File Number: 41111_____

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC)

BETWEEN:

S.N.

APPLICANT
(Applicant)

AND:

ROBERT GERALD MILLER and
FUTURE ELECTRONICS INC.

RESPONDENTS
(Respondents)

- and -

ALONIM INVESTMENTS INC.
ROBMILCO HOLDINGS LTD.
MULTIFORM PROPERTIES INC.
4306805 CANADA INC.
11172247 CANADA INC.
RODNEY MILLER

IMPLEADED PARTIES
(Impleaded Parties**)**

APPLICATION FOR LEAVE TO APPEAL
Article 40(1) of the *Supreme Court Act*, RSC 1985, c S-26 and Rule 25 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

CONSUMER LAW GROUP INC.
1030 Berri Street, Suite 102
Montreal, Quebec, H2L 4C3

Mtre Jeff Orenstein
Mtre Andrea Grass
Phone: (514) 266-7863
Fax: (514) 868-9690
jorenstein@clg.org
agrass@clg.org

Counsel for the Applicant, S.N.

ORIGINAL TO:

THE REGISTRAR
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario, K1A 0J1
Registry-Greffe@SCC-CSC.CA

COPIES TO:

RENNO VATHILAKIS INC.
145 rue St-Pierre, Suite 201
Montreal, Quebec, H2Y 2L6

Mtre Karim Renno
Mtre Ava Liaghati
Phone: (514) 937-1221
Fax: (514) 878-1450
krenno@renvath.com
aliaghati@renvath.com

Counsel for Respondent Robert Gerald Miller

ROBINSON SHEPPARD SHAPIRO LLP
800 rue du Square-Victoria, Bureau 4600
Montreal, Quebec, H4Z 1H6

Mtre Jean-Pierre Sheppard
Mtre Xavier Morand Bock
Mtre William Marchetti-Berry
Phone: (514) 393-4013
Fax: (514) 878-1865
jpsheppard@rsslex.com
xmbock@rsslex.com
wmarchetti@rsslex.com

Counsel for Respondent Future Electronics Inc.

IMPLEADED PARTIES ARE NOT REPRESENTED

APPLICANT'S MEMORANDUM OF ARGUMENT

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. This Application raises an issue of public importance concerning the application of the criteria for the issuance of a provisional *Mareva*-type injunction in Canada. This class action involves numerous women that are pursuing their alleged aggressor for sexual exploitation while underage, ranging between 11-17 years old. The alleged sexual aggressor is Robert G. Miller, the current owner of Future Electronics. This issue arose following Future Electronics' announcement of its sale in the first half of 2024 to WT Electronics, a Taiwanese corporation. In this class action, the Applicant is claiming class damages of $200 million, to which, should this class action be successful on the issue of damages, it is feared that there will no longer be any assets to collect.

2. The Court of Appeal of Quebec denied leave to appeal from the decision rendered by the Superior Court ("Judgment in First Instance") denying the Applicant's *Application for a Provisional & Interlocutory Mareva-type Injunction and Safeguard Order against Defendants Robert Gerald Miller and Future Electronics Inc.* (the "Mareva Motion" and the "Appeal Permission Judgment"). It is submitted that this Honourable Supreme Court should grant leave to appeal to decide the merits of the Applicant's Mareva Motion for at least 6 main reasons:

(a) National Consistency. *Mareva* injunctions are not being decided in a uniform way across the provinces and territories of Canada (which is peculiar, as it originates from British law[1]). Since then, in the common law provinces, the criteria for a *Mareva* injunction follow that of an interlocutory injunction, but with emphasis on the appearance of right. The caselaw uses the terminology: "strong *prima facie*" case,[2] appearance of a "serious" right,[3] or "apparently strong case"[4] – but does not reach the "bound to succeed" threshold.[5] In Quebec, the criterion is simple « *apparence de droit* »[6] and it is said that influence from the common law provinces should be avoided, as stated in *Cinar Corp.* c. *Weinberg*, 2005 CanLII 27867 (QC CS):

OFFICIAL VERSION	UNOFFICIAL TRANSLATION

[1] *Mareva Compania Naviera SA* v *International Bulkcarriers SA*, [1980] All E.R. 213.
[2] *Equustek Solutions Inc.* v. *Jack*, 2012 BCSC 1490, para. 25.
[3] *4463251 Canada inc.* c. *Duo-Regen Technologies Canada inc.*, 2011 QCCS 4043, paras. 3 & 17.
[4] *Li et al.* v. *Barber et. al.*, 2022 ONSC 1176, para. 8.
[5] *Equustek Solutions Inc.* v. *Jack*, 2012 BCSC 1490, para. 26; *Tracy* v. *Instaloans Financial Solutions Centres (B.C.) Ltd.*, 2007 BCCA 481, para. 54.
[6] *Desjardins Assurances générales inc.* c. *9330-8898 Québec inc.*, 2019 QCCA 523, para. 47.

« [15] Les Défendeurs plaident que pour obtenir une injonction Mareva, le requérant doit démontrer qu'il a non seulement une apparence de droit, mais «a strong *prima facie* case». Il semble que cette position ait été adoptée par les tribunaux de l'Ontario, tel qu'en font foi certaines décisions citées par les Défendeurs.	"[15] The Defendants argue that to obtain a Mareva injunction, the petitioner must show that he has not only an appearance of right, but "a strong prima facie case". This position appears to have been adopted by the Ontario courts, as evidenced by certain decisions cited by the Defendants.
[16] Le Tribunal croit qu'il faut faire preuve de circonspection lorsqu'il s'agit d'importer dans le droit du Québec des théories élaborées dans d'autres systèmes de droit. En l'espèce, au Québec, l'octroi d'une injonction interlocutoire trouve sa source dans le texte de l'article 752 C.p.c. et l'interprétation qu'en ont donné les tribunaux. »	[16] The Court believes that caution must be exercised when importing theories developed in other legal systems into Quebec law. In this case, in Quebec, the granting of an interlocutory injunction finds its source in the text of article 752 C.C.P. and the interpretation given to it by the courts."

One would expect that this difference (simple appearance of right in Quebec vs. strong appearance of right in common law) would cause the issuance of a Mareva injunction to be less exacting in Quebec, but instead, in the present case, it ironically, the opposite. Aside from this discrepancy, which likely did not affect the outcome at present (as the Applicant does have a very strong case)[7] a major difference between Mareva injunctions in the common law provinces, as opposed to in Quebec, is the ability to grant a Mareva injunction as a form of security, even where evidence of active dissipation of assets is lacking. There are at least 2 reasons for this: (i) equity, so as to "arrive at a just result"; and (ii) the "court's concern to protect its (own) process from abuse". As stated in *Equustek Solutions Inc.* v. *Jack*, 2012 BCSC 1490:

> "[30] The flexible approach articulated in *Mooney No. 2* rejects any hard and fast rules as to when a *Mareva* injunction can be issued. A careful balancing of relevant factors will lead to a just result. In that case an injunction was found to be available even where the defendant was not actively dissipating or removing assets from the jurisdiction. It was available as a form of security given the particular circumstances before the court. Huddart J. explained the flexible approach as follows:
>
> …
>
> In other words, it prevents the judge from becoming a prisoner of a fixed formula and places the emphasis where it belongs, on the justice and fairness of the order *inter partes*. It is fair to both sides, because, while maintaining the burden on the plaintiff to establish grounds for the application, it justifies calling upon the defendant to meet the case brought by the plaintiff, by putting forth evidence to support his position.

