

CITATION: Business Development Bank of Canada v. Aventura II Properties Inc., 2016 ONSC 1545  
COURT FILE NO.: CV-13-10285-00CL  
DATE: 20160304

**SUPERIOR COURT OF JUSTICE – ONTARIO  
COMMERCIAL LIST**

**RE:** BUSINESS DEVELOPMENT BANK OF CANADA, Applicant

**AND:**

AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,  
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE  
INC., and PAVILION AQUATIC CLUB INC., Respondents

**BEFORE:** HAINEY J.

**COUNSEL:** *Lucas E. Lung*, for Revital Druckmann

*Sean N. Zeitz*, for Jean-Jacques Myara

*Kelli Preston*, for the Receiver, Pollard & Associates Inc.

*Catherine Francis*, for Duca Financial Services Credit Union Ltd.

**HEARD:** February 26, 2016

**ENDORSEMENT**

**Background**

[1] Pollard & Associates Inc. (“Pollard”) is the court-appointed receiver (the “Receiver”) of the respondents (collectively, the “Debtors”).

[2] A Receivership Order was granted to Pollard’s predecessor, Collins Barrow (“CB”), by McEwen J. on September 8, 2014 (the “Receivership Order”).

[3] On December 4, 2015, the Trustee applied for and I granted an *ex parte Mareva* Order against Revital Druckmann (“Revital”), who is the wife of the Debtors’ principal, Johnny Druckmann (the “*Mareva* Order”).

[4] The Trustee seeks an order extending the *Mareva* Order and the immediate repatriation of certain funds that were originally paid to the respondent Pavilion Sports Clubs Inc. (“PSCI”) as an HST refund. These funds were misappropriated by the Debtors and others and diverted to a bank account controlled by Revital (the “HST Funds”).

## **Facts**

[5] I accept as accurate the following facts set out at paragraphs 2-8 and paragraph 13 of the Receiver's factum:

2. PSCI was entitled to a HST refund in the amount of \$986,594.96.

3. On August 5, 2014 the Debtors advised Collins Barrow ("CB"), the Debtors' previously court-appointed Monitor and thereafter receiver, that PSCI had not yet received the HST refund. This was not true. The HST Refund had in fact been received by PSCI on December 4, 2013. It was concealed from CB. Despite a court order that the Debtors were to advise CB of receipt of the HST Refund, the evidence before the court is that the office manager, Henry Karl, ("Karl") responsible for the books and records for the Debtors, received the HST Refund in about the time it was received from CRA. He thereafter put it in his desk and did not tell anyone about it until after the HST Refund had been diverted from PSCI. To further mislead CB, counsel for the Debtors emailed CB and advised that the HST Refund had been paid to "questionable people" who had indirectly threatened the Debtors' principals as well [as] Karl and his family. This too was not true.

4. The HST Refund had been diverted from PSCI to PAV Medical Inc. ("PAV Medical") on January 8, 2014. The HST Refund was transferred again on January 15, 2014 to a TD Bank account in the name of Sigal Stern (the "Stern Account"). The Stern Account was found to be debited by a bank draft issued August 26, 2014 payable to S. Stern in the amount of \$1,016,000.00 (the "Bank Draft").

5. Revital had Power of Attorney over the Stern Account. Druckmann is the spouse of Johny Druckmann, ("Johny"), President of the Debtors.

6. On December 4, 2015 the Receiver successfully motioned *ex parte* for a *Mareva* injunction restraining Druckmann from dissipating her assets. On December 11, 2015, on an urgent basis, Druckmann sought to remove the freeze over the assets so that she may be able to pay her legal counsel and personal expenses. The *Mareva* injunction was extended to January 29, 2016. It was also varied to permit Druckmann access to her line of credit to pay for her living expenses and legal fees. Thereafter on January 29, 2016, at the request of Druckmann as well as at the request of a Mr. Jean-Jacques Myara ("Myara") (whose involvement on the motion will be described below) the motion was again adjourned to February 26, 2016.

7. From December 13, 2015 to January 6, 2016 Druckmann vacationed in Florida. From January 13, 2016 to February 11, 2016 Druckmann vacationed to Singapore, Tokyo, Sydney, and Auckland, where she embarked on a cruise for two weeks. Druckmann stated on her cross-examination that she is employed as a travel agent.

