

SUPREME COURT OF NOVA SCOTIA

Citation: *Good AI Capital GP, LLC v. Robinson*, 2020 NSSC 399

Date: 20201208

Docket: HFX502294

Registry: Halifax

Between:

Good AI Capital GP, LLC

Plaintiff

v.

Wesley Robinson, DRR900306 Nova Scotia Limited, and
Robinson Capital International, LLC

Defendants

DECISION

Judge: The Honourable Justice Darlene Jamieson

Heard: December 8, 2020, in Halifax, Nova Scotia

Oral Decision: December 8, 2020, in Halifax, Nova Scotia

Counsel: Plaintiff: Christopher Madill and Ibrahim Badawi

Defendants: Self-represented (Not Present – *Ex Parte* Motion)

By the Court (Orally):

[1] The plaintiff in this matter has brought an *ex parte* motion seeking both an interim Mareva injunction and interim preservation order against the defendants. I have reviewed the extensive affidavit filed by Mr. Darwin Ling, founder and general partner of the plaintiff, Good AI Capital GP, LLC (“Good AI Capital”), and have reviewed the written submissions and case law provided by counsel as well as heard oral argument this morning.

[2] By way of background, the defendant, Robinson Capital International, LLC (“Robinson Capital”), entered into an agreement whereby it would invest \$9.7 million (USD) with Good AI Capital. The investment was conditional upon Good AI Capital transferring \$100,000 (USD) to Robinson Capital, which Mr. Wesley Robinson (“Mr. Robinson”) confirmed was to cover banking fees that would be incurred by the defendants in order to facilitate the transfer of the investment.

[3] The respective agreements are between Robinson Capital International and Good AI Capital and include a funding agreement. The first portion of the investment funds, being \$3.3 million (USD), were to be delivered within 60 days after receipt of the purported banking fee. This would be followed by two additional transfers at further 60 day intervals.

[4] Mr. Robinson, as Chairman and CEO of Robinson Capital, executed a promissory note dated April 17, 2020, which indicates that if the amounts due under the funding agreement are not paid, then the \$100,000 (USD) is repayable. The funding agreement references the promissory note.

[5] The plaintiff maintains that Mr. Robinson is the beneficial owner, alter ego, and directing mind and will of both Robinson Capital and DRR Nova Scotia. It says Mr Robinson made a number of representations including that the investment funds would be distributed to Good AI after payment of the \$100,000 (USD) and that the funds would be returned per the promissory note if the amounts due under the funding agreement were not paid.

[6] At Mr. Robinson’s direction the \$100,000 (USD) for the banking fees was transferred to the defendant’s, DRR0306 Nova Limited (“DRR Nova Scotia”), bank account.

[7] The plaintiff has not received the promised investment, nor despite requests, has the plaintiff received return of the \$100,000 (USD). The first amount of \$3.3 million (USD) under the funding agreement, was due no later than June 29, 2020. It was never received.

[8] The Nova Scotia Securities Commission has been engaged in an ongoing investigation in relation to Mr. Robinson and DRR Nova Scotia. As set out in the affidavit of Mr. Ling, a temporary order restricting Mr. Robinson's trading of securities was issued by the Securities Commission on December 16, 2019, and it has been extended several times and is to remain in effect until a hearing is held which is anticipated to be held in or about February of 2021. Mr. Ling provided information to the Securities Commission regarding Good AI Capital's dealings with Mr. Robinson and this now forms part of an amended statement of allegations of the Director of Enforcement dated September 13, 2020. The allegations advanced include not only Good AI Capital, but also a number of other individuals and these allegations closely resemble the circumstances of the interactions between Mr. Robinson and Good AI Capital.

[9] The plaintiff seeks both a Mareva injunction and preservation order, both interim orders. The court has authority to grant a Mareva injunction under s. 43(9) of the *Judicature Act*. I am satisfied that the circumstances here justify the motion proceeding on an *ex parte* basis. The requirements for a Mareva injunction are set out in Civil Procedure Rule 42.11, which also contemplates the continued application of the common law requirements for an injunction preserving assets. The requirements are as follows (*Roynat Inc. v. A&A Auctioneers*, 2003 NSSC 114), which I am satisfied are met in the current circumstances of the evidentiary record presented to the court:

1. *The plaintiff should make full and frank disclosure of all matters in his knowledge of which are material for the judge to know.* I am satisfied that the plaintiff has outlined the known facts regarding its claim for breach of contract, fraud and fraudulent misrepresentation, conversion, breach of trust and unjust enrichment. The facts are set out in the Ling affidavit and also in the Notice of Action and Statement of Claim.
2. *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.* Based on the evidence in the Ling affidavit, I am satisfied that the plaintiff has met

the higher standard of a strong *prima facie* case. The plaintiff has not received any of the promised \$9.7 million (USD) investment funds. Requests for information were met with continual delays and then silence. The plaintiff requested the return of the banking fee of \$100,000 (USD) but has yet to receive any funds. When Robinson Capital entered into the funding agreement with the plaintiff, there was an order in force from the Nova Scotia Securities Commission prohibiting Mr. Robinson from trading in securities. The proceedings before the Nova Scotia Securities Commission involving various complainants appear to have a very similar theme to those in the current circumstances. I am satisfied on a balance of probabilities that the plaintiff has presented a strong *prima facie* case in relation to its various claims that is sufficient to meet the threshold.

