Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

MOTION RECORD

(Returnable March 27, 2024)

March 18, 2024

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Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

Applicants

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(JANUARY 26, 2024)

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MOTION RECORD
(Returnable March 27, 2024)

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TAB 1

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NOTICE OF MOTION
(AirSprint Funds and Distribution)

KPMG Inc. ("**KPMG**"), in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "**OTE Group**") in these proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**") will make a motion to be heard by a judge of the Ontario Superior Court (Commercial List) (the "**Court**") at 12:00 p.m. (EST) on March 27, 2024.

PROPOSED METHOD OF HEARING: The motion is to be heard:

☐ in writing under subrule 37.12.1 (1);

☐ in writing as an opposed motion under subrule 37.12.1 (4);

☐ in person at 330 University Avenue, Toronto, Ontario;

☐ by telephone conference;

☒ by video conference.

THIS MOTION IS FOR:

1. An Order substantially in the form appended to the Motion Record of the Monitor (the "**AirSprint Funds Order**"), among other things:

   (a) approving the AirSprint Settlement (as defined herein) between AirSprint Inc. ("**AirSprint**") and the OTE Group, and authorizing and directing AirSprint to remit the Remaining AirSprint Funds (as defined herein) to the Monitor; and

   (b) declaring that the US$5,482,779.85 remitted by AirSprint to the Monitor pursuant to this Court's Order dated July 17, 2023, and all interest accrued thereon, and the Remaining AirSprint Funds are the property of the OTE Group.

2. An Order substantially in the form appended to the Motion Record of the Monitor (the "**Distribution Order**"), among other things, authorizing the Monitor to distribute proceeds received from Allstar Auctions Inc. ("**Allstar**") pursuant to the Vehicle Transaction (as defined below).

THE GROUNDS FOR THE MOTION ARE:

Background

3. The OTE Group functioned as a wholesale fuel supplier which serviced mainly First Nations' petroleum stations and First Nations' communities across Ontario.

4. The OTE Group was granted protection under the CCAA on January 30, 2023 pursuant to the initial order issued by this Court (the "**Initial Order**"). Among other things, the Initial Order granted a ten-day stay of proceedings in favour of the OTE Group and appointed KPMG as the

Monitor. The stay of proceedings was extended pursuant to the Amended and Restated Initial Order issued on February 9, 2023, and has been extended from time to time throughout these proceedings. In its capacity as Monitor, KPMG has participated in these proceedings in accordance with its duties under the Orders granted and the CCAA, and has filed various Reports with the Court.

5. On March 15, 2023, the Court granted a Mareva injunction as part of an Order (the "**Injunctive Order**") restraining Glenn Page ("**Page**"), Mandy Cox ("**Cox**") and 2658658 Ontario Inc. ("**265**", and collectively, the "**Mareva Respondents**") from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named "Cuz We Can" (the "**Italian Yacht**").

6. On July 17, 2023, the Court granted an Order (the "**Yacht Sale and AirSprint Proceeds Order**"), among other things, (i) authorizing and directing the Monitor to conduct a sale process for the Italian Yacht; and (ii) directing AirSprint to remit to the Monitor the US$5,482,779.85 and any accrued interest thereon that was then held in trust by AirSprint on account of net proceeds and receipts from the sale of property including aircraft interests that were purchased or financed from funds sent to AirSprint by any OTE Group entity or affiliate thereof.

7. On October 12, 2023, following the adjournment of several motions that were previously brought before the Court, this Court issued the following Orders (which were ultimately unopposed or consented to by the relevant stakeholders):

(a) an Order (the "**Monitor's Enhanced Powers and Amended Bid Process Approval Order**"), among other things, providing the Monitor with enhanced powers in connection with the business and property of the OTE Group, and

approving an amended bid process for the sale of the assets of the OTE Group to be carried out by the Monitor (the "**Bid Process**"); and

(b) an Order, among other things, extending the stay period to April 26, 2024, approving certain amendments to the Claims Procedure previously approved by this Court on April 27, 2023, and approving the activities of the Monitor.

8. Following the Bid Process, the Court granted an Order (the "**Vehicle Approval and Vesting Order**") approving a sale of vehicles (the "**Vehicle Transaction**") by the Monitor on behalf of the OTE Group to Allstar Auctions Inc. ("**Allstar**") on January 30, 2024. The Vehicle Transaction has since closed.

9. After uncovering evidence that substantial payments were improperly and fraudulently made, and assets including cash improperly and fraudulently transferred, by the OTE Group to or for the benefit of Page, Cox, 265, and others, the Monitor filed a Report with this Court and brought a motion for a broader Mareva injunction against the Mareva Respondents (the "**Mareva Motion**"). The Mareva Motion was adjourned on November 10, 2023 and was ultimately heard by the Court on December 21, 2023. The Court issued a decision on January 16, 2024 granting the Mareva injunction against Page and 265 in respect of all of their worldwide assets and declined to order a Mareva injunction against Cox at that time but ordered that Cox provide a statement of her worldwide assets (the "**Mareva Decision**").

AirSprint Funds

10. In accordance with the Yacht Sale and AirSprint Proceeds Order, on July 20, 2023, AirSprint remitted US$5,482,764.85 (net of wire fees) (the "**AirSprint Proceeds**") to the Monitor. These amounts are currently held by the Monitor in trust.

11. After payment of the AirSprint Proceeds, the Monitor contacted AirSprint in respect of a further US$840,000 of funds paid by OTE Group entities to AirSprint in respect of deposits and partial payments toward the purchase of fractional interests in a jet. Following negotiations between the Monitor, AirSprint, and counsel, AirSprint and the Monitor, on behalf of the OTE Group, have agreed to the following settlement regarding the remittance of these funds (the "**AirSprint Settlement**"), subject to approval of the Court:

(a) AirSprint shall forthwith remit US$535,000.00 to the Monitor, on behalf of the OTE Group (the "**Remaining AirSprint Funds**"), and shall retain the residual US$315,000.00 to address ongoing costs and re-marketing fees associated with the sale of fractional interests in the jet and to cover legal fees incurred in concluding this settlement with the Monitor; and

(b) upon the remittance of the Remaining AirSprint Funds, AirSprint shall be released from all liability (save and except for liability related to gross negligence or wilful misconduct) to the OTE Group, the Monitor, or the Mareva Respondents and related parties in connection with any fractional jet interests purchased prior to these CCAA Proceedings, other than AirSprint's ongoing obligation to respond to information requests from the Monitor in connection with the Monitor's ongoing investigations.

12. The Monitor believes that the AirSprint Settlement benefits the OTE Group and its stakeholders, and is fair and reasonable in the circumstances. The Monitor is of the view that the AirSprint Settlement maximizes value by allowing the OTE Group to recover the majority of the funds held by AirSprint without resorting to unnecessary litigation that would incur further professional fees. The Monitor also believes that the Court-Ordered release of AirSprint, which was a condition of the AirSprint Settlement, is appropriately tailored and not overly broad as it does not release AirSprint from liability stemming from gross negligence or wilful misconduct, or from providing ongoing cooperation and information in connection with the Monitor's investigation.

13. The AirSprint Settlement will not prejudice the Monitor's ability to compel the production of information from AirSprint or Airsprint's ongoing obligation to respond to the Monitor's information requests, or the ability for the Monitor to continue to seek payment on behalf of the OTE Group against any person aside from AirSprint or its directors, officers, employees, or other persons acting on its behalf, for usage of any of the aircraft held on behalf of the OTE Group or to seek any further directions or remedies before this Court in respect thereof.

14. Further, in connection with the Mareva Motion, Page acknowledged that the AirSprint fractional aircraft interests (the "**AirSprint Property**") was owned by the OTE Group and not 265. The Court also found that the AirSprint Property was owned by the OTE Group in the Mareva Decision, and consistent with the Court's finding and Page's admission, the sworn statement of worldwide assets provided to the Monitor by Page and 265 in connection with the Mareva Motion did not include the AirSprint Property. The Monitor is therefore seeking a declaration from this Court that the AirSprint Proceeds and the Remaining AirSprint Funds are the property of the OTE Group and not any of the Mareva Respondents or their related companies.

Distribution of Proceeds from the Vehicle Transaction

15. The Vehicle Transaction has closed, and the Monitor now seeks this Court's approval of a distribution to certain of the equipment leasing and financing companies that had an interest in the Vehicles (the "**Vehicle Leasing and Financing Companies**"). The Vehicle Approval and Vesting Order provided that the claims of the Vehicle Leasing and Financing Companies would be vested out of the purchased Vehicles, and would stand against the proceeds of the Vehicle Transaction. Pursuant to the Distribution Order, the Monitor now seeks approval of a total distribution of up to $2,062,759.25 to the Vehicle Leasing and Financing Companies listed below, broken down as follows:

(a) Up to $35,575.61 to CWB National Leasing or a designated affiliate;

(b) Up to $83,000.00 to Volvo Financial Services or a designated affiliate;

(c) Up to $1,895,433.14 to Essex Lease Financial Corporation or a designated affiliate; and

(d) Up to $48,750.50 to Meridian OneCap Credit Corporation or a designated affiliate.

16. The Distributions shall not be greater than the amounts owing, as set out above, to each of the above Vehicle Leasing and Financing Companies in connection with the Vehicles, provided that the requested Distribution Order is issued by the Court to allow the Monitor to effect the Distributions by April 5, 2024 (the "**Outside Distribution Date**"). In the event that the Distribution Order is issued after April 5, 2024, the above amounts will be increased to reflect the amounts due on the actual date that the Monitor is able to effect the Distributions.

17. The Royal Bank of Canada ("**RBC**"), in addition to being a Vehicle Leasing and Financing Company, is also a secured lender to the OTE Group through certain loan facilities secured by a general security agreement (the "**GSA**"). While RBC has a secured claim against the proceeds arising from the disposition of the some of the Vehicles, the Monitor intends to seek approval of a distribution of those amounts, concurrently with the approval of a distribution to RBC in respect of the amounts secured pursuant to the GSA at a later date.

