

CITATION: Li et al. v. Barber et. al., 2022 ONSC 1543
COURT FILE NO.: CV-22-88514-CP
DATE: 2022/03/10

SUPERIOR COURT OF JUSTICE – ONTARIO
Proceeding under the Class Proceedings Act, 1992

RE: ZEXI LI, HAPPY GOAT COFFEE COMPANY INC, 7983794 CANADA INC.
(c.o.b. as UNION: LOCAL 613) and GEOFFREY DEVANEY, Plaintiffs

AND:

CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING,
JAMES BAUDER, BRIGITTE BELTON, DANIEL BULFORD, DALE ENNS,
CHAD EROS, CHRIS GARRAH, MIRANDA GASIOR, JOE JANSEN, JASON
LAFACE, TOM MARAZZO, RYAN MIHILEWICZ, SEAN TIESSEN,
NICHOLAS ST. LOUIS (a.k.a. @NOBODYCARIBOU), FREEDOM 2022
HUMAN RIGHTS AND FREEDOMS, JOHN DOE 1, JOHN DOE 2, JOHN
DOE 3, JOHN DOE 4, JOHN DOE 5, JOHN DOE 6, JOHN DOE 7, JOHN DOE
8, JOHN DOE 9, JOHN DOE 10, JOHN DOE 11, JOHN DOE 12, JOHN DOE
13, JOHN DOE 14, JOHN DOE 15, JOHN DOE 16, JOHN DOE 17, JOHN DOE
18, JOHN DOE 19, JOHN DOE 20, JOHN DOE 21, JOHN DOE 22, JOHN DOE
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58, JOHN DOE 59, JOHN DOE 60, JANE DOE 1 and JANE DOE 2, Defendants

BEFORE: Regional Senior Justice Calum MacLeod

COUNSEL: Monique J. Jilesen, & Paul Champ, for the Plaintiffs

Norman Groot, for the Mareva defendants Dichter, Lich, Garrah, St. Louis and
Freedom 2022 Human Rights and Freedoms

Geoff Hall & Leah Ostler for the Toronto Dominion Bank

Melissa Adams, for the Attorney General of Ontario (Crown Law Office
Criminal)

Susan Keenan, for the Attorney General of Ontario (Crown Law Office Civil)

Jacob Wells (in person) for GiveSendGo LLC

HEARD: March 9, 2022

ENDORSEMENT

[1] On February 17, 2022, I granted an *ex parte* Mareva injunction. Reasons were released on February 22, 2022 (2022 ONSC 1176). On February 28, 2022, I heard a motion to extend the Mareva Injunction which was adjourned to today on terms (2022 ONSC 1351).

[2] The terms of the adjournment included an extension and modification of the order, the establishment of an escrow fund and transfer of certain assets to the Escrow Agent. The escrow fund was proposed by certain of the Mareva defendants and had the intended effect of putting the funds in question under court control pending further determination.

Matters Before the Court

[3] The motion to extend the Mareva injunction was returnable today. I was also asked to deal with the following motions:

- a. A motion by the plaintiffs to amend the fresh as amended statement of claim. The proposed amendments add the request for a Mareva Injunction to the prayer for relief and add particulars to the damages allegedly suffered by the proposed business class and employee class.
- b. A motion by the TD Bank to add funds held by the Bank to the funds held by the escrow agent (as an alternative to paying funds into court). This duplicates relief sought in an application brought on the Commercial List (Toronto Court File No. CV-22-676865-00CL) on February 14, 2022.
- c. A motion brought by the defendants to lift the Mareva Injunction in relation to certain of the defendants and to convert the order to a preservation order over the funds held by the escrow agent. The defendants also seek clarification and direction in relation to cryptocurrency seized by the police subsequent to my order of February 28, 2022 and relates in part to the restraint order granted by Associate Chief Justice McWatt in a proceeding brought by the Attorney General of Ontario under the *Criminal Code* (Ottawa Court file no. 22-13355MO) and they seek a modification of the restraint order.
- d. The defendants move to dissolve the Mareva Injunction or to set a date to argue the question. The defendants also seek costs against various parties.
- e. There is a request – although no formal motion – that the court direct GiveSendGo to transfer certain funds it is holding to the escrow agent.

f. The Royal Bank of Canada seeks direction to pay funds to the escrow agent.

[4] By way of preliminary comment, it is important that the proposed class proceeding not become a vehicle for omnibus motions dealing with various matters that are before the court in other forms and with different parties. There may well be virtue in having a single judge deal with related matters, but that does not mean the parties can ignore those other proceedings or act as if they have been consolidated. Where I have made orders dealing with other proceedings than the class proceeding currently before me, it is the duty of counsel to ensure the record in each of those proceedings is complete.

Extension of the Mareva Injunction

[5] The Mareva Defendants – at least those that are represented – intend to transfer all of the disputed funds and cryptocurrency in their possession or control to the Escrow Agent so that they need no longer be subject to the Mareva Injunction. This they propose to do without prejudice to their right to argue that the injunction should never have been granted or sought. In the meantime, I have extended the injunction subject to the modifications and clarifications the parties have agreed upon. I have given counsel until 4:00 tomorrow afternoon to settle the form of the order and scheduled a case conference to finalize it.

[6] I have further adjourned the motion to extend the injunction and the motion to dissolve the injunction to March 31, 2022, at 2:00 p.m.

Pleading Amendment Motion

[7] The motion to amend the pleading will be opposed by the Mareva Defendants. This is because the original pleading did not contain the request for injunctive relief. The defendants therefore argue that the proposed amendment in the face of their motion to dissolve the injunction is prejudicial. I have adjourned the pleading amendment motion to March 31 at 2:00 p.m. as well.