[7] At the time of the filing of the Mareva Motion, there were 38 class member sworn statements, at the time of the hearing in the first instance, there were 41, and as of today, this number has grown to 47 class member declarations.

> By this approach, the ultimate question becomes, is it fair and just that the applicant should have the right to monitor the movement or expenditure of capital assets by the respondent during the course of the proceedings between them?
> …
> Implicit in the framing of this question is the view that *Mareva* injunctions are available not only to restrain the active dissipation of assets, but also as a form of security. In my view it is only fair to state directly what courts are doing in fact.
> …
> Fundamental to the exercise of the jurisdiction where no dissipation or secretion is imminent, will be the court's concern to protect its process from abuse. A litigant cannot be permitted to use the court to his advantage, while effectively disavowing in advance any judgment against him.
>
> …
> [31] What is essential is awareness of the root issue of the particular situation before the court, so that a proper balancing of interests can take place, and a just result arrived at (*Tracy* at paras. 44-46). In most circumstances, a real risk of dissipation of assets must be established before a party will be granted a *Mareva* injunction in British Columbia; however, this is not a strict requirement (*ICBC v. Patko*, 2008 BCCA 65 at para. 26. In some circumstances, such as where there is evidence of fraud, a risk of dissipation of assets can be inferred (*Netolitzky*). Where the risk of dissipation of assets is not imminent, the court's fundamental concern should be to protect its process from abuse. As a result, given a *Mareva* injunction can be granted as a form of security, it is not essential that there be evidence of active removal or dissipation of assets. (*Netolitzky*; *Silver Standard Resources Inc. v. Joint Stock Co. Geolog* (1998), 1998 CanLII 6468 (BC CA), 168 D.L.R. (4th) 309 (B.C.C.A.))."

The leading authority from the Quebec Court of Appeal, *Desjardins Assurances générales inc.* c. *9330-8898 Québec inc.*, 2019 QCCA 523, paras. 42-52, is devoid of any reference to either equity or protection. This difference in legal approach leads to different results; even with identical facts, the results differ, based only in the province in which the Mareva injunction is being sought.

(b) If the judgments stand, it is hard to imagine any grounds upon which a Mareva order can ever be granted. It is clear that Defendant Miller is preparing to hide his assets and to make himself judgment-proof. The criteria for the issuance of a Mareva injunction are clearer here than in most other cases in which the remedy was granted. The facts were not clearer in the case of *Li et al*. v. *Barber et. al.*, 2022 ONSC 1176 where a $20 million Mareva order was granted. In that case, cryptocurrency had been donated to the 2022 Freedom Convoy Protest. The organizers had announced that it would soon be distributed to the truckers. According to the reasoning of the Judgment in First Instance, this admission would be considered full "transparency".[8]

[8] *S.N.* c. *Miller*, 2023 QCCS 4524: "[46] The Applicant cannot point to any objective fact which demonstrates that Defendants are attempting to conceal or hide the eventual proceeds of the sale. On the contrary, Future Electronics was transparent in its September 14, 2023, press release regarding the main points of the upcoming transaction."

Following the reasoning of both lower court judgments, a defendant divesting itself of its assets to third persons just means that the plaintiff can one day contest it by filing a Paulian action.

Judgment in First Instance	Appeal Permission Judgment
"[56] As the Court has already stated, this transaction can be contested through a paulian action, if the required criteria are met. Without pronouncing itself on this specific transaction, this one element is insufficient to ground an objective fear that Miller is dilapidating his patrimony."	"[8] She may also have other means of protecting her future right to execution, such as seizure before judgment or, in the case of the transfer of the Westmount property to mis en cause Rodney Miller, paulian action."

Finally, if filing several Paulian actions against third parties, who will have had all the time in the world to dispose of their assets is too difficult or cumbersome, using the same reasoning of both lower court judgments, that is inconsequential since this would amount to confusing potential difficulties in the execution of a judgment with an attempt to hide assets.

Judgment in First Instance	Appeal Permission Judgment
"[48] The Applicant is erroneously equating potential unknown difficulties to execute a judgement … to an attempt by Miller to "hide" the proceeds of the sale."	"[10] The judge of the Superior Court noted that potential difficulties in executing a future judgment cannot be conflated with a risk of dissipation or hiding of assets nor can they justify, as such, the issuance of a Mareva injunction."

(c) To restore faith in the judicial process. "Justice should not only be done, but should manifestly and undoubtedly be seen to be done" – Lord Hewart in *Rex* v. *Sussex Justices*, [1924] 1 KB 256. This infamous quote is related to the appearance of judicial bias; nevertheless, it is based on the concept of how the judicial system will be seen in the eyes of the public. This has been a highly-publicized case; news stories have appeared in nearly every media outlet across the country[9]. 47 women have filed declarations in the present case detailing how they were paid by Defendant Miller for underage sex and have suffered serious psychological injury as a result.

The rejection of the Mareva Motion received significant public attention.[10] If Defendant Miller is able to walk off with $5.2 billion in plain sight and the legal system simply allows it, the

[9] There is simply too many news stories about the present case to list. Internationally, this story has been published in the U.K. Daily Mail, The U.S. Sun, and the Epoch Times. Nationally, this story has been published numerous times since February 2023 in The Globe and Mail, the National Post, CBC, CTV, TVA, Global, MSN, Yahoo, Toronto Sun, Toronto Star, Montreal Gazette, Radio-Canada, La Presse, Le Devoir, Le Journal de Montréal, Le Journal de Québec, iHeartRadio Canada, 98.5 FM, CityNews, Ground News, MooseJaw Today, CP24, West Island Today, Richmond Sentinel, Burnaby Now, Penicton Herald.
[10] See Appendix "A" for media references.

public will justifiably lose faith in the judicial process. The trial will become a "smoke show" leading to judgment with no value. Justice will not be done and it will manifestly and undoubtedly be seen to have not been done. A few publicly-posted comments from newspapers make this point:

- The National Post article "Montreal billionaire accused of sex with minors won't lose access to assets" (published Nov. 27, 2023):
  - "Trudeaus laurentian elite pals…" (4 likes) – posted by Abbanna Ngizi Oguala
  - "Good thing Mr. Miller didn't participate in or donate to the convoy protests or his assets would have been treated differently. (8 likes) – posted by Mark Thomas
  - "Up to fifty complainants! Underaged! Showered with gifts and cash! Between 17 and 27 years ago! Defendant billionaire not hiding. Just "bedridden" in the ugliest house in Westmount! Is this an episode of "Just for Laughs" (also a Montreal production)? (5 likes) – posted by Peter Hargadon
  - "What is the point of being rich if you don't get to do as you please? the courts understand this" (5 likes) – posted by James Bolt
    - Reply "Certainly seems that way sometimes." (2 likes) – by Mike Perkins
    - Reply "And they tell us to trust rich capitalists." (1 like) – by Gord Smith
- The National Post article "Quebec billionaire accused of paying underage girls for sex will die before trial: lawyer" (published Jan. 18, 2024)
  - "Does he sit on the Board of the Trudeau Foundation?" (15 likes, 2 dislikes) – posted Dorothy Brooks