8. Through exercising the *Mareva* Order the Receiver has discovered that Druckmann has used the funds in the Stern Account to pay her personal expenses. She also diverted \$550,000.00 from the Stern Account to non registered mutual funds in her name personally.

...

13. Druckmann has acknowledged that she has no entitlement to the monies held in her non registered mutual fund accounts. She has acknowledged that she has no entitlement to the money held in the Stern Account.

[6] Jean-Jacques Myara ("Myara") has applied for intervenor status on this motion. He claims that the HST Funds belong to him. He bases his claim on the following facts that are set out at paragraphs 5-26 of his factum:

5. Myara has known Tali [Revital] for many years. He was formally a business partner of her late father, Mr. Wolfin. They were business partners and very close friends.

6. Tali is Johnny Druckmann's spouse. Johnny is the principal of the debtor corporations currently under receivership.

7. The Stern Account belongs to Sigal Stern. Sigal is Tali's sister and Johnny's sister-in-law.

8. Tali and Sigal are like sisters to Myara.

9. The Stern Account was administered by Tali under a Power of Attorney granted to her by Sigal.

10. In or about 2003 Myara was approached by Johnny inquiring whether Myara would be interested in investing in what would become the Pavilion Sports Club and Ice Center. The investment was treated as a loan but it was not papered as such seeing as Myara was extremely close with Tali's father and considered Tali as a sister. At the time Myara did not see a need to reduce the loan to writing.

11. Myara's loans were recorded internally on the ledger of "Aventura Properties Inc." notwithstanding that the said corporation is not one of the Debtor Corporations. The aggregate amount that was recorded in the Quickbooks of "Aventura Properties Inc." was \$1,241,290.01, exclusive of interest.

12. There is an entry stating the sum of \$1,241,290.01 was an "investment returned to Myara". This is not so. Myara contacted Johnny to inquire what this entry was about and was advised by him that at or about the same time the corporations were applying for financing with the Business Development Bank of Canada, the accounting firm Deloitte attended at the corporations' premises to conduct an audit. Deloitte advised Johnny that it could not reflect a loan on the books and records in circumstances where there was no paper to substantiate the

same. An internal decision was made by Johny in consultation with the auditors to indicate that the \$1,241,290.01 balance owing to Myara was in fact "returned".

13. Myara, however, did not receive the sum of \$1,241,290.01 on or about January 23, 2007 or at any time subsequent thereto.

14. Mr. Henry Karl is the former Office Manager and internal auditor of the Debtor Corporations. He maintained the books and records and delivered an affidavit deposing that, *inter alia*:

(a) When the books of Aventura II Properties Inc. were established on Quickbooks, the name of the corporation inadvertently omitted the Roman numeral "II". This was never corrected;

(b) The books and records where "Aventura Properties Inc." is reflected as the corporate entity are indeed the books and records of Aventura II. They are one and the same;

(c) There are no separate books and records for Aventura II.

15. Mr. Karl made a copy of the Quickbooks files for all of the Debtor Corporations immediately prior to the Receiver taking possession of them and has produced copies of various statements and ledgers from the files. These documents clearly reflect *expenses of Aventura II* notwithstanding reference to "Aventura Properties Inc." at the top of each page. Expenses such as hydro and payment of the loans to Duca, BDC and ROI are reflected. These payments have nothing to do with "Aventura Properties Inc."

16. The Receiver has been unable to produce copies of any and all records it has to suggest that Myara was paid the \$1,241,290.01. This is because such evidence does not exist. The notation of the debt having been repaid to Myara was nothing more than an internal allocation done for auditing/financing purposes.

**The \$250,000 Loan:**

17. Johny requested that Myara advance an additional \$250,000.00 to the company on the promise that interest would be paid at 8% per annum on a monthly basis. On or about August 11, 2009 Myara advanced an additional \$250,000.00 to the company which loan was booked internally by the company as a loan to "S. Stern".

18. Interest only payments were made on account of this debt as reflected in the "Transaction Detailed by Account" ledger produced as Exhibit "G" to the Myara Affidavit.