18. The Monitor's counsel has completed a review of each of the Vehicle Leasing and Financing Companies' security, and has provided an opinion that, subject to customary qualifications and assumptions, the security documents created valid and binding obligations of the OTE Group entities that are party thereto, the security documents create valid security interests in the Vehicles, and aside from one equipment note that appears not to have been registered under the Ontario PPSA (the "**Unperfected Interest**"), registration has been properly made in respect of all of the security interests. Although perfection did not occur in respect of the Unperfected Interest, the Unperfected Interest was otherwise valid, binding and enforceable and created a valid security interest in the relevant collateral.

19. The Monitor believes that the Distributions are appropriate in the circumstances. Each of the Vehicle Leasing and Financing Companies had valid security interests in the Vehicles, and aside from the Unperfected Interest, all security interests were perfected. The claims of the Vehicle Leasing and Financing Companies now appropriately stand against the proceeds of the Vehicle Transaction. The Monitor intends to seek approval of a distribution of amounts owing to RBC in respect of the Vehicles and in respect of separate loan facilities at a later date. The Distributions are supported by the OTE Group.

OTHER GROUNDS FOR THE MOTION ARE:

20. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court.

21. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194.

22. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

23. The Eighth Report of the Monitor dated March 18, 2024.

24. Such further and other evidence as counsel may advise and this Honourable Court may permit.

March 18, 2024

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TO: THE SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced in Toronto

Notice of Motion

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TAB 2

Court File No.: CV-23-00693758-00CL

ORIGINAL TRADERS ENERGY LTD. ET AL.

EIGHTH REPORT OF KPMG INC.,
IN ITS CAPACITY AS MONITOR

March 18, 2024

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Court File No.: CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

EIGHTH REPORT OF KPMG INC.

In its capacity as Monitor of the OTE Group

March 18, 2024

I. INTRODUCTION

1. On January 30, 2023 (the "**Filing Date**"), Original Traders Energy Ltd. and 2496750 Ontario Inc. (together, the "**Applicants**") were granted relief under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**") by Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). The relief granted under the Initial Order (as amended and restated on February 9, 2023, the "**Amended and Restated Initial Order**") included a stay of proceedings in favour of the Applicants; the appointment of KPMG Inc. ("**KPMG**") as the monitor in these proceedings (in such capacity, the "**Monitor**"); and other related relief. These proceedings under the CCAA are referred to herein as the "**CCAA Proceedings**".

2. OTE Logistics LP and Original Traders Energy LP (together, the "**Limited Partnerships**") are not Applicants in this proceeding. However, the Initial Order and the Amended and Restated Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry on operations that are integral to the business of the Applicants. The term "**OTE Group**" throughout this report refers to the Applicants and Limited Partnerships collectively.

3. KPMG has filed various reports with the Court in these proceedings. Copies of materials filed with the Court and other materials pertaining to the CCAA Proceedings, including all reports issued by the Monitor in these proceedings, are available on the Monitor's website: http://home.kpmg/ca/OTEGroup (the "**Monitor's Website**").

II. PURPOSE OF REPORT

4. The purpose of this Eighth Report of the Monitor (the "**Eighth Report**") is to:

   (i) update the Court with respect to matters relating to the orders of the Court granted on July 17, 2023 (the "**Yacht Sale and AirSprint Proceeds Order**") and January 30, 2024 (the "**Vehicle Approval and Vesting Order**");

   (ii) provide the Monitor's recommendation that this Court issue an Order (the "**AirSprint Funds Order**"), among other things:

      (a) approving the AirSprint Settlement (as defined herein) between AirSprint Inc. ("**AirSprint**") and the OTE Group, and authorizing and directing AirSprint to remit the Remaining AirSprint Funds (as defined herein) to the Monitor; and

(b) declaring that the US$5,482,779.85 remitted by AirSprint to the Monitor pursuant to this Court's Order dated July 17, 2023, and all interest accrued thereon, and the Remaining AirSprint Funds are the property of the OTE Group;

(iii) provide the Monitor's recommendation that this Court issue an Order (the "**Distribution Order**"), among other things, authorizing the Monitor to distribute proceeds received from Allstar Auctions Inc. ("**Allstar**") pursuant to the Vehicle Transaction (as defined below);

(iv) update the Court on the OTE USA Motion (as defined herein); and

(v) update the Court with respect to certain discussions regarding the Blending Equipment (as defined herein).

III. TERMS OF REFERENCE

5. In preparing the Eighth Report, the Monitor has relied on information and documents provided by the OTE Group and their advisors, including unaudited financial information, declarations, in addition to information and documents obtained from third parties that responded to the Monitor's requests for information and other information obtained by the Monitor (collectively, the "**Information Received**"). In accordance with industry practice, except as otherwise described in the Second Report of the Monitor dated March 13, 2023 (the "**Second Report**"), KPMG has reviewed the Information Received for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information Received in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information Received.

6. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. BACKGROUND

7. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is provided in the Monitor's pre-filing report dated January 30, 2023. Since the OTE Group's filing, this Court has granted several Orders, and various materials have been filed in connection therewith. The information below only provides the background on these proceedings

relevant for this Eighth Report. All Orders granted and materials filed in these proceedings can be accessed on the Monitor's Website.

8. On March 15, 2023, the Court granted a Mareva injunction as part of an Order (the "**Injunctive Order**") which restrained Glenn Page ("**Page**"), Mandy Cox ("**Cox**") and 2658658 Ontario Inc. ("**265**", and collectively, the "**Mareva Respondents**") from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named "Cuz We Can" (the "**Italian Yacht**"), more particularly described in Schedule "A" of the Injunctive Order. On March 21, 2023 and March 28, 2023, this Court issued certain endorsements (collectively, the "**Injunctive Endorsements**") related to the Injunctive Order.

9. On July 17, 2023, this Court granted the Yacht Sale and AirSprint Proceeds Order, among other things, (i) authorizing and directing the Monitor to conduct a sale process for the Italian Yacht (the "**Yacht Sale Process**"); and (ii) directing AirSprint to remit to the Monitor the US$5,482,779.85 and any accrued interest thereon that was then held in trust by AirSprint on account of net proceeds and receipts from the sale of property including aircraft interests that were purchased or financed from funds sent to AirSprint by any OTE Group entity or affiliate thereof. The Yacht Sale and AirSprint Proceeds Order also provided that this payment was without prejudice to (i) the rights of Monitor and the OTE Group to seek payment from AirSprint of any other or further monies or property or proceeds to which any entity of the OTE Group may claim an interest in, including without limitation in connection with the sale or use of any aircraft or fractional ownership, leases or other interests therein paid for or financed with funds from any OTE Group entity or affiliate thereof; and (ii) the rights of AirSprint to defend against any such claims made by the OTE Group or the Monitor in respect of any other or further amounts.

10. On October 12, 2023, the Court issued the following:

    (i) an Order, among other things, providing the Monitor with enhanced powers in connection with the business and property of the OTE Group, and approving an amended bid process for the sale of the assets of the OTE Group to be carried out by the Monitor (the "**Bid Process**"); and

    (ii) an Order, among other things, extending the stay period to April 26, 2024, approving certain amendments to the Claims Procedure, and approving the activities of the Monitor.

11. After uncovering evidence that substantial payments were improperly and fraudulently made, and assets including cash improperly and fraudulently transferred, by the OTE Group to or for the benefit

of Page, Cox, 265, and others, the Monitor filed a report with the Court dated November 8, 2023 (the "**Sixth Report**") in support of a motion (the "**Mareva Motion**") for an Order (the "**Mareva Order**") among other things:

(i) extending the provisions of the Injunctive Order to apply to all of the assets of the Mareva Respondents, wheresoever located;

(ii) expanding the Injunctive Order to restrain the Mareva Respondents and anyone else acting on their behalf or in conjunction with any of them directly or indirectly, and all other persons to whom notice of such an Order may be given, from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of the Mareva Respondents' assets, including without limitation real property, bank accounts, insurance policies, annuities and other assets held by them or by any other person or entity on their behalf, wherever so located, without leave of this Court; and

(iii) expanding the Injunctive Order to require the Mareva Respondents to each prepare and provide to the Monitor a sworn affidavit within ten days describing the nature, value and location of their assets wheresoever located, whether in their own name or not and whether solely or jointly owned or whether held in trust for any other party.

12. The Mareva Motion was originally scheduled for November 10, 2023, but was adjourned at that hearing until December 21, 2023. The Mareva Respondents and the Monitor filed additional materials in connection therewith, including the Monitor's supplement to the Sixth Report dated December 4, 2023, which included further information on the Monitor's investigation and further basis for the relief sought.

13. On January 16, 2024, the Court ordered a broader Mareva injunction against Page and 265 in respect of all of their worldwide assets, and declined to order a Mareva injunction against Cox but instead ordered that Cox provide a statement of her worldwide assets (the "**Mareva Decision**"). Substantially all other terms of the proposed Mareva Order sought by the Monitor were approved by the Court except for certain modifications required, including in respect of a cost arrangement between the Monitor, Page and Cox. In accordance with the Mareva Decision, the Monitor examined Page on February 28, 2024 and March 13, 2024. The Monitor will update the Court on the results thereof, and any further examinations or interviews, in a future Report.

14. The Order in respect of the Mareva Decision has now been issued by the Court and is attached hereto at **Appendix "A"**.

15. Counsel to the Monitor and counsel to the Mareva Respondents attended a case conference before the Court in respect of the issue of costs on February 15, 2024. The Court's endorsement from that case conference is attached hereto at **Appendix "B"**. The Court has reserved a hearing date of March 19, 2024 to allow it to determine the issues with respect to the costs of the Page Respondents (as defined in the Court's endorsement). The endorsement provided that the parties were to reattend Court for a case conference on February 27, 2024 – that case conference was rescheduled, and a mediation took place on March 15. The March 19th hearing date has since been vacated, and the Monitor and the Mareva Respondents are in continued discussions regarding this issue, and the Monitor will provide an update to the Court in a future Report.

16. On January 30, 2024, the court issued the following Orders:

    (i) the Vehicle Approval and Vesting Order, among other things, approving the sale transaction of the OTE Group's vehicles contemplated by an agreement of purchase and sale between the Monitor, on behalf of the OTE Group, and Allstar dated January 11, 2024 (the "**Vehicle Transaction**"); and

    (ii) an Order, among other things, approving the key employee retention plan payments and sealing certain confidential appendices to the seventh report of the Monitor dated January 22, 2024 (the "**Seventh Report**").