(d) To decide whether a Mareva injunction can be granted before class certification/ authorization. Because the Judge in First Instance had already concluded that a Mareva injunction was not in order, she did not decide the issues of: (a) whether or not such an order can be rendered before certification; (b) if so, in what amount ($200 million for the Class or $2.5 million for the Applicant); and (c) under what legal provisions (arts. 49 & 510 of the Quebec *Code of Civil Procedure*, CQLR c C-25.01 "C.C.P.), and the court's general powers to protect class members).[11]

There is authority in Ontario that issues (a) and (b) can be answered in the affirmative. As mentioned, in the recent case of *Li et al*. v. *Barber et. al*., 2022 ONSC 1176, R.S.J. MacLeod granted a *temporary* Mareva injunction before certification up to an amount of $20 million in the class action against the 2022 Freedom Convoy protest in Ottawa.[12] The Mareva order has been varied and

[11] *S.N. c. Miller*, 2023 QCCS 4524, paras. 27-28.
[12] See paras. 45-46 of the Reasons for Decision and the Order dated February 17, 2022 at paras. 4 and 12 "… so long as the total unencumbered value of the Mareva Respondent's frozen assets remains above $20 million.
THIS COURT ORDERS that this Order will cease to have effect if the Mareva Respondents provide security by collectively paying the sum of $20 million into Court."

extended 4 times and is now extended until further order.[13] It is respectfully submitted that this result should be equivalent whether in Ontario or in Quebec. A Mareva order can be issued before authorization and in an amount that represents class-wide damages and not just for the Applicant.

With respect to the mechanism of how a Mareva injunction may be granted in Quebec before class authorization, there is significant debate as to whether arts. 49 C.C.P. (the court's general powers) and 510 C.C.P. (injunctions) can apply prior to authorization. Admittedly, this issue relates to Quebec law – but it is common and has already transpired twice in this case. The Judge in First Instance pointed this out, but did not attempt to resolve it.[14] The majority of the authorities submitted by the Applicant on this issue were carefully considered by Justice Bisson, J.S.C. who nevertheless concluded that the Court lacked the power to issue a safeguard order pre-authorization. However, the case of *Li et al*. v. *Barber et. al*., 2022 ONSC 1176, was not submitted to Justice Bisson. In this case, the Superior Court of Ontario issued a Mareva injunction before certification to freeze the organizers' funds in the context of the class action regarding the 2022 Freedom Convoy Protest. There is a lack of guidance in Quebec on the powers of the court to render injunctive or safeguard measures at a pre-authorization stage.[15] Despite the body of authority that art. 49 C.C.P. applies before authorization, Justice Bisson, J.S.C.in a prior judgment in this very case[16] wrote "certain aspects of art. 49 (can) be applied at the pre-authorization stage", but not all of it – with respect, this lacks jurisprudential authority. There is no reason why all of art. 49 (as well as art. 510 C.C.P.) cannot be applied prior to authorization; this debate should be put to rest.

(e) To establish the burden of proof at the preliminary stage (provisional or safeguard) of a Mareva injunction. There is a misunderstanding as to the burden(s) of proof that the applicant must satisfy during the different stages of a Mareva injunction. A different burden is applicable to the plaintiff depending on whether it is at a preliminary stage (provisional or safeguard, i.e. demonstration) or a later stage (renewal, annulment, interlocutory i.e. *prima facie*). This uncertainty does not exist for a seizure before judgment, perhaps because this procedure is more established in Canada. A Mareva injunction (which attaches *in personam*) is often compared to a

[13] Order for Fourth Extension of Mareva Injunction, May 2, 2022, para. 1.
[14] *S.N.* c. *Miller*, 2023 QCCS 4524, paras. 27-28.
[15] There is authority to apply art. 49 C.C.P. pre-authorization in *Larose* c. *Corporation de l'École des Hautes Études commerciales de Montréal*, 2020 QCCS 5176, paras. 11-16, which deems that the Court of Appeal overruled *Daigle* c. *Club de golf de Rosemère*, 2018 QCCS 5360 in deciding *FCA Canada inc.* c. *Garage Poirier & Poirier inc*., 2019 QCCA 2213, paras. 58, 69, & 73 and *Amnistie internationale Canada* c. *Environnement Jeunesse*, 2020 QCCA 223, paras. 10 & 15.
[16] *S.N.* c. *Miller*, 2023 QCCS 2333, para. 71.

seizure before judgment (which attaches *in rem*), as their function is similar. A seizure before judgment has two steps, sufficiency followed by falsity. At step 1 (sufficiency) the burden on the plaintiff is simple demonstration, where the facts alleged by the applicant are taken for true. *Prima facie* evidence is only required at step 2 (falsity).

The Judge in First Instance applied an overly stringent burden of proof. At the preliminary stage, the burden of proof should have been of simple demonstration, i.e. where the facts alleged by the applicant are taken for true. Instead, the Applicant was held to the burden of "[34] … *Prima facie* proof of a real risk of disappearance of the assets if *[sic]* required to meet this criterion." The Appeal Permission Judge held this burden as proper "[9]…the judge did not commit any reviewable error of law in determining the criteria for the issuance of a Mareva injunction nor in determining the burden of proof incumbent upon the applicant (which requires a *prima facie* demonstration)". With respect, the burden of *prima facie* evidence must only be applied in the following steps (renewal, annulment, interlocutory).

(f) To establish the principle that a Mareva injunction may be issued against third parties. In *Google Inc.* v. *Equustek Solutions Inc.*, 2017 SCC 34, para. 33, the Supreme Court of Canada established the principle that a Mareva injunction can "require the assistance of a non-party…if it is just and equitable to do so". Traditionally, "banks and other financial institutions have, as a result, been bound by Mareva injunctions even when they are not a party to an underlying action." However, this decision contains no limitative language that would prohibit a Mareva injunction from being issued against a defendant's *alter egos*; and further, there is no language to suggest that specific allegations must be made to lift the corporate veil in order to do so. Nevertheless, the Judgment in First Instance rendered the opposite on both points.[17]

While unclear, it would seem that the Appeal Permission Judge did not agree with the Judge in First Instance, but felt that it did not change the outcome of the decision, as she wrote:

> "[9] Secondly, the judge did not commit any reviewable error of law in determining the criteria for the issuance of a Mareva injunction nor in determining the burden of proof incumbent upon the applicant (which requires a *prima facie* demonstration), except, perhaps, on one point, concerning the absence of specific allegations against the impleaded parties in the Mareva Motion. This error, however, is without consequence considering the conclusion of the judge that the respondents do not engage or have not engaged in conduct indicating that they are trying to "dilapidate or hide their assets in order to evade the execution of a potentially favourable judgment on the merits of the class action."

[17] *S.N.* c. *Miller*, 2023 QCCS 4524, paras. 41 & 43.

