontario Court of Appeal. By its decision, dated January 26, 2023, the Court of Appeal dismissed the appeal.

[9] Following the release of the Ontario Court of Appeal's decision of January 26, 2023, Desjardins made a motion seeking directions regarding the payout of the Life Insurance Policy. By its Notice of Motion, dated May 11, 2023, Desjardins sought an order directing it to pay the proceeds of the Life Insurance Policy into court. Among the stated motion grounds were the following: that there were three other proceedings in which the Life Insurance Policy funds are claimed by parties other than Matteo Costanza, including the Price Application, the Skojo Action, and the within action; that the interests of the claimants in the other proceedings were not dealt with in Chozik J.'s decision dated January 18, 2022; and that those interests "could represent competing claims" to the Life Insurance Policy benefits. The plaintiffs in the within action were served with the Desjardins motion but did not file any materials before the motion was heard.

[10] On June 14, 2023, Chozik J. heard Desjardins' motion for directions. Her endorsement indicates that Mr. Brown, counsel for the plaintiffs, made submissions to the court asking that the proceeds of the subject policy be paid into court for the potential benefit of his clients. Justice Chozik did not accept those submissions. Instead, she ordered that the Life Insurance Policy proceeds be paid to Ms. Skojo in trust for Matteo Constanza. Justice Chozik's endorsement reads:

> The Respondent brings a motion to clarify my order as to the payment of the proceeds of an insurance policy. There is no dispute that the designated beneficiary under the insurance policy pursuant to a change of designated beneficiary executed by the deceased on October 20, 2014, is "Matteo Costanza, 6, son, in trust to Bozana Skojo, mother of child". The Applicant in this matter is Matteo Costanza, by his litigation guardian, Bozana Skojo.
>
> My order required payment of the proceeds of the insurance policy to the Applicant.
>
> In my view, no clarification is necessary. The proceeds of the insurance policy and any pre and post judgment interest shall be paid to Bozana Skojo in trust for Matteo Costanza. There is no need for the money to be paid into court.
>
> Mr. Brown attended today to address the court. His client [Christina Price] claims against the estate of the deceased. He submitted that he was aware of this litigation, which was about the validity of the insurance policy. His client chose not to participate in that litigation. His client is not a party to this Application or motion. He now asks, on behalf of his client, that the proceeds of the insurance policy be paid into court for the potential benefit of his client.

> I do not accept this submission. I determined that the insurance policy is valid. I ordered the proceeds of the policy to be paid to the Applicant. The Court of Appeal for Ontario upheld that decision. While there may be claims against the deceased's estate, I am not persuaded that those should be considered in this case, where the designation under the insurance policy is clear and an order in respect of those funds has already been made.

[11] The plaintiffs in the within action prepared a Notice of Appeal, dated June 15, 2023, appealing the June 14, 2023 Order of Chozik J. However, it does not appear that the Notice of Appeal was filed (as required by Rule 61.04(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194) or perfected. Following the expiry of the 30-day appeal period, Desjardins paid out the Life Insurance Policy proceeds to Mackesy Smye LLP in trust. The funds were then paid to Ms. Skojo, on behalf of Matteo Costanza, from the law firm's trust account.

[12] The plaintiffs made the within motion by way of Notice of Motion, dated July 27, 2023, after the Life Insurance Policy proceeds had been paid out. The plaintiffs amended the motion, by way of an Amended Notice of Motion dated August 17, 2023, seeking the following relief, among other things:

(a) leave to serve and file the Statement of Claim;

(b) a suspensory order pursuant to section 59 of the *Succession Law Reform Act*, regarding the estate of Dean Costanza;

(c) an order that the within action (CV-18-64445) be heard together with the Price Application (CV-18-08391) and the application bearing Court File number CV-19-02198;

(d) an order under section 72(1)(f) of the *Succession Law Reform Act* that the $500,000.00 sum ordered paid to Ms. Skojo by Chokiz J., on June 14, 2023, be included as a testamentary disposition and deemed to be part of the net estate of Dean Costanza for purposes of ascertaining the value of his estate and being available to be charged for payment by an order under s. 63(2)(f) of the Act;

(e) a *Mareva* injunction restraining the defendant, Ms. Skojo, from selling, removing, dissipating, transferring, assigning, encumbering or similarly dealing with the Life Insurance Policy funds;

(f) an order that the defendant, Ms. Skojo, deposit the Life Insurance Policy funds with the law firm Mackesy Smye LLP to be held in trust pending further court order or written agreement between the parties; and,

(g) an accounting from the defendant, Ms. Skojo, regarding any dealings with respect to the Life Insurance Policy funds.