V. AIRSPRINT PROCEEDS

17. In accordance with the Yacht Sale and AirSprint Proceeds Order, on July 20, 2023, AirSprint remitted to the Monitor US$5,482,764.85 (net of wire fees) (the "**AirSprint Proceeds**") which represented proceeds from the sale of property including aircraft interests that were purchased or financed from funds sent to AirSprint by OTE Group entities. These amounts are currently held by the Monitor in trust.

18. After the payment of the AirSprint Proceeds, the Monitor contacted AirSprint in respect of a further US$840,000 of funds that were paid by the OTE Group entities to AirSprint in respect of deposits and partial payments toward the purchase of fractional interests in a jet. The Monitor followed up with AirSprint to seek the return of those remaining funds and was advised by AirSprint that it was willing to transfer the net funds after accounting for the costs associated with re-selling the fractional interests.

Following negotiations between the Monitor, AirSprint, and counsel, AirSprint and the Monitor (on behalf of the OTE Group) have agreed to the following settlement regarding the remittance of these funds (the "**AirSprint Settlement**"), subject to approval of the Court:

(i) AirSprint shall forthwith remit US$535,000.00 to the Monitor, on behalf of the OTE Group, (the "**Remaining AirSprint Funds**"), and shall retain the residual US$315,000.00 to address ongoing costs and re-marketing fees associated with the sale of fractional interests in the jet and to cover legal fees incurred in concluding this settlement with the Monitor; and

(ii) upon the remittance of the Remaining AirSprint Funds, AirSprint shall be released from all liability (save and except for liability related to gross negligence or wilful misconduct) to the OTE Group, the Monitor, or the Mareva Respondents and related parties in connection with any fractional jet interests purchased prior to these CCAA Proceedings, other than AirSprint's ongoing obligation to respond to information requests from the Monitor in connection with the Monitor's ongoing investigations.

19. Further background on the AirSprint Settlement, including the methodology used to calculate the settlement amount, is provided in the letter dated December 12, 2023 provided by counsel to AirSprint to the Monitor and its counsel, as attached at **Appendix "C"**.

20. The AirSprint Settlement will not prejudice the Monitor's ability to compel the production of information from AirSprint or Airsprint's ongoing obligation to respond to the Monitor's information requests, or the ability for the Monitor to continue to seek payment on behalf of the OTE Group against any person aside from AirSprint or its directors, officers, employees, or other persons acting on its behalf, for usage of any of the aircraft held on behalf of the OTE Group or to seek any further directions or remedies before this Court in respect thereof.

21. The Monitor believes that the AirSprint Settlement benefits the OTE Group and its stakeholders and is fair and reasonable in the circumstances. The AirSprint Settlement will allow the OTE Group to recover the remaining net funds held by AirSprint, less the agreed upon amount estimated by AirSprint for its fees and expenses that the Monitor believes is reasonable and appropriate in the circumstances. The Monitor is of the view that the AirSprint Settlement maximizes value by allowing the OTE Group to recover the majority of the funds held by AirSprint without resorting to unnecessary litigation that would incur further professional fees. A court-ordered release of AirSprint was a condition of the agreement reached with the Monitor, subject to approval of the Court, and the Monitor is of the view that it is appropriately tailored and not overly broad as it does not release liability stemming from gross

negligence or wilful misconduct, and does not release AirSprint from providing ongoing cooperation and information in connection with the Monitor's investigation. Given AirSprint's cooperation with the Monitor throughout these proceedings and that the majority of the OTE Group payments will now have been recovered (save for the agreed upon reasonable reserve for Airsprint's fees and expenses), the Monitor supports the AirSprint Settlement, including the release of AirSprint, and believes it is appropriate in the circumstances.

22. Furthermore, as detailed in the Sixth Report, the OTE Group's funds were used to purchase the AirSprint fractional aircraft interests (the "**AirSprint Property**") in the name of 265. Despite the use of OTE Group's funds to purchase the AirSprint Property, the Mareva Respondents had continuously asserted the AirSprint Property was rightfully owned by 265 and was purchased using partnership distributions to Page. However, in connection with the Mareva Motion, Page acknowledged that the AirSprint Property purchased in the name of 265 was in fact owned by the OTE Group and not 265. An excerpt of the transcript with the aforementioned acknowledgement by Page from the Mareva Motion hearing is attached hereto as **Appendix "D"**.

23. In the Mareva Decision, the Court held at paragraph 95 that, in the context of the development of the evidentiary record for the Mareva Motion, it was confirmed that "OTE, and not 265, owned the AirSprint fractional interests". A copy of the Mareva Decision is attached hereto at **Appendix "E"**. Consistent with the Court's finding and Page's admission, the sworn statement of worldwide assets provided to the Monitor by Page and 265 in connection with the Mareva Motion did not include the AirSprint Property.

24. In accordance with the Mareva Decision, the Monitor is seeking a declaration from this Court that the AirSprint Proceeds along with the Remaining AirSprint Funds (the "**AirSprint Funds**") are the property of the OTE Group and not of any of the Mareva Respondents or their related companies. The Monitor is not aware of any basis upon which this declaration could be opposed.

VI. DISTRIBUTION OF PROCEEDS FROM THE VEHICLE TRANSACTION

25. As detailed in the Seventh Report, the Monitor completed the Bid Process which provided for the sale of the property, assets and undertakings of the OTE Group (collectively, the "**Property**"). Most of the Property subject to the Bid Process consisted of vehicles in the possession of the OTE Group (the "**Vehicles**"). Certain other Property included office furniture and IT equipment of the OTE Group.

26. Most of the Vehicles were encumbered pursuant to loan and security agreements or held pursuant to capital leases with equipment leasing and financing companies, which were served directly or through counsel in connection with the Court-approved Bid Process. When the Vehicle Approval and Vesting Order was granted, the equipment leasing and financing companies with an interest in the Vehicles were CWB National Leasing ("**CWB**"), Essex Lease Financial Corporation ("**Essex**"), Meridian OneCap Credit Corporation ("**Meridian**"), Royal Bank of Canada ("**RBC**") and Volvo Financial Services ("**VFS**" and together the "**Vehicle Leasing and Financing Companies**"). Separate from the capital leases, RBC is also a secured lender to the OTE Group through certain loan facilities secured by a general security agreement (the "**GSA**").

27. As discussed in the Seventh Report, the Monitor determined that the bid submitted by Allstar was superior in respect of its economic and other terms as compared to the other bids for the Vehicles. Following a motion brought by the Monitor, on January 30, 2024, the Court granted the Vehicle Approval and Vesting Order approving the Vehicle Transaction and authorizing the Monitor's execution, on behalf of the OTE Group, of the purchase agreement in respect thereof (the "**Purchase Agreement**").

28. The Vehicle Approval and Vesting Order provided that the claims of the Vehicle Leasing and Financing Companies would be vested out of the purchased Vehicles and would stand against the proceeds of the Vehicle Transaction. The Monitor indicated in the Seventh Report that, following closing and the completion of its counsel's security review in respect of the Vehicles, the Monitor would return to Court to seek approval of a distribution of the proceeds of the Vehicle Transaction.

29. The Purchase Agreement contemplated the closing of the Vehicle Transaction within ten business days after the issuance of the Vehicle Approval and Vesting Order. The Vehicle Transaction has since closed – the Monitor has executed the Purchase Agreement, the proceeds of the Vehicle Transaction have been received by the Monitor from Allstar, and the Vehicles have been conveyed to Allstar.

Security Review Opinion

30. The Monitor's counsel completed a review of each of the Vehicle Leasing and Financing Companies' security. The review included conducting a search of the *Personal Property Security Act*, R.S.O. 1990, c. P.10. (the "**PPSA**") and reviewing the relevant financing and leasing documents in the Monitor's possession. The Monitor's counsel has provided the Monitor with its opinion that, subject to customary qualifications and assumptions, the security documents created valid and binding obligations of the OTE Group entities that are party thereto, the security documents create valid security interests in the

Vehicles, and aside from one equipment note that appears not to have been registered under the Ontario PPSA (the "**Unperfected Interest**"), registration has been properly made in respect of all of the security interests.[1]

Distribution

31. Given that the Vehicle Leasing and Financing Companies had valid security over the Vehicles, the Monitor seeks approval from this Court to affect a total distribution of up to $2,062,759.25 broken down as follows (collectively, the "**Distributions**"):

    (i) up to $35,575.61 to CWB or an affiliate designated by CWB;

    (ii) up to $83,000.00 to VFS or an affiliate designated by VFS;

    (iii) up to $1,895,433.14 to Essex or an affiliate designated by Essex; and

    (iv) up to $48,750.50 to Meridian or an affiliate designated by Meridian.

32. The Distribution amounts may be slightly less than the above amounts depending on the distribution date and the per diem incurred as of the distribution date for each of the above Vehicle Leasing and Financing Companies. The Distributions shall not be greater than the amounts owing, as set out above, to each of the above Vehicle Leasing and Financing Companies in connection with the Vehicles, provided that the requested Distribution Order is issued by the Court to allow the Monitor to effect the Distributions by April 5, 2024 (the "**Outside Distribution Date**"). In the event that the Distribution Order is issued after April 5, 2024, the above amounts will be increased to reflect the amounts due on the actual date that the Monitor is able to effect the Distributions.

33. In addition to its security in respect of the Vehicles, as noted above, RBC has a GSA against the assets of the OTE Group. As described in the Fifth Report of the Monitor dated September 28, 2023, the GSA has been reviewed by the Monitor's counsel to confirm the validity and enforceability of RBC's security. While RBC has a secured claim against the proceeds arising from the disposition of the some of the Vehicles, the Monitor intends to seek approval of a distribution of those amounts, concurrently with the approval of a distribution to RBC in respect of the amounts secured pursuant to the GSA at a later date.

[1] The amount owing in respect of the Unperfected Interest as at the date of this Report is approximately $143,834.