3. It is the Applicant's position that:

i) A Mareva injunction can be ordered at any time in a class action, including before authorization. The statutory authority emanates from the provisions on injunctions (provisional and interlocutory, arts. 510-511 C.C.P.) and the court's inherent powers (art. 49 C.C.P.). The amount thereof is based on anticipated class-wide damages and not the plaintiff's individual injury;

ii) A Mareva injunction can be ordered as security, even where there is no evidence of active dissipation of assets, based on equity and/or protecting the judicial process from abuse. This should be available where the circumstances are such that "dissipation of assets can be inferred", such as where there is evidence of fraud or where the litigant is "using the court system to his advantage";[18]

iii) Where the defendant will suffer none (or negligeable) inconvenience while the prejudice to the plaintiff will be devasting – this should weigh heavily in favour of the Mareva injunction;

iv) A defendant's prior persistent or characterized dishonest behaviour can relate to any past conduct; it need not relate solely to the behaviour in relation to the dissipation of assets. A defendant's prior persistent or characterized dishonest behaviour can transform a neutral act into a suspicious act (of an attempt to jeopardize class recovery);

v) The facts of the present case are clear that Defendant Miller will eventually be subject to a condemnation of damages. Accordingly, he is taking measures to evade such a scenario. This behaviour is consistent with his prior conduct of using *prête-noms* to hide and shield his assets;

vi) The standard of proof necessary at a preliminary stage (provisional or safeguard) of a Mareva injunction is simple demonstration, where the facts alleged by the applicant are taken for true. *Prima facie* evidence is only required at the next stage, being either a renewal of a Mareva order or upon a motion by the defendant to annul it;

vii) Impleaded parties can also be bound by Mareva injunctions where it is "just and equitable to do so"[19], such as, where the order would not be effective without the impleaded parties being directly implicated. This can often involve *alter egos* of a defendant and family members. It is neither necessary for the impleaded parties to be involved in the underlying action, nor is it required that allegations be made by the applicant to pierce a defendant's corporate veil.

[18] *Equustek Solutions Inc.* v. *Jack*, 2012 BCSC 1490, paras. 30-31.
[19] *Google Inc.* v. *Equustek Solutions Inc.*, 2017 SCC 34, paras. 28-29, 33.

B. Background Facts

4. On February 22, 2023, the Applicant filed this class action alleging the sexual exploitation of underage adolescent girls, of which, she was one. On November 17, 2023, the Applicant presented her Mareva Motion. The hearing lasted approximately 3 hours.[20]

5. On November 27, 2023, the Honourable Justice Eleni Yiannakis, J.S.C. rendered judgment dismissing the Applicant's Mareva Motion.[21] The Judge in First Instance rejected the Mareva Motion based on her assessment that the 4 criteria necessary of a Mareva injunction were not met (appearance of right, serious or irreparable harm, balance of convenience, and urgency).[22] Based on this, the Judge in First Instance found that she need not decide the issue of ***whether*** such a measure ***can*** be granted prior to authorization.[23] On January 8, 2024, the Applicant presented her Application for Leave to Appeal (arts. 30, 31, 32 and 357 C.C.P.) (the "Motion for Permission to Appeal"). The hearing lasted approximately 1 hour.[24]

6. On January 10, 2024, the Honourable Justice Marie-France Bich, J.A. (the "Appeal Permission Judge") rendered judgment dismissing the Applicant's Motion for Permission to Appeal (the "Appeal Permission Judgment").[25] The Appeal Permission Judge rejected the Motion for Permission to Appeal based on her assessment that the Judgment in First Instance did not cause irremediable injury, that there were no reviewable errors committed, and that an appeal had no reasonable chance of success. Further, the Appeal Permission Judge opined that the question as to the possibility of issuing a Mareva injunction at the authorization stage of a class action was purely theoretical and need not be addressed. Finally, the Appeal Permission Judge agreed that the Judge in First Instance had made 1 or 2 errors, but that they were "without consequence" or "on one or two minor aspects".[26]

7. The facts relative to the Mareva Motion are not in dispute, only their characterization is. On February 2, 2023, Radio-Canada's investigative program *Enquête* aired « *Le Système Miller – des jeunes filles, de l'argent, des hôtels* » where women were interviewed on their encounters with Defendant Miller who paid them to engage in sexual relations, while under the age of 18, between

[20] Specifically, the hearing was between 9h16–12h04 in room 2.13 of the Superior Court of Quebec.
[21] *S.N.* c. *Miller*, 2023 QCCS 4524.
[22] *Desjardins Assurances générales inc.* c. *9330-8898 Québec Inc.*, 2019 QCCA 523.
[23] Judgment in First Instance, paras. 27-28.
[24] Specifically, the hearing was between 10h13–11h19 in room RC-18 of the Quebec Court of Appeal.
[25] *S.N.* c. *Miller*, 2024 QCCA 22.
[26] *S.N.* c. *Miller*, 2024 QCCA 22, paras. 9-10.

1994 and 2006. While Miller denied these allegations, he nevertheless stepped down as President and CEO of Defendant Future Electronics the next day. On February 22, 2023, the present class action was filed, which was amended several times, including most recently on December 4, 2023 (Third Amended Application for Authorization). The most recent class definition is:

> "All persons who, while under the age of 18 years, performed sexual services in exchange for consideration with and/or were victims of sexual exploitation and/or were victims of sexual interference by Robert G. Miller or any other group to be determined by the Court;"

8. The common issues include whether Defendant Miller violated ss. 286.1 (issue a), 153 (issue b), and/or 151 (issue b.1) of the of the *Criminal Code*, RSC 1985, c C-46. Included in evidence are 47 Class Member declarations alleging that Defendant Miller paid them for sex while they were underage (the ages varying from 11-17). It is also alleged that, in furtherance of Defendant Miller's stratagem, he had fallaciously told his victims that his name was "Bob Adams" and that he lived in Chicago, IL – neither are true – and he used a fake business card to this effect.[27]

9. Shortly after the class action was filed, Defendant Miller made the decision to sell Future Electronics. "The decision at that point was to separate Mr. Miller from the company…This included the launch of a formal sale process. The founder made that call …".[28] On September 14, 2023, Future Electronics issued a press release stating that WT Microelectronics "has entered into a definitive agreement to acquire 100% of the shares of Future Electronics for an enterprise value of US$3.8 billion in an all-cash transaction … and is expected to close in the first half of 2024, subject to customary closing conditions including the receipt of required regulatory approvals."[29] Currently, Future Electronics is owned by Alonim Investments Inc., which is owned by Robmilco Holdings Ltd. (both are Impleaded Parties), which is in turn 100% owned by Defendant Miller.[30] The headquarters of Future Electronics (in Pointe-Claire), a building with a city evaluation of $30.5 million,[31] is owned by Robert Gerald Miller Holdings Inc. (which is now Multiform Properties Inc.) (both Impleaded Parties), which is 100% owned by Defendant Miller.[32]

10. With regard to Defendant Miller's personal residence, which has a city evaluation of $9.5 million[33] – in 1984, it was purchased by Defendant Miller in his own name; in 2021, he donated it

[27] Exhibit R-45.
[28] Exhibit MA-4.
[29] Exhibit MA-6.
[30] Exhibit R-9.
[31] Exhibit MA-15.
[32] Exhibit MA-13.
[33] Exhibit MA-23.

to 11172247 Canada Inc.[34] (an Impleaded Party). Until the facts surrounding this class action were made public, 11172247 Canada Inc. listed Me Jules Charette of Norton Rose as its sole shareholder, director and officer;[35] on March 30, 2023, after this class action was filed, an annual declaration at the *Registre des entreprises* was filed removing Me Charette and replacing him with Defendant Miller;[36] on April 19, 2023, a declaration of correction was filed replacing Defendant Miller with his son, Rodney Miller;[37] on August 31, 2023, pursuant to a private agreement, 11172247 Canada Inc. transferred ownership of the property for $1.00 to Defendant Miller's son, Rodney.[38] The private agreement references the fact that Defendant Miller was always the real owner and the corporate entity was acting as his *prête-nom.* Consequently, after the institution of the present action, a $9.5 million immoveable asset "left" Defendant Miller's patrimony and was given to his son for $1.