**Demand for payment:**

19. In or about early 2012 Myara wanted his money back. Johny and the Debtor Corporations did not have the money to pay Myara back at that time. Johny advised Myara that he was expecting a CRA refund to the tune of approximately \$1,500,000.00 and that he was looking to pledge same in favour of Duca Credit Union to obtain financing. The financing was for the purpose of paying Myara out.

20. Duca refused to grant the financing. Johny subsequently advised Myara that he would repay him from the proceeds of the CRA refund of \$986,594.95. The refund cheque was paid into Pavilion Sports Clubs Inc.'s account on or about December 4, 2013 and then paid out to PAV Medical Inc. Myara has no interest in that corporation.

21. Myara has no knowledge as to why these funds were paid into Pav Medical Inc.'s account. While he was not aware that the funds were transferred from the PAV Medical Inc. account, it was he who requested that the CRA refund be paid into the Stern Account as part repayment of his loans. Myara asked the companies' internal auditor, Mr. Karl, to deposit monies into the Stern Account as Myara did not want the money to be deposited into his personal account for tax planning purposes.

22. After the monies were deposited into the Stern Account in August 2014, Myara asked Tali to issue a bank draft payable to "S. Stern" from that account. Myara asked her to prepare a bank draft and to await further instructions. He later decided that it would be more advantageous for him to have the monies invested.

23. On or about March 6, 2015 Myara advised Tali to re-deposit the draft. He then instructed her to invest \$300,000.00 with TD Bank and an additional \$250,000.00 with RBC which investments are reflected in the Receiver's Flow Chart of Funds appended as Exhibit "H" to the Myara Affidavit.

24. In consideration for Tali administering the Stern Account which in turn was being used to assist Myara, and having regard to the fact Tali advised Myara that she was in need of funds, Myara authorized Tali to issue the drafts and payments referenced in the Receiver's Flow Chart of Funds.

25. Tali agreed to reimburse Myara for all these amounts no later than when she sells her home located at 12 Malka Gate, Thornhill Ontario. The only exception is the \$18,236.49 draft Myara authorized be issued to Volkswagen which he does not require be paid back.

26. Myara is not claiming a priority over any of the Debtor Corporations' secured creditors; rather, it is his position that the funds in the Stern Account and the investments Tali made on his behalf belong to him and do not form part of the Receivership Estate.

[7] I do not accept Myara's version of events. It does not have an air of reality and it does not accord with common sense. I find that it is neither an accurate nor truthful account of Myara's entitlement to the HST Funds. Myara's "story" is simply another fraudulent attempt to divert the HST Funds away from the Receiver.

[8] Further, even if I were to accept Myara's version of events, which I do not, he would be an unsecured creditor of a bankrupt company. His alleged interest in the HST Funds would be subordinate to the Receiver's interest in the HST Funds.

[9] Accordingly, for these reasons, I dismiss Myara's claim to any interest in the HST Funds.

### **Issues**

[10] Revital opposes the Receiver's motion. She submits that the Receiver did not satisfy the test for obtaining a *Mareva* injunction against her. Further, she submits that the Receiver is not entitled to immediate repatriation of the HST Funds.

### ***Mareva* Injunction**

[11] Revital submits that the *Mareva* injunction should not have been issued because:

- (a) The Receiver did not make full and frank disclosure to the Court;
- (b) A *Mareva* injunction was not available against Revital who was a non-party and had not been sued by the Receiver; and
- (c) The Receiver did not provide an undertaking as to damages in respect of the *Mareva* injunction.

[12] The HST Refund was the property of PSCI. On January 23, 2014, Justice David Brown ordered the Debtors to advise the Monitor immediately upon the receipt of any refund from the CRA. Further he prohibited them from depositing or otherwise disbursing any refund received. The Debtors clearly breached his order by concealing and diverting the HST Refund. Revital was a party to the breach. I find that the Debtors' conduct in respect of the HST Refund, including the conduct of Revital, were deliberate and blatant acts of fraud designed to divert the HST Refund away from the Receiver.

[13] The Receiver was acting under the authority of the Receivership Order when it applied for and obtained the *Mareva* Order against Revital, who was in breach of D. Brown J.'s order and the Receivership Order. Further, Revital was party to serious fraudulent conduct on the part of the Debtors in misappropriating the HST Refund.