34. The Monitor believes that the Distributions are appropriate in the circumstances. Each of the Vehicle Leasing and Financing Companies had valid security interests in the Vehicles, and aside from the Unperfected Interest, all security interests were perfected. The claims of the Vehicle Leasing and Financing Companies now appropriately stand against the proceeds of the Vehicle Transaction. Although perfection did not occur in respect of the Unperfected Interest, the Unperfected Interest was otherwise valid, binding and enforceable and created a valid security interest in the relevant collateral. Further, the Amended and Restated Initial Order granted by this Court does not prevent the filing of any registration to preserve or perfect a security interest.

35. The amounts to be distributed represent the payment of all obligations owing from the OTE Group to each of the relevant Vehicle Leasing and Financing Companies, except for RBC, and will not exceed the full amount of those obligations. Further, the Distributions will ensure that interest does not continue to accrue for amounts owed in respect of the Vehicles. The Distributions are supported by the OTE Group.

VII. UPDATE ON YACHT SALE PROCESS

36. As previously discussed in the Sixth Report of the Monitor dated November 8, 2023, the Monitor commenced the Yacht Sale Process after the issuance of the Yacht Sale and AirSprint Proceeds Order. As noted therein, the Monitor had not formally engaged a boat dealer or broker (a "**Boat Broker**") in respect of the Italian Yacht upon becoming aware of certain legal issues with respect to unpaid duties surrounding the Italian Yacht that would prohibit its sale in Florida. The Monitor retained U.S. marine counsel to investigate the unpaid duties. The Monitor's Sixth Report also noted that the Monitor had obtained new insurance in respect of the Italian Yacht.

37. The Monitor has since obtained a Boat Broker acceptable to the Mareva Respondents, as well as a valuation report and a quote from the U.S. customs broker to address the issue of unpaid duties. In order to move the Yacht Sale Process forward, the Monitor has arranged the payment by the OTE Group of the customs duty and applicable fees in connection with the Yacht Sale Process, which will be reimbursed to the OTE Group out of the proceeds of sale after payment of the Boat Broker's commission. The payment of the customs duty will allow the marketing and sale of the Italian Yacht to take place in Florida. The Monitor is continuing to work with its U.S. marine counsel, customs broker, insurance broker, the Boat Broker, and other service providers to advance the Yacht Sale Process, and will report to the Court when there is further information to share.

VIII. OTE USA MOTION

38. On December 22, 2023, counsel for the Monitor, counsel for the Mareva Respondents, and counsel for OTE USA LLC ("**OTE USA**") attended a scheduling case conference before Justice Kimmel. OTE USA requested this Court schedule a motion authorizing it to, among other things, (i) engage in discussions with the creditors of the OTE Group to discuss a proposed CCAA plan of arrangement (the "**Proposed Restructuring Plan**"), the terms of which are set out in a term sheet (the "**Plan Term Sheet**") and (ii) engage with licensing authorities to reinstate the licenses of the OTE Group and/or negotiate new licenses in support of the Proposed Restructuring Plan.

39. The Court scheduled the hearing of the OTE USA Motion to take place on March 22, 2024, and approved a timetable in connection therewith pursuant to an endorsement (the "**December 22 Endorsement**").

40. The Plan Term Sheet provided for OTE USA to purchase certain the assets and liabilities of the OTE Group in exchange for consideration to be paid to the OTE Group's creditors (much of which consideration consisted of property that, in the Monitor's views, already belongs to the OTE Group, including the AirSprint Funds). The Plan Term Sheet also stipulated that the Mareva Respondents, OTE USA and certain other related parties would be released from all claims in respect of their dealings with the Original Traders Energy Ltd and OTE LP and any pending litigation against the Mareva Respondents and OTE USA would be dismissed without prejudice and without costs.

41. On January 16, 2024, the Monitor facilitated a discussion at OTE USA's request between OTE USA and representatives of two significant creditors of the OTE Group, the Ministry of Finance for Ontario (the "**MOF**") and the Canada Revenue Agency (the "**CRA**"). The purpose of the discussion was to allow OTE USA to provide the MOF and the CRA with an overview of the Proposed Restructuring Plan and answer questions on same, on a "without prejudice" basis. It was agreed between the parties that the occurrence of the discussion could be reported by the Monitor, but the content of those discussions were without prejudice and therefore are not being reported upon by the Monitor.

42. On February 23, 2024, the counsel for each of the MOF and CRA notified counsel for OTE USA that neither the MOF or CRA would support the Proposed Restructuring Plan or any other plan involving OTE USA or its related entities.

43. Consequently, on February 27, 2024, counsel for OTE USA withdrew the OTE USA Motion on a without costs basis. A copy of OTE USA's e-mail to the service list withdrawing the OTE USA Motion is attached hereto as **Appendix "F".**

IX. BLENDING EQUIPMENT

44. As discussed in the Seventh Report, certain time limited gas licenses and fuel licenses expired on December 31, 2023. Subsequently, all sales and distribution of fuel by the OTE Group ceased. OTE Group's vehicles were also sold pursuant to the Vehicles Approval and Vesting Order. As a result, the equipment primarily available for acquisition through the Proposed Restructuring Plan was the OTE Group's fuel blending equipment (the "**Blending Equipment**").

45. In accordance with the Bid Process, four (4) offers were received for the Blending Equipment (the "**Blending Equipment Expressions of Interest**"), all from third parties unrelated to the OTE Group. As stated in the Bid Process, the completion of any transaction in respect of any of the Blending Equipment, among other things, would be conditional on the negotiation of acceptable lease agreements with the current landlords of the leased premises in respect of the Fuel Blending Locations (the "**Blending Location Landlords**").

46. Prior to the withdrawal of the OTE USA Motion, the Monitor did not progress any negotiations with the Blending Location Landlords or otherwise further the Blending Equipment Expressions of Interest pending the hearing of the OTE USA Motion.

47. Since the OTE USA Motion has been withdrawn, the Monitor has reached out to the Blending Location Landlords to discuss the expressions of interest received for the Blending Equipment and will report back to Court as these discussions progress.

X. MONITOR'S RECOMMENDATIONS

48. For the reasons set out in this Eighth Report, the Monitor is of the view that the relief sought in the AirSprint Funds Order and the Distribution Order is necessary and appropriate in the circumstances. As such, the Monitor respectfully requests that this Court issue the AirSprint Funds Order and the Distribution Order.

49. The Monitor is also of the view that that the Blending Equipment Expressions of Interest should be pursued for the purpose of furthering and completing one or more transactions for the Blending Equipment.

All of which is respectfully submitted this 18th day of March 2024.

KPMG Inc.
In its capacity as Monitor of
Original Traders Energy Group
And not in its personal or corporate capacity

Per:

Paul van Eyk
CPA, CA-IFA, CIRP, LIT, Fellow of INSOL
President

Duncan Lau
CPA, CMA, CIRP
Senior Vice President

Appendix “A”

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE		TUESDAY, THE 16TH DAY
JUSTICE KIMMEL	)	OF JANUARY, 2024
	)	
	)	

B E T W E E N:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO INC.

Applicants

ORDER

NOTICE

If you, the Mareva Respondents, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Monitor (as defined herein), for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Mareva Respondents to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, made by the Court-appointed Monitor, KPMG Inc., on notice, for an Order in the form of a Mareva injunction restraining Glenn Page, Mandy Cox and 2658658 Ontario Inc. (the "**Mareva Respondents**"), from transferring, moving, or dissipating their assets, as detailed below, and other relief, was heard on December 21, 2023 at the courthouse, 330 University Avenue, 8th floor, Toronto, Ontario.

ON READING the motion materials and written arguments filed by the parties, and on hearing the submissions of counsel for all parties in attendance and represented per the counsel slip.

Service

1. **THIS COURT ORDERS** that the time for service of the motion materials and written arguments by the parties herein is hereby abridged and validated so that this motion was properly returnable on December 21, 2023 and hereby dispenses with further service thereof.

Mareva Injunction

2. **THIS COURT ORDERS** that Glenn Page and 2658658 Ontario Inc. (the "**Injunction Parties**"), and their servants, employees, agents, assigns, officers, directors as well as any other person or entity acting on their behalf or at their direction or, in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

(a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Injunction Parties, including real property, bank accounts, insurance policies, annuities and other assets held by them or by any other person or entity on their behalf, wherever situate, without leave of this Court;

(b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and

(c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

3. **THIS COURT ORDERS** that paragraph 2 applies to all of the Injunction Parties' assets whether or not they are in the possession or control of any of the Injunction Parties and whether they are solely or jointly owned by any other party. For the purpose of this order, the Injunction Parties' assets include any asset to which any of them may have the power, directly or indirectly, to dispose of or deal with as if it were their own. Each of the Injunction Parties are to be regarded as having such power if a third party holds or controls the assets in accordance with any of their direct or indirect instructions.

Ordinary Living Expenses and Legal Expenses

4. **THIS COURT ORDERS** that the Injunction Parties may apply for an order, on at least twenty-four (24) hours notice to the Monitor, specifying the amount of funds which the Injunction Parties are entitled to spend on ordinary living expenses and legal advice and representation.

Disclosure of Information

5. **THIS COURT ORDERS** that the Injunction Parties each prepare and provide to the Monitor within twenty days of the date of service of this Order, a sworn affidavit or statement

describing the nature, value, and location of each of their assets worldwide, whether in their own names or not and whether solely or jointly owned.

6. **THIS COURT ORDERS** that the Injunction Parties submit to examinations under oath within twenty-five days of the delivery by the Mareva Respondents of the aforementioned sworn statements.

7. **THIS COURT ORDERS** that Cox prepare and provide to the Monitor within twenty days of the date of service of this Order, a statement describing the nature, value, and location of each of her assets worldwide, whether in her own name or not and whether solely or jointly owned, and co-operate with the Monitor if it seeks information or documents from her, including any requested interview by the Monitor.

8. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate the Injunction Parties or Cox, they may be entitled to refuse to provide it, but are recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraphs 5, 6 and 7 herein is contempt of court and may render the Injunction Parties and/or Cox liable to be imprisoned, fined, or have their assets seized.

Third Parties

9. **THIS COURT ORDERS** that any financial institution given notice of this Order (the "**Banks**") forthwith freeze and prevent any removal or transfer of monies or assets of the Injunction Parties that may be held in any account or on credit on behalf of the Injunction Parties, with the Banks, until further Order of the Court.