11. With regard to Defendant Miller's other 2 properties (375 and 380 Olivier), which have a combined city evaluation of $4.5 million[39] – before this class action was filed, they were both owned on paper by 4306805 Canada Inc. (an Impleaded Party), which at first listed Me Samuel Minzberg of Davies and then after by Me Charette of Norton Rose as its sole shareholder, director and officer;[40] on March 30, 2023, an annual declaration at the *Registre des entreprises* was filed removing Me Charette and replacing him with Defendant Miller;[41] on August 31, 2023, pursuant to private agreements, 4306805 Canada Inc. transferred ownership of the 2 properties for $1.00 each to Defendant Miller.[42] The private agreements reference that Defendant Miller was always the real owner of the 2 properties and the corporate entity was merely acting as his *prête-nom*.

12. The Applicant has been unable to effectuate personal service on Miller, despite 12 attempts to do so during the period of Feb.-Dec. 2023. In Feb./ March 2023, the Applicant attempted to serve the Originating Application; the bailiff went to Miller's listed residence (in Westmount, Quebec), but nobody answered the door (3 attempts), the driveway and walkway were covered in snow that had neither been shovelled, nor walked through and Miller never replied to the notice

[34] Exhibit MA-16.
[35] Exhibit MA-17.
[36] Exhibit MA-19.
[37] Exhibit MA-20.
[38] Exhibit MA-21.
[39] Exhibit MA-26 and MA-30.
[40] Exhibits R-13 and R-14.
[41] Exhibits R-14A.
[42] Exhibits MA-24 and MA-28.

left in the mailbox.[43] The bailiff attempted to serve Miller at two other residential locations that he frequented in Westmount, Quebec; again, no one answered (3 attempts) and no one ever responded to the notes that the bailiff left in the mailboxes.[44] In August 2023, the Applicant tried to serve Miller with her Notice of Appeal (2 attempts), but again, no one was present.[45] In October/ November 2023, the Applicant tried to serve Miller with the Mareva Motion at his residence[46] (2 attempts) and once at 380 Olivier[47] (1 attempt), without success. In December 2023, the Applicant tried to serve Miller with the Permission to Appeal at his home address (1 attempt), also unsuccessfully.[48] During the hearing on the Mareva Motion in the first instance, "Miller's attorney stated in open court that his client was living in Montreal at 78 Summit Crescent in Westmount … Miller's attorney argued that he is bed ridden and that this explains the failed attempts to serve him personally"[49] – but no affidavit has ever been produced to this effect by Miller.[50]

PART II – STATEMENT OF THE QUESTIONS IN ISSUE

13. This proposed appeal raises the following questions of law which are of public importance, some of which have never been considered by the Supreme Court:

(1) Can a Mareva injunction be ordered prior to certification/ authorization of a class action? Pursuant to what provision of law or court power? If so, can the amount be based on class-wide damages or just on the amount of the plaintiff's injury?

(2) Can a Mareva injunction be ordered as a form of security, whether based on equity or protecting the judicial process from abuse, even where there is no evidence of active removal or dissipation of assets?

(3) What is the proper amount of weight to be given to each of the 4 criteria to a Mareva injunction? Ought there be significant consideration where a defendant suffers negligeable or no inconvenience to a Mareva injunction being granted?

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[43] Exhibit MA-7 and MA-8.
[44] Exhibit MA-9.
[45] Exhibit MA-36.
[46] Exhibit MA-37.
[47] Exhibit MA-38.
[48] Minutes of the bailiff report dated December 11, 2023.
[49] Judgment in First Instance, paras. 53-54.
[50] Even assuming this to be true, which the Judge in first Instance was not permitted to do absent affidavit evidence, how can it be explained that someone who can't get out of bed and requires around-the-clock care, has a caretaker that doesn't hear the doorbell and doesn't enter and exit the house? This explanation doesn't make sense.

(4) Must prior persistent or characterized dishonest behaviour of a defendant relate to their dissipation of assets or can it relate to any past conduct?

(5) Do the facts of the present case merit the issuance of a Mareva injunction?

(6) What is the standard of proof necessary to succeed at a preliminary stage (provisional or safeguard) of a Mareva injunction?

(7) Can impleaded third parties who are not defendants in the underlying legal proceeding also be ordered to comply with a Mareva injunction?

PART III – STATEMENT OF ARGUMENT

ISSUE 1: Can a Mareva injunction be ordered prior to certification/ authorization of a class action? Pursuant to what provision of law or court power? If so, can the amount be based on class-wide damages or just on the amount of the plaintiff's injury?

14. There is no reason that a Mareva injunction cannot be ordered prior to authorization/ certification of a class action and no justification that it cannot be issued in an amount that represents anticipated class-wide damages.[51] With respect to the mechanism of how a Mareva injunction may be granted before authorization, art. 510 C.C.P. states: "A party may ask for an interlocutory injunction in the course of a proceeding or *even before the filing of the originating application* if the latter cannot be filed in a timely manner." Consequently, the stage at which the class action is at is not significant – a Mareva motion can be filed before the class action. It is also submitted that art. 49 C.C.P. has no limitation as to the powers that a court may exercise "*at any time and in all matters*" to "grant injunctions or issue protection orders or orders to safeguard the parties' rights for the period and subject to the conditions they determine. As well, they may make such orders as are appropriate to deal with situations for which no solution is provided by law." Courts have the authority to protect the interest of class members by rendering any necessary order.

ISSUE 2: Can a Mareva injunction be ordered as a form of security, whether based on equity or protecting the judicial process from abuse, even where there is no evidence of active removal or dissipation of assets?

15. As established in *Equustek Solutions Inc.* v. *Jack*, 2012 BCSC 1490, a Mareva injunction can be ordered as a form of security, even where evidence of active dissipation of assets is lacking,

[51] *Li et al.* v. *Barber et. al.*, 2022 ONSC 1176.

when it is necessary to protect the court system from abuse or on equitable grounds. A Mareva injunction is intended to be flexible, without any "fixed formula" or "hard and facts rules".[52]

16. There are circumstances where a risk of dissipation or hiding of assets can be inferred, such as, in the case of fraud.[53] The court should keep in mind that money can easily be moved between jurisdictions and that judgments require adaptation to effective. As stated in *Tracy* v. *Instaloans Financial Solutions Centres (B.C.) Ltd.*, 2007 BCCA 481, para. 47: "assets are easily moved from jurisdiction to jurisdiction…the practical consideration that in this day of instant communication and paperless cross-border transfers, the courts must, in order to preserve the effectiveness of their judgments, adapt to new circumstances. Such adaptability has always been, and continues to be, the genius of the common law."

ISSUE 3: What is the proper amount of weight to be given to each of the 4 criteria to a Mareva injunction? Ought there be significant consideration where a defendant suffers negligeable or no inconvenience to a Mareva injunction being granted?