[13] The motion heard by me is by way of the Amended Notice of Motion.

ISSUES

[14] At the hearing of the motion, counsel for the plaintiffs advised that he was not presently seeking an order consolidating the proceedings, so I will not be deciding that issue by way of this decision. (I note that, by her endorsement dated October 6, 2023, Sheard J. indicated that she had advised the plaintiffs that the relief sought to have this action heard together with actions commenced in a different region was within the exclusive jurisdiction of the Regional Senior Judge.) Further, at the hearing, no substantive arguments were made on behalf of either party about the plaintiffs' requests for leave to serve and file the statement of claim attached as Schedule "A" to the Amended Notice of Motion or for an accounting from Ms. Skojo. Rather, it was submitted that those aspects of the plaintiffs' motion should be adjourned. I have agreed to so adjourn them.

[15] The following issues will therefore be determined on this motion:

(a) Should an order be made directing that the Life Insurance Policy sum of $500,000.00 paid to the defendant, Ms. Skojo, in trust for Matteo Costanza, is deemed to be part of the net estate of the deceased, Dean Costanza, pursuant to s. 72(1)(f) of the Succession Law Reform Act?

(b) Should an order be made under s. 59(1) of the *Succession Law Reform Act* suspending the administration of the estate of Dean Costanza, deceased?

(c) Should a *Mareva* injunction be ordered restraining the defendant, Ms. Skojo, from dealing with the Life Insurance Policy funds paid to her on behalf of Matteo Costanza?

(d) Should an order be made directing the defendant, Ms. Skojo, to deposit the Life Insurance Policy sum of $500,000.00 with the law firm Mackesy Smye LLP, in trust, until further court order or written agreement between the parties?

ANALYSIS

(a) Should an order be made directing that the Life Insurance Policy sum of $500,000.00 paid to the defendant, Ms. Skojo, in trust for Matteo Costanza, is deemed to be part of the net estate of the deceased, Dean Costanza, pursuant to s. 72(1)(f) of the Succession Law Reform Act?

[16] By s. 72 of the *Succession Law Reform Act*, certain assets dealt with by a deceased before their death are deemed to be part of the deceased's estate and be made available "to be charged for payment" of a dependant's support order. Section 72 reads, in part:

> 72(1) Subject to section 71, for the purpose of this Part, the capital value of the following transactions effected by a deceased before his or her death, whether benefitting his or her dependant or any other person, shall be included as testamentary dispositions as of the date of the death of the deceased and shall be deemed to be part of his or her net estate for purposes of ascertaining the value of his or her estate, and being available to be charged for payment by an order under clause 63(2)(f),
> …
>
> (f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him or her;
>
> …
>
> (7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights.

Position of the Moving Party

[17] Counsel for the plaintiffs submits that his clients were not a party to the Insurance Application and, therefore, his clients should not be prevented from asserting a claim against the Life Insurance Policy proceeds in this action.

[18] The plaintiffs submit that the purposes underlying the statutory scheme of the *Succession Law Reform Act* mandate the return of the life insurance proceeds in the hands of Ms. Skojo, so that the issue of whether the Minor Plaintiff is entitled to dependant claim relief can be decided.

[19] The plaintiffs rely on the decision in *Moores v. Hughes*, 1981 CanLII 1870 (ON SC), (1981) 37 O.R. (2d) 785, wherein Robins J. (as he then was) described the intent of s. 72 of the *Succession Law Reform Act* in the following terms (at para. 16):

> … Manifestly, [s. 72] was intended to ensure that the maintenance of a dependant is not jeopardized by arrangements made, intentionally or otherwise, by a person obligated to provide support in the eventuality of his death. It is designed to alleviate the hardship that can be visited on a dependant by causing money or property to pass directly to a beneficiary (donee or joint tenant) and not as part of the estate. …

[20] The plaintiffs also rely on the Ontario Court of Appeal's decision in *Madore-Ogilvie (Litigation Guardian of) v. Ogilvie Estate*, 2008 ONCA 39. However, I find that that decision has no relevance to the case before me since it is concerned with the ownership of a jointly-owned insurance policy.

Position of the Responding Party

[21] It is the position of the defendant that the within motion constitutes a collateral attack on the Order of Justice Chozik, dated June 14, 2023, and so is improper and an abuse of the court's process.