10. **THIS COURT ORDERS** that the Banks forthwith disclose and deliver up to the Monitor any and all records held by the Banks concerning any of the Injunction Parties' assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of any of the Injunction Parties by the Banks.

Variation, Discharge or Extension of Order

11. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this order, on four (4) days' notice to the Monitor.

General

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Monitor and its respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its respective agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that the Monitor is authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition and/or enforcement of this Order, the Initial Order dated January 30, 2023, the Amended and Restated Initial Order dated February 9, 2023 and any further orders issued in these proceedings, and for assistance in carrying out the terms and/or intent of all such orders.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry or filing.

Costs

15. **THIS COURT ORDERS** that the Injunction Parties shall pay partial indemnity costs to the Monitor in the all-inclusive amount of $100,000 (the "**Page Cost Payment**"). The timing of the Page Cost Payment and the source of funds from which the Injunction Parties may make the Page Cost Payment shall be subject to further direction from the Court or agreement between the Monitor and the Injunction Parties. For greater certainty, this aspect of this Order is intended to address the issue of the costs of this motion as between the Injunction Parties and the Monitor, and does not in any way prejudice the Monitor's ability be paid its full fees and costs (including legal costs) from the OTE Group in the ordinary course of this CCAA proceeding or to seek any Court approval in respect thereof.

16. **THIS COURT ORDERS** that the Monitor shall pay partial indemnity costs of this motion to Cox in the all-inclusive amount of $85,000 forthwith upon receipt of the endorsement of the Court dated February 15, 2024 ("**Cox Cost Payment**"). The Cox Cost Payment shall be paid by the Monitor out of the assets of the OTE estate.

Digitally signed by Jessica Kimmel
Date: 2024.02.28 11:56:00 -05'00'

Kimmel J.

IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO INC.

Applicants

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for The Monitor, KPMG Inc.

Appendix “B”

ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00693758-00CL **DATE:** **15 February 2024**

NO. ON LIST: **1**

TITLE OF PROCEEDING: **ORIGINAL TRADERS ENERGY LTD. et al v. HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF FINANCE et al**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Jessica Orkin Natai Shelsen	Mandy Cox	jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com;
Monique Jilesen	Glenn Page and 26586568 Ontario Inc.	mjilesen@litigate.com;

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Duncan Lau Broderick Lomax Paul van Eyk	KPMG (Court Appointed Monitor)	duncanlau@kpmg.ca; blomax@kpmg.ca; pvaneyk@kpmg.ca;
Shaan Tolani Richard Swan Raj Sahni	Counsel for the monitor	tolanis@bennettjones.com; swanr@bennettjones.com; sahnir@bennettjones.com;

Thomas gray		grayt@bennettjones.com;

ENDORSEMENT OF JUSTICE KIMMEL:

1. The Monitor requested a brief case conference to seek the court's direction in settling the terms of the formal Mareva Order arising from the court's Endorsement dated January 16, 2024 on the Mareva motion heard December 21, 2023 (the "Mareva Motion"), on the issue of costs.
2. The Monitor and the respondents, Mandy Cox ("Cox"), Glenn Page, and 2658658 Ontario Inc. (the "Page Respondents"), agreed to: "*a fixed amount of costs to the successful party in the all-inclusive amounts of $100,000 in respect of the Mareva motion as against Glenn Page/265, and $85,000 in respect of the Mareva motion as against Mandy Cox, for a total of $185,000 in respect of all respondents*".
3. It was further agreed that costs payable by the Monitor, if any, would be payable from the assets of the OTE estate.

Legal Costs and Other Expenses of the Page Respondents

4. It is not disputed that the Monitor is entitled to an award of costs against the Page Respondents in the agreed amount of $100,000 for the Mareva Motion given that the requested Mareva Order was granted against them. The normal order under r. 57 that costs of a motion be fixed and ordered to be paid forthwith would require payment of these costs by the Page Respondents within 30 days of January 16, 2024, which is today, February 15, 2024.
5. It is also not disputed that, as a result of the Mareva Order grated against them, the Page Respondents are not able, without leave of the court, to access funds to pay the agreed upon costs, or to pay their accounts receivable for legal expenses or to pay for ongoing legal and other expenses.
6. The Page Respondents have asked that the costs now payable by them in the agreed amount of $100,000 be ordered to be paid out the $1,874,058.28 being held in the trust account of Lenczner Slaght LLP ("Trust Funds"), representing the proceeds of sale of 118 Main St. North, Page's and Cox's jointly-held home that was sold in the months leading up to the hearing of the Mareva Motion. The Page Respondents also seek an order directing that $574,722.40 of the Trust Funds be applied towards the Lenczner Slaght accounts receivable, most of which they say accrued prior to the Mareva Order being granted.
7. Further, the Page Respondents want an order allowing them to use frozen Trust Funds to cover their ongoing living and other expenses, as would be typically provided for in a Mareva Order to permit them to maintain a normal standard of living and to meet legitimate debt payments accruing in the normal course, including the payment of reasonable legal expenses to defend the lawsuit. They rely on *Otal v. Azure Foods Inc.*, 2019 BCSC 1510 at para. 22, citing *Kelly v. Brown*, [1999] O.J. No. 419 (Ont. Gen. Div.).
8. The Monitor contends that the Frozen Funds comprise a defined asset pool was expressly frozen by the court (on consent) for the benefit of OTE's creditors (from the sale of a home that the Monitor further contends was purchased and/or improved using funds sourced from OTE) and that this asset pool should not be diminished if the Page Respondents have other assets that may be used to the pay the costs award against them.
9. The Monitor wishes to cross-examine Page on his statement of worldwide assets and affidavit(s) in support of the motion by the Page Respondents regarding the use of the Trust Funds or other assets frozen by the Mareva Order to pay for any approved legal and living expenses. The parties have agreed

that Page will be cross-examined on February 22, 2024 and he shall deliver any supplementary affidavit he seeks to rely upon in support of this motion by the Page Respondents before the cross-examination.

10. The Monitor wishes to test, among other things, the assertion by the Page Respondents that they do not have other liquid assets, aside from the Trust Funds, from among their frozen assets sufficient to pay the costs of the Monitor, their own legal costs, and/or their living expenses.
11. Cox currently has not objected to the use of Page's share of the frozen Trust Funds (which she has an interest in as a former joint owner of the house that was sold) to pay the Page Respondents' court ordered costs or legal expenses, but she may have a different position if they are seeking on the motion to use more than the amount of Page's share of those Trust Funds.
12. The parties hold out some hope that they might be able to reach an agreement regarding the payment of the Page Respondents legal and living expenses out of frozen assets after Page's cross-examination. To facilitate such, a case/settlement conference has been scheduled before a judge other than me for one hour on February 27, 2024. The parties shall serve, file and upload their Aide Memoires for use at that case conference by 2:30 p.m. on February 26, 2024.
13. In the meantime, the court confirms that the Page Respondents shall not be required to pay the $100,000 in costs payable by them in respect of the Mareva Motion pending further order of this court directing from which frozen assets those costs shall be paid.
14. The motion by the Page Respondents has been scheduled for two hours on March 19, 2024. If the parties do not reach an agreement regarding the remaining issues on that motion at the February 27, 2024 case/settlement conference, they shall at that time or shortly thereafter agree upon a timetable for all pre-hearing steps for the motion on March 19, 2024 such that all material shall have been served, filed and uploaded onto CaseLines by no later than 2:30 p.m. on March 18, 2024.

Cox's Costs of the Mareva Motion

15. Cox wants the Monitor to pay her the agreed upon $85,000 in costs in respect of the Mareva Motion, since the requested Mareva injunction against her was not granted.
16. The Monitor argues that even though the Mareva Order sought was not made against Cox, because Cox agreed that assets she jointly held with Page could be subject to any Mareva Order granted against him and because the court ordered Cox to submit a statement of her worldwide assets, cooperate with the Monitor in its investigation, and expressly left open the question of obtaining further relief, including a freeze order, against Cox based on the information to be provided by Cox, the costs agreement should not be enforced, or its enforcement should at least be deferred until it has been determined whether a further order will be sought and made against Cox.
17. The Monitor relies on *Arfanis v. University of Ottawa*, 2004 CanLII 34513 (ON SC), at para. 6, for the proposition that: "Where there is mixed complexity to the court's direction and certain matters remain to be determined, costs are usually deferred (often "in the cause", even if the amount may be fixed)." I do not find this case to be particularly helpful to the circumstances of this case. As well, and like the judge in *Arfanis*, I am mindful of the concerns with respect to distributive costs orders.
18. Cox's concession that her assets jointly held with Page could be subject to any Mareva Order against him is a reflection of what one might expect would be ordered based on the Commercial List Model Mareva Order and is in service of the Mareva Order granted against the Page Respondents. That does not amount to an order against her. The orders that were made against Cox (to submit her sworn asset list and co-operate with the Monitor) are also in service of the objective of ascertaining and identifying the assets Cox may jointly hold with the Page Respondents; thus, also in service of the Mareva Order against the Page Respondents.
19. Nor do I consider this a situation of divided success in relation to Cox.
20. The fact that the court did not close the door on the Monitor coming back at a later date for further relief against Cox (e.g., for example, did not render the Monitor's request for a Mareva injunction against Cox *res judicata*) does not change the fundamental outcome of the Monitor's motion and request for a Mareva Order against Cox, which was not granted. Cox is entitled to her costs of that motion.