17. The 4 criteria in Quebec for the issuance of a Mareva order are: (1) appearance of right;[54] (2) serious or irreparable harm;[55] (3) balance of convenience; and (4) urgency. But the proper weight to be given to these factors remains unresolved. There is authority to say that the more serious one factor is, the less demanding another one ought to be. As stated in *Ubi Soft Divertissements Inc.* c. *Champagne Pelland*, 2003 CanLII 528 (QC CS):

OFFICIAL VERSION	UNOFFICIAL TRANSLATION
« [29] CONSIDÉRANT que comme le soulignait la Cour d'appel dans l'arrêt *Favre*,[56] tous ces critères, y inclus la question de l'apparence de droit, doivent s'analyser selon une approche globale à la lumière les uns des autres et non de façon théorique distinctement les uns des autres. C'est ainsi que plus le préjudice et les inconvénients subis par le demandeur sont sérieux, moins on sera exigeant sur l'apparence de droit, et vice-versa [voir aussi *Brassard* c. *Société zoologique de*	"CONSIDERING that, as emphasized by the Court of Appeal in *Favre*, all these criteria, including the question of the appearance of right, must be analyzed as a whole in light of each other, and not in a theoretical manner distinct from one another. Thus, the more serious the prejudice and inconvenience suffered by the claimant, the less stringent the appearance of right, and vice versa."

[52] *Equustek Solutions Inc.* v. *Jack*, 2012 BCSC 1490, para. 30.
[53] *Equustek Solutions Inc.* v. *Jack*, 2012 BCSC 1490, para. 31.
[54] This is different from the common law provinces, where the plaintiff must show a strong appearance of right.
[55] This is another difference between Quebec law and the common law provinces. This distinction, however, is created by statute, as art. 511 C.C.P. uses the words "serious *or* irreparable prejudice" – consequently the harm can be serious, but yet remediable by a final judgment. Injunctions in the common law provinces must show irreparable harm, serious injury would be insufficient. *Groupe CRH Canada inc.* c. *Beauregard*, 2018 QCCA 1063, paras. 30-34.
[56] *Favre* c. *Hôpital Notre-Dame*, 1984 CanLII 2824 (QC CA).

Québec Inc., 1995 CanLII 4710 (QC CA), [1995] R.D.J. 573 (C.A.); *Coutu* c. *Ordre des pharmaciens du Québec*, 1982 CanLII 2832 (QC CA), [1984] R.D.J. 298 (C.A.)]; »	

18. The case law is clear that where an applicant can show a clear right, there is no need to look at the balance of convenience criterion (*Desjardins Assurances générales inc.* c. *9330-8898 Québec inc.*, 2019 QCCA 523 « [49] Comme en matière d'injonction interlocutoire, la preuve *prima facie* d'un droit clair dispense l'étude de la balance des inconvénients. » UNOFFICIAL TRANSLATION "[49] As in the case of interlocutory injunctions, prima facie evidence of a clear right dispenses with the need to consider the balance of convenience.").

19. Consequently, there is clear jurisprudence on the interplay between criteria #1 (appearance of right) and #3 (balance of convenience). However, there does not appear to be much authority on the relationship between criteria #2 and #3 (serious or irreparable harm) – which are determinative at present. It is evident that Class Members will suffer grave inconvenience should a judgment in their favour be incapable of execution, while Defendant Miller will suffer little to no effect whatsoever.[57] Oftentimes, where a Mareva injunction is in effect, a defendant loses its access to funding; leading to a motion to vary the order to allow an allowance. Here, Miller is a notorious billionaire, who will shortly accrue an additional CA$5.2 billion; setting aside $200 million (.2 of the $5.2 billion) will not affect his standard of living. In addition, the request is to freeze, not seize, the assets; consequently, Miller could make arrangements to retain his $200 million in a Canadian-chartered bank and earn interest. In a worst-case scenario, Miller could obtain an irrevocable letter of credit from a financial institution;[58]

20. With criteria #3 (balance of convenience) so heavily in the Applicant's favour, this should have been an overriding factor. The Applicant and Class Members also have a particularly strong claim for criteria # 1 (appearance of right), which even the Judge in First Instance recognized "[39] … based solely on the allegations contained in the Authorisation Application, and without conducting any analysis as to the quantum claimed, the Court finds that the allegations … are

[57] *Groupe CRH Canada inc.* c. *Beauregard*, 2018 QCCA 1063: « [34] … il faut rechercher laquelle des deux parties subira le plus grand préjudice selon que l'injonction interlocutoire sera accordée ou refusée dans l'attente d'une décision sur le bien-fondé du dossier au mérite. » UNOFFICIAL TRANSLATION "[34] … the question is which of the two parties will suffer the greatest prejudice depending on whether the interlocutory injunction is granted or refused, pending a decision on the merits of the case."
[58] Exhibits MA-34 and MA-35.

serious and that she has a reasonable chance of succeeding on the merits."

21. The combined effect of criteria #1 and #3, ought also to have weighed heavily in favour of granting the Mareva injunction and criteria #2 should not have been scrutinized as heavily as it was – that would be a more global and holistic evaluation of the matter.

ISSUE 4: Must prior persistent or characterized dishonest behaviour of a defendant relate to their dissipation of assets or can it relate to any past conduct?

22. The Judge in First Instance held that the facts alleged as prior "persistent or characterized dishonest conduct" were irrelevant to the Mareva Motion since they related to the merits of the case and not to Defendant Miller's acts of dissipation.[59] This assessment is erroneous; no such distinction exists or is justified. The Appeal Permission Judgment is silent on this issue.

23. There have been several Quebec Court of Appeal decisions that clarify how, what, and why "persistent or characterized dishonest conduct" applies to the objective fear that recovery of the plaintiff's claim is in jeopardy. Such cases include *Griffis* c. *Grabowska*, 2009 QCCA 2421:

OFFICIAL VERSION	UNOFFICIAL TRANSLATION
« [15] … S'agissant d'une conduite malhonnête persistante (ou caractérisée), le juge pourra cependant apprécier la portée de ces faits à la lumière de cette conduite. C'est ainsi qu'un geste, un comportement ou une initiative, quoique neutre à première vue, pourra tout de même justifier le demandeur de craindre que sans la saisie avant jugement des biens du défendeur le recouvrement de sa créance ne soit mis en péril. »	"[15] … In the case of persistent (or characterized) dishonest conduct, however, the judge may assess the significance of these facts in the light of that conduct. Thus, a gesture, behavior or initiative, although neutral at first glance, may nevertheless justify the plaintiff in fearing that without the seizure before judgment of the defendant's assets, the recovery of his debt would be jeopardized."

And *Desjardins Assurances générales inc.* c. *9330-8898 Québec inc.*, 2019 QCCA 523:

OFFICIAL VERSION	UNOFFICIAL TRANSLATION
« [37] Cependant, « en face d'une conduite malhonnête persistante et caractérisée » de la partie visée, la jurisprudence « se montre plus généreuse en ce qu'elle ne se veut pas exigeante au point que le recours à la saisie	"[37] However, "in the face of persistent and characterized dishonest conduct" on the part of the targeted party, case law "is more generous in that it is not so demanding that the use of a seizure before judgment is in some way sterilized."