Discussion

[22] As indicated above, on June 14, 2023, Chozik J. ordered that the judgment of September 28, 2021 be amended to declare that "the policy is payable" and to direct that Desjardins pay to Ms. Skojo, in trust for Matteo Costanza, the proceeds of the Life Insurance Policy in the amount of $500,000.00, as well as the associated prejudgment and postjudgment interest, in satisfaction of the judgment.

[23] In *Dagg v. Cameron Estate*, 2017 ONCA 366, the Ontario Court of Appeal dealt with the interplay between ss. 72(1)(f) and 72(7) of the *Succession Law Reform Act*. In that decision, the Court of Appeal had to determine what rights a support recipient, who was named as the irrevocable beneficiary of an insurance policy, had to the policy's proceeds in the face of a competing claim by another dependant of the deceased made under Part V of the *Succession Law Reform Act*. At paragraphs 75 through 78, the Court of Appeal held that, where a payor is subject to a court order that requires them to name a support recipient as an irrevocable beneficiary, the portion of the insurance proceeds needed to satisfy the support payments is not subject to the s. 72(1)(f) "clawback" provision. Rather, the support recipient, as the named beneficiary of the insurance policy, is effectively a creditor of the deceased in a "transaction with respect to which a creditor has rights", in keeping with s. 72(7) and so s. 72(1)(f) does not apply.

[24] In a similar vein as *Dagg*, I find that s. 72(7) of the *Succession Law Reform Act* applies to inoculate the Life Insurance Policy proceeds from clawback in this case. Here, Chozik J. ordered that the Life Insurance Policy proceeds are payable to Matteo Costanza, as the designated

beneficiary, and that such funds are to be paid to Ms. Skojo on behalf of Matteo Costanza. That order has not been appealed, or varied or set aside, so it is a valid enforceable court order. I am satisfied that, by virtue of that order, Matteo Costanza is a "creditor" of the deceased in a transaction with respect to which Matteo Costanza has rights such that s. 72(7) applies and the Life Insurance Policy funds are not captured by s. 72(1(f).

[25] In my view, I also find that s. 72(1)(f) relates only to an amount that is "payable" under a policy of insurance effected on the life of the deceased. Here, the evidence is that the Life Insurance Policy funds have already been *paid* to Ms. Skojo in trust for Matteo Costanza, pursuant to court order. Accordingly, they are no longer payable.

[26] In the result, I conclude that it is not available to this court to make any order directing that the Life Insurance Policy funds be deemed to be part of the net estate of the late Dean Costanza under s. 72(1)(f). This aspect of the plaintiff's motion is dismissed.

(b) Should an order be made under s. 59(1) of the Succession Law Reform Act suspending the administration of the estate of Dean Costanza, deceased?

[27] Section 59(1) of the *Succession Law Reform Act* provides that, on application by or on behalf of a dependant, the court may make an order suspending in whole or in part the administration of the deceased's estate, for such time and to such extent as the court may decide.

Position of the Moving Party

[28] The plaintiffs submit that they moved for s. 59 relief in the Price Application, upon issuance of the Notice of Application on May 21, 2019. The defendant's counsel requested an adjournment of the application indicating that she would provide the plaintiffs' counsel with a copy of the defendant's materials so that the life insurance matter could be expedited. The requested materials were never provided, however. As a result, the plaintiffs were prejudiced in terms of being able to move forward with their application. The defendant's counsel did not put the plaintiffs' counsel on notice that they would be alleging a lack of due diligence as against the plaintiffs. It was the defendants who breached an agreement and are now seeking to derive a strategic advantage from same. This is not in the interests of justice.

Position of the Responding Party

[29] Despite commencing proceedings back in February 2018 regarding the estate of Dean Costanza, the plaintiffs did not obtain an order pursuant to s. 59 of the *Succession Law Reform Act* to suspend the administration of the deceased's estate and effectively freeze the assets. The plaintiffs have not been diligent in taking the necessary steps to preserve access to the proceeds of the estate prior to the hearing of this motion.

Discussion

[30] There was no suspensory order obtained under s. 59 of the *Succession Law Reform Act* prior to Justice Chozik's Order of June 13, 2023, pertaining to the estate of the late Dean Costanza.

[31] There are two problems the plaintiffs face in obtaining a suspensory order at this point in time concerning the Life Insurance Policy proceeds that have been paid to Ms. Skojo on behalf of Matteo Costanza. First, a s. 59 order is made suspending the administration of a deceased's estate. Here, the Life Insurance Policy proceeds were not paid to the deceased's estate. There is no evidence before me as to other assets currently in the deceased's estate. Except for the Life Insurance Policy proceeds, there are no other grounds put forward by the plaintiffs on this motion to support the granting of an order suspending the administration of the estate of Dean Costanza.