21. The alleged misconduct of Cox (suggested misrepresentations in her prior evidence regarding her assets that the Monitor raises as a further basis for not awarding costs in her favour) is not something that can be addressed by the court at a case conference. In any event, on the face of the transcript, Cox's prior answers do not directly contradict the assets she has now disclosed. There may be some answers close to the line but it does rise to the level of fraud or intentional misleading of the court. Based on the evidence I was directed to, Cox does appear to be answering the questions asked, even if she might be interpreting them differently than counsel now suggests, for example whether condos she owns through holding companies in St. Lucia that are rented out could be considered to be other homes owned by her (whether directly or indirectly).
22. There is the further nuance of the alleged misconduct being based on evidence that was not part of the record before the court at the time of the Mareva Motion. The fact that the statement of worldwide assets that Cox has now provided discloses additional assets that she did not previously disclose in response to questions asked of her on her cross-examination on the Mareva Motion may require some further explanation from her at some point in time. I do not foreclose that there may be some consequence for that at some later point when the full evidentiary record regarding the assets of the Page Respondents and Cox and their jointly held assets has been fully developed.
23. In the meantime, Cox is entitled to her costs of the Mareva Motion. The court found that a *prima facie* case had not been made out against her and did not grant the requested worldwide Mareva Order against her. The parties agreed that the amount of those costs to be paid to the successful party, as between the Monitor and Cox, is $85,000, and agreed that the Monitor could pay those costs out of the assets of the OTE estate. Counsel for the Monitor confirmed that there are assets in the OTE estate (outside of the Trust Funds) that can be used to pay these costs and the Monitor should do so forthwith upon receipt of this endorsement.

Settling the Order

24. It is my understanding that the directions now provided in this endorsement will enable counsel to finalize the form of order to be taken out on for the Mareva Motion. Once the form of order has been settled, the approved form of order (with confirmation of approval from each counsel) together with a clean copy of the order to be signed may be sent to me through the Commercial List Office to be signed.
25. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order in the meantime.

KIMMEL J.

Appendix “C”

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
855 - 2nd Street S.W.
Suite 3500, Bankers Hall East Tower
Calgary AB T2P 4J8 Canada
Tel: 403-260-9600 Fax: 403-260-9700

Brendan MacArthur-Stevens
Partner
Dir: 403-260-9603
Brendan.MacArthur-Stevens@blakes.com

December 12, 2023

Reference: 84862/32

VIA E-MAIL

Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Attention: Raj Sahni

KPMG
Bay Adelaide Centre
333 Bay St. #4600
Toronto, ON M5H 2S5

Attention: Duncan Lau

RE: Original Traders Energy Ltd., 2496750 Ontario Inc., OTE Logistics LP and Original Traders Energy LP (collectively, the "OTE Group")

Dear Duncan and Raj:

We write further to our call on November 23, 2023, and subsequent correspondences in which the Monitor and AirSprint Inc. ("**AirSprint**") engaged in productive discussions regarding the settlement of all outstanding matters between the OTE Group, the Monitor, and AirSprint, as applicable.

As requested by the Monitor, please find below the rationale and methodology used to support AirSprint's offer to deposit into trust with the Monitor **$535,000** (the "**Settlement Amount"**) in full and final satisfaction of any obligation between the parties, as described in our November 20, 2023, letter (the "**Letter**"). Unless otherwise indicated, all amounts in this email are in USD.

A. Methodology

The $535,000 Settlement Amount is equivalent to:

(a) the full value of:

i. the **$619,000** deposit paid by Glenn Page ("**Page**") towards the 12.5% fractional interest (the "**Fractional Interest**" or the "**FI**") in the 2023 Embraer P500 Aircraft ("**P500**"),

ii. the two **$10,000** deposits, and

iii. the **$211,000** partial payment made towards the purchase of the P500,

(b) less **$315,000** to be retained by AirSprint to address ongoing costs and fees associated with the sale of the P500 as well as a small amount to cover legal fees to conclude a settlement with the Monitor.

The methodology used for calculating the $315,000 deduction is as follows.

In the Letter, we advised that the current fair market value of the Fractional Interest was approximately the same as its purchase price, i.e., **$2,476,000** plus tax. Similar aircraft are currently selling wholesale for **$19,434,600**. See the enclosed VREF reference confirming this. The Fractional Interest is therefore valued at approximately **$2,429,325** (the "**FMV**"). This is marginally less than the **$2,476,000** purchase price negotiated with Page.

As you are aware:

1. AirSprint charges a remarketing fee of 5% of the value of the Fractional Interest to facilitate the sale of all fractional interests. This fee is to cover AirSprint's costs to conclude a transaction for a fractional interest. 5% of the FMV is equal to **$121,466**.

2. All fractional interest agreements, including the P500 agreement with Page, include overhead fees. In the contract negotiated with Page, these fees were listed at CA$423,327 annually or the "then applicable annual overhead fee rate". Effective January 1, 2024, overhead fees will be CA$39,007/month or **$468,088** annually.

Due to depressed market conditions for private aircraft services, AirSprint anticipates that it will take approximately six months to sell the Fractional Interest, which will lead to costs that AirSprint will be obligated to address. For context, AirSprint currently has seven fractional interests for sale for similar Embraer aircraft, including three interests in similar P500 aircrafts, all of which were listed for sale in the past 6 weeks. It is going to take significant time to sell this FI.

The overhead fees over a 6-month sales period will equal CA$234,044 or approximately **$172,841**. Note that we have converted to USD from CAD using the FX rate reported by the Bank of Canada as at December 4, 2023, i.e., CA$1.3541:US$1 (please see: https://www.bankofcanada.ca/rates/exchange/daily-exchange-rates/).

In addition to each of the above fees, we have included **$20,693** in the settlement amount to account for additional legal fees to be incurred by AirSprint to facilitate and appear at the hearing to approve same. This fee is less than 1% of the FMV of the Fractional Interest.

A summary of the foregoing is provided immediately below:

					A				B	A+B	C	A+B+C
Aircraft	FMV	Page FI	FMV of Page FI	Remarketing Fee %	Remarketing Fee US$	Annual Overhead CA$	6 Months Overhead CA$	CADUSD	6 Months Overhead $US	Remarketing Fee plus Overhead	Legal Fees	Total to be retained
P500	19,434,600	12.50%	2,429,325	5%	121,466	468,088	234,044	1.3541	172,841	294,307	20,693	315,000

Please note that: (a) AirSprint has utilized the wholesale FMV of the P500 in order to be consistent with prior offers made to the Monitor, and (b) the retention of $315,000 by AirSprint is equivalent to approx. 13% of the FMV of the P500. We hope that the above analysis clearly articulates both the commercial and reasonable nature of AirSprint's offer.

B. Next Steps & Notice to Page

As previously discussed, the foregoing offer is conditional on the OTE Group and the Monitor obtaining a consent order from the Ontario Superior Court of Justice (Commercial List), drafted by the Monitor in consultation with AirSprint, which:

1. directs AirSprint to forward the Settlement Amount to the Monitor or the OTE Group, as applicable; and

2. orders that AirSprint shall have no further lability of any kind to the OTE Group, the Monitor, or Page, as applicable.

Given that the foregoing settlement is likely to impact Page, including his rights vis-à-vis AirSprint, AirSprint expects that any application to advance the settlement contemplated herein must made be on notice to Page. Further, because of AirSprint's ongoing obligations to Page under the various LOI's (which, as of writing, are still valid), and as we mentioned in our telephone discussion with the Monitor last week, AirSprint intends to imminently advise Page of same.

Please do not hesitate to reach out if you have any questions or concerns.

Yours truly,

Brendan MacArthur-Stevens

Enclosures

c. Mungo Hardwicke-Brown, Christopher Keliher (*Firm*)
James Elian, Mike Knapp, Marry Vanderkooi (*AirSprint*)

Appendix “D”

Excerpt of Transcript from the Mareva Motion Hearing

Q: And, sir, do we agree that these fractional ownership interests in these three jets were all paid for out of OTE LP funds?

A: The capital of the fractional aircraft and the fixed overhead were paid for out of OTE. That is correct.

Q: And were these payments to AirSprint by OTE to purchase these fractional interests in these three aircrafts, was that part of your distribution from OTE to 265 or not?

A: Sir, it was not. It was a board decision.

Q: So it was not part of your distribution.

A: Correct.

Q: And was it intended that OTE would be the ultimate owner or that 265 would be the ultimate owner?

A: The management board that reviewed the decision and made the decision to procure the fractional ownership were -- had requested that they be held at arm's length, away from OTE. CCD did not wish to do it, so 265 was selected.

Q: Do you have any documents that reflect that that was the management decision, sir?

A: We had a board meeting. It was discussed at a board meeting face to face, at which Scott Hill, Nick Capretta, Brian de Nobriga and myself attended, and it was agreed by the team to procure the fractional ownership. They felt it was justified.

Q: My question was do you have any documents reflecting this.

A: Not to the best of my knowledge.

Q: And so to come back to my question, sir, was it intended that OTE would be the ultimate owner of these fractional interests or that 265 would be?

A: OTE paid for the assets. 265 was managing the assets.

Q: So who was the ultimate owner?

A: OTE.

Q: So OTE is the ultimate owner of these fractional interests?

A: With a capital interest in the fractional aircraft.

Q: That's always been your view?

A: Always been the -- my view.

Appendix “E”

CITATION: Original Traders Energy Ltd., (Re) 2024 ONSC 325
COURT FILE NO.: CV-23-00693758-00CL
DATE: 20240116

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE: **IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO INC.

BEFORE: KIMMEL J.

COUNSEL: *Martin Henderson*, for the Applicants, Original Traders Energy Ltd. and 2496750 Ontario Inc.

Richard Swan, Raj Sahni and Shaan Tolani, for the Monitor, KPMG

Monique Jilesen, Bonnie Greenaway and Jonathan Chen, for Glenn Page and 2658658 Ontario Inc.

Jessica Orkin and Natai Shelsen, for Mandy Cox

Massimo Starnino, for OTE USA LLC

Edward Park, for The Attorney General of Canada on behalf of His Majesty the King in Right of Canada as represented by the Canada Revenue Agency (the "CRA")

Laura Brazil and Steven Groeneveld, for His Majesty the King in Right of Ontario as Represented by the Ministry of Finance ("Ontario Minister of Finance")

HEARD: December 21, 2023

ENDORSEMENT
(MONITOR'S MOTION FOR MAREVA INJUNCTION)

This Motion

[1] KPMG Inc., in its capacity as the court-appointed monitor (the "Monitor") of the Applicants, Original Traders Energy LP ("OTE"), and OTE Logistics LP (collectively, the "OTE Group"), seeks an interim or interlocutory Mareva Injunction Order against Glenn Page ("Page"), 2658658 Ontario Inc. ("265") and Mandy Cox ("Cox"). These responding parties (sometimes referred to as the "Mareva Respondents") oppose the requested order. The Mareva injunction is sought in the context of a proceeding under *Companies' Creditors Arrangement Act*, RSC 1985, c. C.36. ("CCAA"). The request for a Mareva injunction is supported by the Applicants.

