

CITATION: Li et al. v. Barber et al., 2022 ONSC 2662
COURT FILE NO.: CV-22-88514-CP
DATE: 2022/05/02

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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53, JOHN DOE 54, JOHN DOE 55, JOHN DOE 56, JOHN DOE 57, JOHN DOE
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

No one appearing for Patrick King

Melissa Adams, for the Attorney General of Ontario

Iris Fischer for non-party Stripe Canada Payments Services Ltd.

HEARD: May 2, 2022

ENDORSEMENT

[1] This was the return of competing motions that were last before the court on March 31, 2022. (2022 ONSC 2038). Those were motions to extend the Mareva Injunction originally granted without notice on February 17, 2022 and a motion by the Mareva defendants to dissolve the injunction.

[2] Today I was advised that the parties have reached an agreement. Essentially, as Mr. Groot describes it, the injunction will be dissolved upon transfer of remaining funds to the escrow agent and the order will become a preservation order. The funds will be held in escrow pending the determination of this proceeding or further court order. I was presented with an approved form of order which I have reviewed and signed.

[3] It should be noted that Patrick King, who is currently in detention, has never appeared in this proceeding, is not represented by counsel and is not part of the agreement. He is however one of the defendants targeted by the Mareva order and therefore the original order remains in place in relation to Mr. King. As Mr. King is represented by criminal counsel, I am directing that this matter be brought to the attention of his counsel since the order signed today extends the Mareva order against Mr. King until further order of the court. Mr. King is at liberty to bring a motion to vary or dissolve the injunction as it affects him should he wish to do so.

[4] Certain of the funds held in escrow are also subject to the restraint order, obtained independently by the Attorney General of Ontario pursuant to s. 490.8 of the *Criminal Code of Canada*. That section permits the Attorney General to obtain an order freezing “offence related property” and the order was granted by Associate Chief Justice McWatt on February 10, 2022 (Court file no. 22-13355MO). I had previously granted an order varying the restraint order to permit the transfer of funds to the escrow agent. The parties have reached a further agreement with the Crown in respect of the Mareva funds and I have signed that further amendment.

[5] The conversion of the injunction to a preservation order means that it is far less intrusive or disruptive to the individual Mareva defendants than was the original injunction. It should be noted, however, that as a consequence of the agreements between the parties, there has never been a contested adjudication concerning whether or not a Mareva injunction was appropriate in this context. The facts presented to the court at the time of the *ex parte* interim interim injunction I found to support the granting of that order on a temporary basis but all of the subsequent extensions and variations have been either terms of adjournment or have been negotiated between the parties. I say that not to be critical. To the contrary, I commend counsel for conducting the litigation efficiently and arriving at a practical solution. But it is important to record the fact that neither the extension of the interim interim order nor the dissolution of the original order have been fully argued.

[6] It should also be observed that this injunction was granted in the context of a proposed class proceeding. A class proceeding is a procedural device authorized by statute which allows the court to effectively bundle together what would otherwise be individual actions on behalf of numerous parties with similar claims. The point to be emphasised is that a class proceeding does

not create substantive rights. Each of the individual named plaintiffs and each member of the class or classes must have a cause of action that could be pursued separately. Although the original order was not dependant on the likelihood of certification, it would be of significant concern if the plaintiffs do not move the matter forward expeditiously. Potential damages in individual actions would be minor in comparison to the collective damages that might be the result of a successful class proceeding.

[7] I am assured by Mr. Champ that much work has been done behind the scenes and he expects to be in a position shortly to deal with identification of remaining defendants, service on those defendants, the possibility of defendant classes and scheduling of the certification motion. I will continue to be the Class Proceedings Judge assigned to this matter. The parties may obtain a date for a case conference to discuss scheduling and other matters.

[8] The court therefore directs as follows:

- a. The order varying the injunction order and providing for continuation of the escrow fund may issue as signed.
- b. The order varying the restraint order may issue as signed.
- c. The plaintiffs are to schedule a case conference with me to schedule the date for the certification motion and any other steps in this proceeding within 90 days.

Date: May 2, 2022

Regional Senior Justice C. MacLeod

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of Ontario (Crown Law Office Criminal)

Iris Fischer for non-party stakeholder

ENDORSEMENT

Regional Senior. Justice C. MacLeod

Released: May 2, 2022