[32] Second, making a suspensory order on the ground that the Life Insurance Proceeds are subject to "clawback" under s. 72(1)(f) would constitute a collateral attack on the Order made by Chozik J. directing the payment of those proceeds to Ms. Skojo on behalf of Matteo Costanza. The rule against collateral attack was described in *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local* 79, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 33, citing *Wilson v The Queen*, 1983 CanLII 35 (SCC), [1983] 2 S.C.R. 594, at p. 599, as follows:

> … the rule against collateral attack has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally – and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment.

[33] While the plaintiffs do not explicitly seek to overturn the Order made by Chozik J., their request for a suspensory order is an implicit attack on the correctness of Justice Chozik's decision and its legal consequence. Such an attack is not permitted.

[34] Collateral attacks can also attract the application of the doctrine of abuse of process to preclude parties from relitigating issues decided against them in a prior proceeding. Allowing relitigation of an issue that has already been determined, which relitigation could result in a different conclusion than that reached in the first proceeding on the same issue, can "undermine the credibility of the entire judicial process, thereby diminishing its authority, its credibility and its aim of finality": *Toronto (City) v. C.U.P.E., Local 79*, at para. 51.

[35] I accept the argument made on behalf of the defendant that allowing the plaintiffs to obtain a suspensory order in the present circumstances engages the primary concerns of the abuse of

process doctrine. Chozik J. has already ruled and made an order respecting the payment of the Life Insurance Policy funds. Permitting the plaintiffs to seek relief in a parallel proceeding that would interfere with that court order would constitute an abuse of the court's process. Accordingly, this aspect of the plaintiffs' motion is dismissed.

(c) Should a Mareva injunction be ordered restraining the defendant, Ms. Skojo, from dealing with the Life Insurance Policy funds paid to her on behalf of Matteo Costanza?

Position of the Moving Party

[36] The plaintiffs submit that they have a strong *prima facie* case against the estate of the late Dean Costanza for a dependant claim relief. The injunction sought relates to assets held in Ontario by Ms. Skojo and there is a real risk of dissipation given that: (a) the monies in the possession of Ms. Skojo properly belong to the estate of Dean Costanza; and (b) the assets are being held in Ms. Skojo's bank accounts and are liquid, easily transferable, and difficult to trace once transferred. The plaintiffs have given the necessary undertaking.

Position of the Responding Party

[37] The defendant opposes the relief sought on the basis that the plaintiffs have not met their onus required to satisfy the ordering of a *Mareva* injunction.

Discussion

[38] Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides that this court may grant an interlocutory injunction "where it appears to a judge of the court to be just or convenient to do so".

[39] In *Mareva Compania Naviera, S.A. v. International Bulkcarriers, S.A.*, [1975] 2 Lloyd's Rep 509, [1980] 1 All E.R. 213, Lord Denning, M.R. considered the meaning of "just or convenient", stating: "If it appears that the debt is due and owing – and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment – the Court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent his disposing of those assets." See also *Manufacturers Life Insurance Co. v. Suggett*, 1992 CarswellOnt 374, 13 C.P.C. (3d) 171, at para. 13.

[40] The purpose of a *Mareva* injunction is to "tie up the assets of the defendant … pending any judgment adverse to the defendant" so that the funds will then be available for execution in satisfaction of the judgment: *Chitel v. Rothbart*, 1982 CanLII 1956 (ON CA), [1982] O.J. No. 3540, (Ont. C.A.), at para. 30.

[41] The guidelines for granting a *Mareva* injunction were affirmed by the Ontario Court of Appeal in *Chitel*, at paras. 44, 56-58, as follows:

> (i) The plaintiff should make full and frank disclosure of all matters in his knowledge which are material for the judge to know.
>
> (ii) The plaintiff should give particulars of his claim against the defendant, stating the ground of his claim and the amount thereof, and fairly stating the points made against it by the defendant.
>
> (iii) The plaintiff should give some grounds for believing that the defendant has assets in the jurisdiction.
>
> (iv) The plaintiff should give some grounds for believing that there is risk of the assets being removed before the judgment or award is satisfied.
>
> (v) The plaintiff must give an undertaking as to damages.

[42] A plaintiff bears the onus of satisfying the test for the *Mareva* injunction order and can do so based on evidence from which reasonable inferences can be drawn. A defendant must address the evidence and inference the plaintiff relies upon to successfully oppose the motion: *PPI Management Inc. v. Zhou*, 2023 ONSC 3603, at para. 67.