[59] Judgment in First Instance, para. 50.

avant jugement soit en quelque sorte stérilisé ». [60]	

24. The prior "persistent or characterized dishonest conduct" has never been restricted to facts that relate only to dissipation of assets. What it does allow for is a court to "not give a defendant the benefit of the doubt", to view a neutral act as suspicious, and to soften the threshold of evidence to demonstrate dissipation of assets. Here, there were 4 actions that constituted prior "persistent or characterized dishonest conduct", all of which were downplayed or not considered: (a) hiding the title of his primary residence behind a corporate veil; (b) hiding ownership of his 2 other properties behind a corporation; (c) allegedly committing criminal acts in violation of ss. 286.1 (obtaining sexual services for consideration), 153 (sexual exploitation), and 151 (sexual interference) of the *Criminal Code*; and (d) allegedly giving out false business cards.

25. It is in the context of these 4 behaviours that the sale of Future Electronics must be scrutinized. Under normal circumstances, the sale of a business can be seen as neutral. One could envisage legitimate reasons why Defendant Miller is selling his most important asset; he is aging (Defendant Miller is 80 years old) and his reputation had been severely affected by the news about his sexual misconduct – though the mere timing of putting the company up for sale immediately after the filing of the present class action is in itself suspicious. Nevertheless, Defendant Miller's "persistent and characterized dishonest conduct" logically leads to the conclusion that the sale of Defendant Future Electronics creates an objective and reasonable fear that the recovery of the Applicant and Class Members' debt is in peril. Instead, the Judgment in First Instance wrote:

> "[59] The sale and the upcoming transaction were publicly announced on September 14, 2023. The press release issued by Future Electronics confirmed that the decision to sell was taken further to the allegations targeting Miller reported by the press on February 2, 2023, to "separate Mr. Miller from the company". There is nothing "suspicious" about Future Electronics' announcement which provides the reasons which prompted the sale of the company's shares and the timetable for a potential closing. The Court cannot see how this element demonstrates Miller's dishonesty or reproachful conduct."

ISSUE 5: Do the facts of the present case merit the issuance of a Mareva injunction?

26. Since the class action was instituted, Defendant Miller has: (i) sold his crown-jewel asset, Future Electronics along with the head office, valued at $30.5 million; (ii) Defendant Miller has

[60] The same wording is also found in *Rhéaume* c. *Dazé*, 2015 QCCA 1047, para. 33.

gifted his personal residence to his son Rodney, valued at $9.5 million; and (iii) Defendant Miller has disappeared, all attempts to serve him in Montreal have failed.[61]

27. Facts (ii) and (iii) are, without question, telling of Defendant Miller's attempts to evade Canadian jurisdiction. These 2 facts combined, in and of themselves, justify an objective "fear that recovery of the claim might be jeopardized" (art. 518 C.C.P.). Aside from logic, the relevant caselaw from the Quebec Court of Appeal dealing with seizures before judgment stress the importance of these 2 factors (disposal of a principal residence and being unable to be located).[62]

28. It is not any one fact, in isolation, that must be measured, but rather all the facts together that reveal a complete picture. In *Maisonair Climatisation inc.* c. *Manricks*, 2006 QCCA 62:

OFFICIAL VERSION	UNOFFICIAL TRANSLATION
« [4] S'il est vrai que chacune des allégations en elle-même n'est peut-être pas suffisante pour autoriser une saisie avant jugement, l'ensemble des circonstances mentionnées à l'affidavit est suffisant pour établir une crainte objective de mise en péril de la créance de l'appelante. »	"[4] While it is true that each of the allegations in itself may not be sufficient to authorize a seizure before judgment, the totality of the circumstances mentioned in the affidavit is sufficient to establish an objective fear of jeopardizing the appellant's claim."

And *Séguin* c. *TrailMobile Canada Ltd.*, 2004 CanLII 76561 (QC CA):

OFFICIAL VERSION	UNOFFICIAL TRANSLATION
« [4] … Les faits mis en preuve suffisaient pour que les appelants craignent objectivement, que, sans la saisie avant jugement, le recouvrement de leur créance contre les intimées serait mis en péril. A cet égard, il convient de noter que ce n'est pas un fait pris isolément qui permet de tirer cette conclusion, mais plutôt l'ensemble des faits lorsque additionnés les uns aux autres. »	"[4] … The facts put in evidence were sufficient for the appellants to objectively fear that, without the seizure before judgment, the recovery of their claim against the respondents would be jeopardized. In this respect, it should be noted that it is not any one fact taken in isolation that allows this conclusion to be drawn, but rather all the facts when added together."

[61] There are minutes from the bailiff attempting service unsuccessfully on 12 occasions in 2023: February 28 at 16h05, March 1 at 7h55, March 2 at 19h45 (Exhibit MA-7), March 6 at 15h05, March 7 at 7h30, March 9 at 13h40 (Exhibit MA-9), August 3 at 13h30, August 3 at 17h31 (Exhibit MA-36), October 26 at 13h50, October 31 at 19h15 (Exhibit MA-37), November 15 at 7h15 (Exhibit MA-38), December 11 at 15h15. In total, the bailiff attempted, but failed, to serve Defendant Miller various legal proceedings in the present file on 12 occasions between the months of February to December 2023.

[62] *Maisonair Climatisation inc.* c. *Manricks*, 2006 QCCA 62, paras. 1-4; *Mercedes-Benz Financial Services Canada Corporation* c. *Seweha*, 2021 QCCA1893, paras. 4 & 25.

ISSUE 6: What is the standard of proof necessary to succeed at a preliminary stage (provisional or safeguard) of a Mareva injunction?

29. The standard or proof that the Applicant should have been subjected to at the provisional or safeguard stage was of simple demonstration. This step is akin to the sufficiency stage (as opposed to falsity) of a seizure before judgment. The burden of proof at the sufficiency stage of a seizure before judgment is well established, in *Stopponi* c. *Bélanger*, 1988 CanLII 293 (QC CA):

OFFICIAL VERSION	UNOFFICIAL TRANSLATION
« [12] Les règles applicables en matière de suffisance de l'affidavit au soutien d'une saisie avant jugement émise sous l'article 734 C.P. sont connues. On peut les résumer dans les propositions suivantes : 1. Pour juger de la suffisance, les faits allégués doivent être tenus pour avérés; 2. Ce n'est que lors de la discussion portant sur la fausseté des allégations que s'applique la notion de la preuve *prima facie;* … [17] L'erreur commise par le premier juge me paraît manifeste, lorsqu'elle déclare que « *prima facie*, la preuve ne permet pas de dire que le demandeur est le propriétaire des biens ». Avec respect, il s'agit là d'une intrusion non admissible dans le domaine de la preuve au procès. »	"[12] The rules applicable to the sufficiency of the affidavit in support of a seizure before judgment issued under article 734 C.P. are well known. They can be summarized in the following propositions: 1. In order to determine sufficiency, the facts alleged must be taken as proven; 2. It is only in the discussion of the falsity of the allegations that the notion of *prima facie* evidence applies; ... [17] The error committed by the first judge seems obvious to me, when she states that "*prima facie*, the evidence does not allow us to say that the plaintiff is the owner of the property". With respect, this is an impermissible intrusion into the realm of evidence at trial."