[2] The two most significant creditors of the applicants are the CRA and the Ontario Minister of Finance. These tax authorities have issued significant Notices of Assessment for taxes claimed to be owing, estimated to be in excess of $310 million (about $20,630,068 in 2019, $47,615,974 in 2020, $107,497,231 in 2021, and $134,103,437 in 2022). While they are neither moving nor responding parties on this motion, they are significant economic stakeholders that appeared on this motion with instructions to advise the court that they appreciate the preservation measures that the Monitor is taking.

[3] OTE USA LLC ("OTE USA") is controlled by Page and his brother Brian. Counsel for OTE USA appeared and advised the court of certain steps it is taking in the CCAA proceedings in parallel with the Monitor's efforts, including a motion that has since been scheduled to be heard on March 22, 2024 by which OTE USA will seek leave to present a proposed Plan of Arrangement to the other stakeholders of the applicants.

[4] The Monitor presented this motion as a logical extension of an earlier Mareva order that was granted by Osborne J. on March 21, 2023 at the request of the applicants (supported by the Monitor at that time), based on a finding of a strong *prima facie* case that the respondents had misappropriated funds from the OTE Group to purchase a yacht and fraudulently prepared and executed documents to do so (the "Yacht Mareva Order"). This order restrained Page, his spouse Cox, and their jointly owned and/or controlled company 265, and those acting on their behalf or in conjunction with them, from directly or indirectly selling, transferring, encumbering or dealing with a 70 foot yacht bearing the name "Cuz We Can" or "Home South" (the "Yacht").

[5] The broader Mareva Injunction Order now requested is based on:

a. further confirmation of concerns previously identified by the Monitor about the alleged fraudulent activities of the Mareva Respondents and their dealings with the assets of the applicants (such as payments made for personal expenditures claimed to have been Page's share of equity distributions, which were made without formal approvals and were accounted for as expenses at times when OTE may have had significant outstanding tax remittances, and the falsification of accounting and financial records);

b. more recently discovered concerns, such as: (i) transfers of the Yacht to two different offshore companies owned by Page five months prior to the Yacht Mareva Order that were not disclosed by them at the time of that order; and (ii) admissions regarding the ownership of the fractional interests in AirSprint jets, originally claimed to be owned by 265 and now acknowledged to belong to the OTE Group);

c. recent dealings with their own assets, such as the sale of their primary residence in Ontario (the "Ontario Home") coupled with their acknowledged ties to St. Lucia, where they have a residence, businesses and bank accounts; and

d. the Monitor's further expanded obligations and powers that were granted pursuant to a consent order of the court made on October 12, 2023 (the "October 2023 Order").

[6] The broader Mareva Injunction Order is primarily objected to by both of the Mareva Respondents because they say that the Monitor's delay and alleged lack of any new evidence since the Yacht Mareva Order was granted should lead the court to conclude that there is not any real risk of dissipation or removal of assets, particularly in light of their willingness to allow more than $13 million in estimated or known net sale proceeds of: their home (the "House Sale Proceeds"), the yacht (the "Yacht Sale Proceeds") and certain fractional interests in private jets ("AirSprint Proceeds") to be frozen pending further court order (the "Frozen Assets"). Without a finding of such risk, the granting of a further Mareva Injunction Order is not warranted. Cox has raised some other grounds for opposing the broader Mareva Injunction Order against her.

[7] Pursuant to a consent order dated July 17, 2023 (the "Frozen Funds Order"): (i) the Yacht remains under the Monitor's control and is undergoing a sales process which is expected to recover up to USD$3.2 million (CAD$4,281,200 when converted as of December 15, 2023); and (ii) Page agreed that USD$5,482,779.85 (and any interest accrued, which totalled CAD$7,331,079.78 when converted as of December 15, 2023) was to be remitted to the Monitor pending judicial determination of entitlement to the AirSprint Proceeds. In the course of this motion, it was acknowledged that AirSprint fractional interests purchased in the name of 265 (using an estimated CAD$9 million transferred from OTE) that 265 had been asserting it owned are, in fact, owned by (and held in trust for) OTE.

[8] The Monitor served this motion on November 8, 2023 after it learned about an impending closing of the Ontario Home of Page and Cox (later confirmed to be scheduled for November 30, 2023). The next day, on November 9, 2023, Page and Cox offered to place proceeds of sale of their Ontario Home into the trust account of Page's counsel. Initially, the Monitor rejected this proposal although it was later agreed to as a term of the first adjournment of this motion. The sum of $1,874,058.28 (representing the net proceeds of the sale on closing) was paid into Page's lawyer's trust account on November 30, 2023 pursuant to the court's November 10, 2023 endorsement.

Summary of Outcome

[9] For the reasons that follow, the requested Mareva Injunction Order is granted against Page and 265. A limited order for delivery of a statement of worldwide assets is granted as against Cox at this time.

Factual and Procedural Background

[10] OTE functions as a wholesale fuel supplier which services mainly First Nations' petroleum stations and First Nation communities across Ontario. OTE has serviced or currently services many gas stations throughout Southern Ontario. OTE LP is in the business of blending and selling gasoline to independent gas stations on First Nation reserves. OTE LP has three blending sites, all located on First Nation reserve lands.

[11] OTE has a partnership structure, in which the Mareva Respondents hold a direct or indirect 33% interest. In particular, 265 (a company in which Page and Cox are the only shareholders) is one of three limited partners of OTE LP. OTE is the general partner of OTE LP. The other two limited partners are Scott and Miles Hill, who are described as status Indians.

[12] 2584861 Ontario Inc. ("CCD") was one of the original partners of OTE. Its principals, Nick Capretta, Brian de Nobriga and Lou Cerutti, were active in the OTE Group's business. They also ran Claybar Contracting Inc., a supplier to the business. CCD's units in OTE LP were reassigned in 2019 but, according to Page, CCD and certain of its principals continued to be involved with OTE.

[13] Page was the one who determined the timing and quantum of distributions to the limited partners. It was also Page's responsibility to ensure OTE met its tax remittance obligations for the Ontario and Federal governments, including those involving taxes payable under the *Gasoline Tax Act*, *Fuel Tax Act*, and *Excise Tax Act*. Page was the President of OTE (the general partner) and the senior executive in charge of operating the business of OTE LP.

[14] In late 2021, OTE LP's financial situation became precarious. The relationship between Miles and Page began to deteriorate. Page left the OTE Group in July 2022. In October 2022, the OTE Group and Miles and Scott Hill initiated an action against Page, 265, Cox and others in which various allegations of unjust enrichment, fraud, breach of fiduciary duty and other causes of action were asserted. By this time, KPMG had been engaged by the OTE Group to provide advisory services.

[15] The applicants sought protection under the CCAA and an initial order was made on January 30, 2023 (the "Initial Order") that was amended and restated on February 9, 2023 (the "ARIO") as a result of the serious financial difficulties the OTE Group was facing by that time.

[16] Shortly afterwards, concerns came to light about the source of funds used to purchase the Yacht and the applicants sought and obtained the Yacht Mareva Order. Following the hearing of a contested motion, Osborne J. made certain findings at that time that are repeated here for ease of reference:

> [3] …I appointed KPMG as Monitor [by the Initial Order], with certain investigatory powers in the circumstances, given that the Applicants were unable to locate all books and records, said to be as a result of alleged misconduct of certain former executives, including Mr. Glenn Page…
>
> …
>
> [16] The Respondents control the Yacht, and the evidence on this motion was to the effect that it was up for sale with multiple Boat Brokers (with active listings at the time of the hearing of the motion).
>
> [17] Moreover, the evidence of the OTE Group is that the Respondents have caused a deregistration of the Yacht from Canada, changed its name and taken other steps all in an attempt to remove the asset from the control or reach of the OTE Group, have forged certain documents to fund the purchase of the Yacht, and are otherwise acting in an attempt to frustrate the efforts of the OTE Group and the Monitor to investigate the use of OTE Group funds, the purchase of the Yacht and the whereabouts of the Yacht.

…

[33] The evidence is to the effect that the Respondents transferred funds or permitted and authorized the transfer of funds from OTE accounts, inappropriately and without the right to do so, and used those funds to purchase the Yacht, in part through the alleged misuse of the signing authority of Page at OTE Logistics. The OTE Group received no benefit or consideration for these fund transfers. It appears the Respondents further fraudulently executed and forged signatures on documents to Essex, the party that provided financing for the Yacht.

[34] The Respondents filed no evidence on this motion, perhaps not surprisingly given that they had received only two days-notice. In submissions, counsel for the Respondents submitted not that the transfers of funds did not occur, but rather that they were not improper, or at least they did not constitute *prima facie* evidence of fraud, since they could be said to be distributions of profits to which the Respondents were entitled.

[35] I cannot accept the submission, however, in the complete absence of any evidence to corroborate the suggestion. The books and records of the OTE Group are incomplete and lacking. There is no evidence before me of resolutions, meeting minutes, correspondence or any documents demonstrating or even suggesting that these transfers were in fact, or were even intended to be, distributions of profit or income. There is also no evidence of any corresponding distributions, at the same time or in the same amount, to the other partners who presumably would have been entitled to the same distribution.

[36] Finally, there is no evidence that the partnership had, at the time of the impugned transfers, sufficient profits to fund such distributions in any event.

[37] Even if the Respondents were entitled to distributions of profit that the relevant time, it does not follow that they are somehow entitled to simply take funds and apply them for their own uses.

[38] In short, I am satisfied that the moving parties have established, with sufficient particulars, a strong *prima facie* case.

…

[45] In my view, and as submitted by the OTE Group, the objective facts support my conclusion that there is a serious risk that the asset will be removed from the jurisdiction (in the sense of the jurisdiction and reach of this Court) and/or will be dissipated.