3. *The plaintiff should give some grounds for believing that there is a risk of the assets being removed before the judgment or award is satisfied.* Based on the totality of the evidence, there are grounds to infer and believe that the defendants will dissipate the funds. I refer to *Sibley & Associates LP v. Ross*, 2011 ONSC 2951, in this regard and in particular to paras. 62 through 64 dealing with those situations where the risk of dissipation can be established by inference. It appears from the evidence, Mr. Robinson controls an offshore bank account in Switzerland, there is also evidence of transfers from the DRR Nova Scotia account to an account in Switzerland. There is no doubt that the defendants are capable of transferring funds outside of the country.
4. *The plaintiff must give an undertaking in damages. In a suitable case this should be supported by a bond or security.* The plaintiff, by way of the affidavit of Mr. Ling, has provided an undertaking in damages. Despite the plaintiff being a US corporation, I am satisfied in the current circumstances with the undertaking, given the plaintiff carries on business and has a registered office in Montreal.¹

¹ Subsequent to my oral decision in this matter, counsel advised that Good AI does not have a registered office in Montreal but has made investments in a company headquartered in Montreal named “Keatext”; that Good AI uses the offices of Keatext when their staff are in Montreal on business; and that Good AI itself does not have its own office space in Montreal. Despite this clarification, I am satisfied in the specific circumstances of this matter that there is not a sufficient level of risk of loss to require fortification of the Undertaking by way of a bond.

5. *The plaintiff should give some grounds for believing that the defendant has assets here.* There is evidence to indicate that DRR Nova Scotia is in control of a CIBC bank account located in Nova Scotia and that the \$100,000 (USD) representing the purported banking fee was transferred to this account.

[10] I am satisfied on the law and the evidence that the requirements for an interim Mareva injunction have been met.

[11] In relation to the request for a preservation order, I refer to Civil Procedure Rule 42.02(1) which states:

Preservation of evidence or property injunction:

- (1) A party who files an undertaking as required by Rule 42.07 may make a motion for an injunction to preserve evidence relevant to an issue in, or to preserve property claimed in, a proceeding.

[12] While both preservation orders and Mareva injunctions are forms of injunctive relief that preserve property, a preservation order preserves the property actually claimed in the proceeding. Here the plaintiff is asserting a proprietary claim in respect of the bank facility fee that they believe is in the possession of the defendants. The test is well established and requires:

- (1) that the claim has merit to the extent that it at least represents a serious issue to be tried;
- (2) without a preservation order, the plaintiff will suffer irreparable harm; and
- (3) when the consequences of making such an order are fully considered, the balance of convenience favours issuing the order.

(*Korem v. Crown Jewel Resort Ranch Inc.*, 2011 NSCA 102; *Reddick v. MacInnes*, 2018 NSSC 201)

[13] Clearly, there is a serious issue to be tried. With regard to irreparable harm the Supreme Court in *RJR MacDonald Inc. v. Canada (Attorney General)*, [2008] O.J. No.5242, at para. 64, discussed its meaning stating:

... “Irreparable” refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other...

I also refer to the *Vogler v. Szendroi*, 2011 NSCA 11, decision of the Nova Scotia Court of Appeal at paragraphs 13-15.

[14] Based on the evidence, I am of the opinion there is a risk the plaintiff will not be able to recover its funds after trial, given there is evidence before this court of strikingly similar patterns of behaviour in six matters set out in the allegations in the proceeding before the Nova Scotia Securities Commission, as well as in various civil matters. Further, I find the balance of convenience clearly favours the plaintiff in the interim injunctive relief being sought. I find the granting of a preservation order is just and equitable in all of the circumstances of this case.

Conclusion

[15] I am satisfied that the evidence paints a concerning picture in relation to the actions of the defendants and there are sufficient circumstances present that meet the requirements necessary to grant the exceptional relief requested. In light of the evidentiary record placed before the court, I am prepared to grant an interim Mareva injunction and an interim preservation order on an *ex parte* basis. Such orders are always subject to further review of the court. The plaintiff is obligated to serve the motion materials immediately, including any order and as set out in Civil Procedure Rule 22, the defendants have the right to bring the matter back for rehearing.

Jamieson, D.