And restated in *Desjardins Assurances générales inc.* c. *9330-8898 Québec inc.*, 2019 QCCA 523:

OFFICIAL VERSION	UNOFFICIAL TRANSLATION
« [40] Le juge saisi d'une demande d'annulation de saisie avant jugement pour cause d'insuffisance des allégations du saisissant doit tenir ces dernières pour avérées et en décider uniquement à la lumière des faits tels qu'allégués et de leur rapport logique avec le droit à la saisie avant jugement. »	"[40] The judge hearing an application to set aside a seizure before judgment on the grounds of insufficiency of the seizing party's allegations must take these allegations at face value and decide solely in the light of the facts as alleged and their logical relationship to the right to seizure before judgment."

30. What was before the Judge in First Instance was a request for a provisional injunction to temporarily freeze the disposition of certain assets pending a further hearing. Once granted, an affidavit would be filed by the Defendants detailing a list of assets in order to proceed to the next,

more onerous step. It is only at a later stage – either on a renewal of the provisional injunction, a motion to annul, or at the interlocutory step, that a contested and contradictory battle is possible. At this point, the parties will have submitted evidence, performed cross-examinations, and conducted discovery. That is the time that the Applicant is required to and has the ability to prove her allegations. Instead, the Judge in First Instance demanded convincing and determinative evidence for each of the Applicant's allegations[63] – this could have been possible at such an early stage and with such an informational imbalance – the Appeal Permission Judge agreed.[64]

ISSUE 7: Can impleaded third parties who are not defendants in the underlying legal proceeding also be ordered to comply with a Mareva injunction?

31. The Impleaded Parties must be subjected to the Mareva injunction without any necessity to pierce the corporate veil for 3 reasons: (a) there was no purpose to name the Impleaded Parties as parties in the class action on its merits – the necessity only began when Defendant Miller began dissipating assets; (b) the Impleaded Parties are either the corporate *alter egos* of Miller or his son Rodney; it is through these corporate *alter egos* that Miller acts to exert ownership of his real estate and his operating company, Future Electronics – if the Mareva order does not involve these third-parties, any judgment will be pointless; and (c) the caselaw allows for non-parties to be subject to a Mareva order, where necessary. This concept has generally been applied to financial institutions, but there is no reason why the same principle cannot apply to whatever party has charge of the assets.[65] It would run contrary to the principle of *Nemo auditur propriam turpitudinem allegans* to allow Miller to be immune from the application of the law as a result of his crafty subterfuge.

PART IV – SUBMISSIONS CONCERNING COSTS

32. The Applicant leaves this matter at the discretion of the Court.

PART V – ORDER SOUGHT

33. The Applicant requests that this application for leave to appeal from the judgment of the Superior Court of Quebec dated November 27, 2023 and the decision of the Court of Appeal Quebec dated January 10, 2024, be granted and that the Applicant's *Application for a Provisional & Interlocutory Mareva-type Injunction and Safeguard Order against Defendants Robert Gerald Miller and Future Electronics Inc.* be granted.

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[63] *S.N.* c. *Miller*, 2023 QCCS 4524, para. 34.
[64] *S.N.* c. *Miller*, 2024 QCCA 22, para. 9.
[65] *Google Inc.* v. *Equustek Solutions Inc.*, 2017 SCC 34, paras. 28-29, 33.

ALL OF WHICH is respectfully submitted this 8th day of February, 2023.

CONSUMER LAW GROUP INC.
Per: Mtre Jeff Orenstein / Mtre Andrea Grass
1030 Berri Street, Suite 102
Montreal, Quebec, H2L 4C3
Phone: (514) 266-7863
Fax: (514) 868-9690
Email: jorenstein@clg.org / agrass@clg.org
Counsel for the Applicant (Applicant)

PART VI – TABLE OF AUTHORITIES

CASE LAW	**PARAGRAPH(S)**
Mareva Compania Naviera SA v *International Bulkcarriers SA*, [1980] All E.R. 213	3(a)
Equustek Solutions Inc. v. *Jack*, 2012 BCSC 1490	3(a), 4ii), 16, 17
4463251 Canada inc. c. *Duo-Regen Technologies Canada inc.*, 2011 QCCS 4043	3(a)
Li et al. v. *Barber et. al.*, 2022 ONSC 1176	3(a), 3(b), 3(d), 15
Tracy v. *Instaloans Financial Solutions Centres (B.C.) Ltd.*, 2007 BCCA 481	3(a), 17
Desjardins Assurances générales inc. c. *9330-8898 Québec inc.*, 2019 QCCA 523	3(a), 6, 19, 24, 30
Cinar Corp. c. *Weinberg*, 2005 CanLII 27867 (QC CS)	3(a)
Rex v. *Sussex Justices*, [1924] 1 KB 256.	3(c)
Larose c. *Corporation de l'École des Hautes Études commerciales de Montréal*, 2020 QCCS 5176	3(d)
Daigle c. *Club de golf de* Rosemère, 2018 QCCS 5360	3(d)
FCA Canada inc. c. *Garage Poirier & Poirier inc.*, 2019 QCCA 2213	3(d)
Amnistie internationale Canada c. *Environnement Jeunesse*, 2020 QCCA 223	3(d)
S.N. c. *Miller*, 2023 QCCS 2333	3(d)
Google Inc. v. *Equustek Solutions Inc.*, 2017 SCC 34	3(f), 4vii), 32
Ubi Soft Divertissements Inc. c. *Champagne Pelland*, 2003 CanLII 528 (QC CS)	18
Groupe CRH Canada inc. c. *Beauregard*, 2018 QCCA 1063	18, 20
Favre c. Hôpital Notre-Dame, 1984 CanLII 2824 (QC CA)	18
Griffis c. *Grabowska*, 2009 QCCA 2421	24

Rhéaume c. Dazé, 2015 QCCA 1047	24
Maisonair Climatisation inc. c. *Manricks*, 2006 QCCA 62	28, 29
Mercedes-Benz Financial Services Canada Corporation c. *Seweha*, 2021 QCCA1893	28
Séguin c. TrailMobile Canada Ltd., 2004 CanLII 76561 (QC CA)	29
Stopponi c. *Bélanger*, 1988 CanLII 293 (QC CA)	30

LEGISLATION	**PARAGRAPH(S)**
Code of Civil Procedure, CQLR c C-25.01, arts. 30, 31, 32, 49, 357, 510, 511, 518	3(a), 3(d), 4i), 6, 15, 28
Criminal Code, RSC 1985, c C-46, ss. 151, 153, 286.1	9, 25

PART VII – LEGISLATION

Code of Civil Procedure, CQLR c C-25.01, arts. 30, 31, 32, 49, 357, 510, 511, 518	3(a), 3(d), 4i), 6, 15, 28
Criminal Code, RSC 1985, c C-46, ss. 151, 153, 286.1	9, 25

APPENDIX A

The following references are non-exhaustive and are in relation only to the sale of Defendant Future Electronics for US$3.8 billion and the Mareva injunction filed by the Applicant.

The Globe and Mail:
https://www.theglobeandmail.com/business/article-montreal-based-future-electronics-sold-to-taiwanese-company-amid/ (Sept. 14, 2023);
https://www.theglobeandmail.com/business/article-montreal-billionaire-sex-case-class-action-lawyer-wants-accuseds/ (Nov. 17, 2023).

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