[14] The Receivership Order gave the Receiver broad powers with respect to the Debtors' assets. The Debtors' assets included the HST Refund. Paragraph 2 of the Receivership Order provides as follows:

2. THIS COURT ORDERS that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, CBTL is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to businesses carried on by the Debtors, including all proceeds thereof (collectively, the "Property").

[15] Paragraph 3 of the Receivership Order sets out the Receiver's powers which include the following:

#### RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

...

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to each of the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

...

[16] The Receivership Order also provides as follows:

#### DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that: (i) the Debtors; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other person acting on their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

[17] The Receiver obtained the *Mareva* Order on the strength of the Receiver's Fifth Report to the Court dated December 1, 2015. Paragraph 65 of that Report provides as follows:

MAREVA ORDER

65. The information obtained by the Receiver indicates that the principals of the Debtors, including Johnny Druckmann and his daughter Jennifer Bitton, lied repeatedly to CB as Monitor and later as receiver and acted in a dishonest and secretive manner. Among other things:

- (a) The HST refund was misappropriated during the period of the Monitor's appointment and deposited into a newly opened bank account;
- (b) The proceeds were delivered to PAV Medical Inc.;
- (c) The proceeds were further diverted to an account of S. Stern, which was controlled by Johnny Druckmann's wife, Revital Druckmann;
- (d) The Druckmanns misled the Monitor, alleging that the tax refund had not been received;
- (e) After the Order of Mr. Justice Hainey, Revital Druckmann authorized the issuance of the Bank Draft;
- (f) Following the appointment of CB as receiver, the Druckmanns' counsel misled CB, advising that the funds had been paid to "questionable people" – when in fact the Bank Draft was issued to S. Stern and remained in a suspense account at TD until March 6, 2015;
- (g) On March 6, 2015, the Bank Draft was deposited into an unknown account.

[18] This evidence demonstrates blatant fraud on the part of the Debtors and Revital. It provides a sufficient basis for the issuance of the *Mareva* Order against Revital and, in my view, constitutes full and frank disclosure by the Receiver. I am satisfied that the Receiver was justified in obtaining the *Mareva* Order against Revital on December 4, 2015 on the strength of this evidence. Under the circumstances, and in particular because of the Receivership Order, I conclude that:

- (a) The Receiver made full and frank disclosure to the Court on the application for the *Mareva* Order;
- (b) It was not necessary for the Receiver to first commence an action against Revital before applying for and obtaining a *Mareva* Order against her; and
- (c) Because the Receiver was operating under the authority of the Receivership Order it was not necessary for an undertaking as to damages to be provided by the Receiver.



[19] I am satisfied, therefore, that the *Mareva* Order should be continued to permit the Receiver to prevent Revital from further dissipating or transferring assets that the Receiver is entitled to possess under the terms of the Receivership Order.

*Repatriation of Funds*

[20] There is no dispute that the HST Funds originated from the HST Refund. Revital has no interest in the HST Funds. They are assets that are subject to the Receivership Order. The Receiver is, therefore, entitled to possession of the HST Funds under the terms of the Receivership Order.

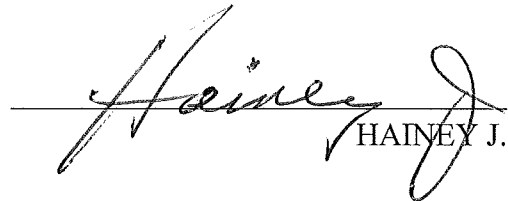
[21] For these reasons the Receiver's motion to repatriate the HST Funds is granted.

**Conclusion**

[22] For the reasons outlined above, the Receiver's motion is granted. The *Mareva* injunction is extended until further order of the Court and the Receiver is entitled to immediate possession of the HST Funds.

**Costs**

[23] The Receiver is entitled to its costs of this motion against Revital and Myara. I urge counsel to settle the terms and amounts of the costs to be awarded. If they are unable to do so, they may file brief written submissions of no more than three pages with costs outlines attached.

  
HAINEX J.

**Date:** March 4, 2016