TD Interpleader Motion

[8] With respect to the TD interpleader motion, it is on consent, and it is an efficient use of court time to deal with it now. TD holds approximately \$1.3 million in funds deposited from funds raised by the Freedom Convoy Campaign. Those funds may, in part, be funds to which the Mareva injunction applies and, in part, may be funds captured by the Restraint Order. I note that the Restraint Order obtained by Ms. Adams on behalf of the Attorney General of Ontario is an order pursuant to the *Criminal Code* which seeks to freeze property that may have been used for a criminal purpose. This is not, in and of itself, a forfeiture proceeding.

[9] Ms. Keenan who also acts for the Attorney General, but on the civil side, advises that the Attorney General will be bringing forfeiture proceedings under the *Civil Remedies Act, 2001*. (S.O. 2001, c. 28). That proceeding has not yet been commenced, but the TD funds may be one of its targets.

[10] The Attorney General asks that a term of the interpleader order be that the Attorney General be given notice of any motion or other proceeding seeking to release these funds from escrow. I consider that reasonable, but I do not believe the Attorney General requires 30 days notice. 21 days notice should suffice.

[11] TD is prepared to discontinue the Commercial List application, but it will not be necessary to take that step. I communicated with the Toronto RSJ and the Team Lead for the Commercial List earlier today. The order will be granted pursuant to the notice of motion in the class proceedings action. The Commercial List application will be stayed.

Funds seized from Mr. St Louis by the police

[12] According to the affidavit of Mr. St. Louis, following the previous hearing, he was about to transfer cryptocurrency to the Escrow Agent when police officers operating under a search warrant raided his home and compelled him to surrender the cryptocurrency keys to the police.

[13] I am advised by counsel for the Attorney General that the police have now transferred the cryptocurrency keys to the Escrow Agent so that the order issued by this court will have been put into effect.

[14] The defendants take issue with the propriety of police seizing funds that were the subject of the court order shortly after a hearing at which counsel for the Attorney General was present. This may be an issue to be dealt with on a subsequent occasion as the defendant seeks costs against the Attorney General. No order appears necessary today.

Amendment to the Restraint Order

[15] Besides the TD funds mentioned above, there are funds held by the Royal Bank in accounts belonging to Mr. Garrah. Mr. Garrah acknowledges that one of those bank accounts was opened solely to collect funds or to receive funds from a fund-raising platform. He is prepared to release those funds to the Escrow Agent. Other funds in other bank accounts were not the target of the injunction.

[16] Counsel for the Attorney General agrees there should be a minor amendment to the Restraint Order granted by McWatt, ACJ. It appears that the amendment is on consent, I will grant it. I have communicated with the Associate Chief Justice and she has no objection to my dealing with the matter, but it will have to be an order made in the *Criminal Code* proceeding (which is an Ottawa file as shown above.)

Position of GiveSendGo LLC

[17] GiveSendGo LLC is a corporation with its head office in Delaware. It is a fund-raising platform. It is not a party to this proceeding. Mr. Wells appeared today as he was put on notice of the hearing by counsel for the Mareva Defendants.

[18] I am advised by Mr. Groot and by Mr. Wells that the defendant Freedom 2022 Human Rights and Freedoms was to have been a recipient of funds raised on the GiveSendGo platform, but it did not open a bank account to receive the funds prior to the granting of the injunction. As a consequence, the funds were never transferred. Mr. Wells advises that GiveSendGo is now returning those funds to the donors.

[19] Ms. Jilesen takes the position that GiveSendGo is in breach of the injunction by taking this step. Ms. Adams also takes the position that GiveSendGo is in breach of the restraint order.

[20] The question of a breach of the restraint order is not before the court today.

[21] As set out in my original reasons, the funds which the Mareva Injunction intended to preserve were funds that were, at the time, in the possession or control of the Mareva Defendants and therefore potentially exigible property if the plaintiffs are successful in this proceeding. I indicated that I did not view property that was held by a fund-raising platform and had not been distributed as falling within that class.

[22] Ms. Jilesen asked that I not rule definitively on that question today without the benefit of further affidavit material and a formal motion. In her submission, funds that were to have been distributed to Freedom 2022 as soon as it opened a bank account are its property and should fall into the class of assets to which the injunction attached. She argued that the question of whether GiveSendGo is in breach of the Mareva Injunction or whether Freedom 2022 is in breach by not taking the steps necessary to receive the funds should be questions for another day. I agree.

[23] There is no motion for contempt before the court and no motion to expand the scope of the injunction. If the plaintiffs wish to bring such motions for relief against either GiveSendGo or Freedom 2022, they may do so.

[24] For the moment, although Mr. Wells was present and is aware of the position of counsel for the plaintiffs (and counsel for the Attorney General) there is nothing for his company to formally respond to.

Summary & Conclusion

[25] The Mareva Injunction is extended with modifications and terms to be set out in an order which I will finalize tomorrow afternoon. The extension is until the end of the day on March 31, 2022.

[26] The motion to dissolve the injunction, the motion to extend the injunction and the motion to amend the statement of claim are adjourned to March 31, 2022, at 2:00 p.m.

[27] The interpleader motion brought by TD is granted with the provision for notice to the Attorney General. The Commercial List application is stayed.

[28] The Mareva defendants are to continue their efforts to comply with the modified order by moving funds and cryptocurrency to the Escrow Agent.

[29] If an amendment to the Restraint Order is necessary to deal with certain of the funds to be paid to the Escrow Agent, I will sign the necessary amending order.

[30] Costs of today, if any, are reserved to the return of the various motions mentioned above.

Regional Senior Justice C. MacLeod

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Melissa Adams, for the Attorney General
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Regional Senior. Justice C. MacLeod

Released: March 10, 2022