[43] To show a strong *prima facie* case, a plaintiff must show a strong likelihood on the law and the evidence presented that, at trial, they will ultimately be successful in proving the allegations set out in their claim: *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, at paras. 17-18.

[44] In this case, I am not satisfied that the plaintiffs have established a strong evidentiary basis showing a *strong likelihood* that they will be successful in the dependant support claim being made. The evidence proferred consists of Ms. Price's attestation that Dean Costanza stood in *locus parentis* to the Minor Plaintiff and had paid for kindergarten and Grade 1 school fees; a letter, dated July 3, 2023, regarding two psychotherapy sessions held on January 17 and February 10, 2018 for the Minor Plaintiff purportedly to address his grief following the death of Dean Costanza; and a portion of a handwritten card that is unaddressed. I agree with the submissions made on behalf of the defendant that this is insufficient evidence concerning the particulars of the Minor Plaintiff's dependant support claim against the estate of Dean Costanza and/or the amount thereof.

[45] However, even if I am wrong in finding that no strong *prima facie* case has been shown, more significantly, I find that the plaintiffs have not established that Ms. Skojo has removed or

dissipated any assets from the jurisdiction, or that there is a real risk that she will do so, in order to avoid the plaintiffs' claims.

[46] A *Mareva* injunction will not issue unless there is a genuine risk of assets disappearing: *Aetna Financial Services Ltd. v. Fiegelman*, [1985] 1 S.C.R. 2, at para. 26. Here, the plaintiffs have not shown, on a balance of probabilities, that Ms. Skojo or her on behalf of Matteo Costanza is taking steps to put either of their assets out of reach, either by removing them from the jurisdiction of the court or by disposing of them. An order granting a *Mareva* injunction cannot be based on speculation: *Kreft v. Mezo*, 2006 CanLII 14412 (ON SC), at para. 10.

[47] In the result, I conclude that the plaintiffs have not met the onerous test required to justify the granting of a *Mareva* injunction. Accordingly, this aspect of the plaintiffs' motion is dismissed.

(d) Should an order be made directing the defendant, Ms. Skojo, to deposit the Life Insurance Policy sum of $500,000.00 with the law firm Mackesy Smye LLP, in trust, until further court order or written agreement between the parties?

[48] I adopt and rely on my reasons for refusing to make a suspensory order under s. 59(1) of the *Succession Law Reform Act*, as set out above in paragraphs 32 through 35, to refuse to make an order directing Ms. Skojo to deposit the Life Insurance Policy funds with her law firm, in trust, until further court order or written agreement between the parties.

[49] I accept the argument made on behalf of the defendant that, in the present circumstances, allowing the plaintiffs to obtain this type of injunctive or preservation relief constitutes a collateral attack on the June 14, 2023 Order of Chozik J. and engages the primary concerns of the abuse of process doctrine.

[50] Justice Chozik has already ruled against ordering the payment into court of the Life Insurance Policy funds. Permitting the plaintiffs to seek effectively the same relief by this motion – directing payment of those same proceeds into the trust account of Mackesy Smye LLP – would result in the same consequence, that Matteo Costanza would be deprived of the use of those funds. This would fly in the face of the June 14, 2023 Order that directs that the Life Insurance Policy funds are payable to Matteo Costanza. Accordingly, this aspect of the plaintiffs' motion is dismissed.

DISPOSITION

[51] For the foregoing reasons, the plaintiffs' motion as it relates to the relief requested in paragraphs 4, 6, 7, and 8 of the Amended Notice of Motion, dated August 17, 2023, is dismissed.

[52] The plaintiffs' motion as it relates to the relief requested in paragraphs 3, 5, 9, 10, 11 and 12 of the Amended Notice of Motion, dated August 17, 2023, is adjourned unless resolved by agreement between the parties.

COSTS

[53] I would urge the parties to agree on costs. If they are unable to do so, then costs submissions may be made as follows:

(a) By December 3, 2024, the defendant (Responding Party) shall serve and file his written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers; and

(b) The plaintiffs (Moving Party) shall serve and file their responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, by December 17, 2024; and

(c) The defendant's (Responding Party) reply submissions, if any, are to be served and filed by December 24, 2024, and are not to exceed two pages.

(d) If no submissions are received by December 24, 2024, the parties will be deemed to have resolved the issue of the costs and costs will not be determined by me.

B. MacNeil J.

MacNEIL J.

Released: November 12, 2024