> [46] The Yacht was, and apparently still is, listed for sale although it has been listed for sale in at least two locations (Palm Beach, Florida and Bimini, Bahamas). It has been delisted from Canadian registries. It has been renamed, and listed on the websites of the Boat Brokers as being for sale in Hollywood, Florida. Its GPS locator, whether intentionally disabled or simply malfunctioning, is not active, with the result that the exact location of the vessel cannot be determined.
>
> [47] I am satisfied there is a risk of dissipation of assets. Different jurisdictions are, on the face of the evidence, involved. Proof of the risk of removal/dissipation may be inferred from the surrounding circumstances of the responding parties' misconduct. (See *Ontario Professional Fire Fighters Association v. Atkinson et al*, 2019 ONSC 3877 at para. 6-8, quoting with approval from Sibley v. Ross, 2011 ONSC 2951 at paras. 63, 64 and *Amphenol Canada Corp. v. Sunadrum*, 2019 ONSC 849).
>
> …
>
> [51] Finally, pursuant to Rule 40.03, I am persuaded that the requirement for an undertaking, although provided by the moving parties here, should be dispensed with in the circumstances. The case put forward by the OTE Group is strong, and the OTE group is insolvent and in ongoing CCAA protection from its creditors. In my view, it is appropriate to dispense with the requirement for an undertaking as to damages where, as here, the case of the moving parties is strong and they are insolvent: *Sabourin & Sun Group of Cos. v. Laiken*, [2006] OJ No. 3847 at para. 16.

The Test for a Mareva Injunction

[17] The test for granting a Mareva injunction in a case of alleged fraud and breach of fiduciary duty is the same on this motion as the test that was applied by Osborne J. when the Yacht Mareva Order was granted, as follows:

> [20] The test for a Mareva injunction is well established. This Court has jurisdiction to grant an interlocutory injunction, including a Mareva injunction, pursuant to section 101 of the *Courts of Justice Act*, where it appears just or convenient to do so. Pursuant to Rule 40.01, an interlocutory injunction or mandatory order under section 101 may be obtained on motion to a judge. The order may include such terms as are just, and may be sought on motion made without notice for a period not exceeding 10 days.
>
> [21] That said, the relief is extraordinary. As numerous courts have observed, the harshness of such relief, usually issued ex parte, is mitigated or justified in part by the requirement that the defendant have

an opportunity to move against the injunction immediately. The relief remains extraordinary even in circumstances such as are present here, where the relief was not sought ex parte, but rather on notice to the Respondents, albeit brief.

[22] The factors to be considered in determining whether to grant Mareva relief include whether the moving party has established the following:

(a) a strong *prima facie* case;

(b) particulars of its claim against the defendant, setting out the grounds of its claim and the amount thereof, and fairly stating the points that could be made against it by the defendant;

(c) some grounds for believing that the defendant has assets in Ontario (although this requirement has been modified by more recent jurisprudence discussed below, such that it is perhaps better expressed as: some grounds for believing that the defendant has assets within the jurisdiction of the Ontario Court);

(d) some grounds for believing that there is a serious risk of defendant's assets being removed from the jurisdiction or dissipated or disposed of before the judgment or award is satisfied;

(e) proof of irreparable harm if the injunctive relief is not granted;

(f) the balance of convenience favours the granting of the relief; and

g) an undertaking as to damages.

(See *Aetna Financial Services Ltd. v Feigelman*, [1985] 1 S.C.R. 2 ("Aetna") at paras. 26, 30; *Chitel v. Rothbart*, 1982 CANLII 1956 (ONCA) at para. 60; and *Lakhani et al v. Gilla Enterprises Inc. et al*, 2019 ONSC 1727 at para. 31).

[23] A strong case that a defendant has committed fraud against the plaintiff can be important evidence in support of the relief sought. The "reluctance" of the common law toward allowing execution before judgment has recognized exceptions, including circumstances where the relief is necessary for the preservation of assets, the very subject matter in dispute, or where to allow the adversarial process to proceed unguided would see their destruction before the resolution of the dispute. (See *Aetna*, at para. 9).

[24] The test as to whether a strong *prima facie* case exists has been expressed by the courts as the question of whether the Plaintiff would succeed "if the court had to decide the matter on the merits on the basis

> of the material before it" (See *Petro-Diamond Inc. v. Verdeo Inc.*, 2014 ONSC 2917 at para. 25).
>
> [25] The following elements are required for the tort of civil fraud: a false representation by the defendant; some level of knowledge of the falsehood of the representation by the defendant (i.e., knowledge or recklessness); the false representation caused the plaintiff to act; and, the plaintiff's actions resulted in a loss: *Bruno Appliance and Furniture, Inc. v Hryniak*, 2014 SCC 8 at paras. 17-21.

[18] The Mareva Respondents are right to emphasize that a Mareva injunction is an extraordinary remedy and should only be imposed in the clearest of cases. See *Shaw Communications Inc. v. Young*, 2021 ONSC 7918, at para. 9. It is available to freeze assets where there is a serious risk of harm through either dissipation or removal of assets to avoid judgment. See *Promo-Ad v. Keller*, 2013 ONSC 1633, at para. 51.

[19] Ultimately, as a Mareva is an equitable and discretionary remedy, the court may refuse to grant an order if it has concerns about the case. See *Allen v. Gerstel*, 2023 ONSC 107, at para. 4.

Analysis

[20] In considering the factors relevant to the determination of whether the broader requested Mareva Injunction Order should be granted, the court has also taken into account the following differences in the circumstances now that did not exist when the Yacht Mareva Order was made:

a. Further explanations have been provided by the Mareva Respondents in respect of the distributions that Page claims the OTE LP Partners were entitled to, said to provide an answer to the earlier findings of a strong *prima facie* case of fraud and breach of fiduciary duty;

b. Many of the concerns that underly the allegations of fraud, breaches of duty, knowing receipt, unjust enrichment etc. were first asserted in October 2022 and repeated in March 2023; the delay in seeking a broader Mareva Injunction Order predicated on these facts in the absence of any new facts is alleged to be indicative of an absence of any legitimate apprehension of immediate risk of dissipation or removal of assets said to be relevant to the existence of irreparable harm;

c. The Mareva Respondents have been ordered, or have agreed, to freeze proceeds from the sale of other assets (the Frozen Assets) said to be valued at approximately $13 million, also said to be relevant to the existence of any irreparable harm; and

d. The Mareva Injunction Order is not limited to a single asset alleged to be owned by the OTE Group (the Yacht), but is sought in respect of all assets of the Mareva Respondents, said to be relevant to the balance of convenience.

Is there a Strong Prima Facie *Case?*

[21] This needs to be analyzed for the Mareva Respondents separately.

The Case Against Page and 265 for Misrepresentation and Fraud

[22] The Monitor has further substantiated through the documents and records it has collected and reviewed to date, as well as through its cross-examinations of both Page and Cox on this motion, many of the concerns raised about the conduct of Page (and 265, the company through which he carried out various activities). These concerns are the subject of the 2022 civil action and were among the concerns cited at the time the Initial Order and Yacht Mareva Order were made. Page's answer to the concerns about amounts seemingly paid from OTE for Page and Cox's personal benefit remains unchanged from the Yacht Mareva Injunction: he says they were all legitimate distributions to him, despite the absence of corporate and accounting records to back this up.

[23] Page has, in the course of his response to this motion, attempted to reconcile and substantiate the seemingly disproportionate distributions that he received from OTE that were previously identified. He relies upon the informal processes (said to be reflected in emails) that he says were adopted in order to explain the lack of supporting corporate or financial records documenting the distributions and is critical of the Monitor for not making inquiries of third parties (for example, Scott and Miles Hill and/or principals of CCD) about the distributions they received and/or signed off on.

[24] The applicants had previously disclosed that each of Scott and Miles Hill and Page had received estimated profits of $3 million from the OTE Group, based on the last available financial statement of OTE for the year ended December 31, 2020, dated June 11, 2021. According to Page and 265, while the available records are incomplete to determine the exact payment to each of Scott, Miles and Page, Page has reconstructed through emails and banking and other records that each of the three of the partners received roughly equal amounts of: approximately $1 million in 2019, $2 million in 2020, $1.5 million in 2021 and $100,000 in 2022. Page also points to a spreadsheet of income collected by CCD said to have been prepared by Nick Capretta, which indicates consistent amounts having been received by the limited partners between 2019 and 2022, with CCD also being noted to have received $3.8 million from OTE LP.

[25] Page acknowledges that he was the one who determined the amounts and timing of the distributions but all partners were aware of the distributions and signed off on them, including some that were paid directly to other parties rather than to the partners themselves. He relies heavily on the alleged equivalency of the distributions to each of the partners and the historic informality of their accounting and approval processes.

[26] However, these practices could not be reconciled with the wire transfers from OTE's accounts between March of 2021 and June of 2022 of over $10 million to AirSprint. These funds were used primarily to purchase fractional aircraft interests held in the name of 265. The Mareva Respondents affirmatively asserted through their counsel starting in the fall of 2022 and continuing into the fall of 2023 that the AirSprint fractional interests were not the property of the OTE Group and fell outside the scope of the Monitor's mandate. They continued to affirmatively reserve 265's purported rights in respect of the AirSprint Proceeds when the Frozen Funds Order was made (freezing the AirSprint Proceeds) in the summer of 2023. By way of example, in an October 20, 2022 letter, former counsel for Page and 265 asserted: "None of the travel credits or entitlements

held by AirSprint on GPMC's[1] account should be returned to or held to be used by OTE LP. They are rightfully the property of GPMC."

[27] The import of these earlier assertions would have meant that Page had received distributions far in excess of the other partners. Even if the other partners knew and signed off on some of this because of the informal way they conducted the business and affairs of the OTE Group, it is unlikely that they would have agreed to Page receiving three times as much as them in distributions. When cross-examined on this motion and confronted with this inconsistency in the amounts of distributions, Page disavowed the previous positions taken by counsel and now says that the AirSprint fractional interests were always being held by 265 for OTE.

[28] The Mareva Respondents concede that the $10 million paid by OTE for the purchase of the fractional airline interests in the name of 265 cannot be justified as legitimate partnership distributions to Page. This change in the position of the Mareva Respondents avoids the otherwise inescapable conclusion that Page received disproportionately higher distributions than to the other partners. While this may be a convenient way of rationalizing what happened, it is difficult to accept that these funds were not initially misappropriated by Page, having regard to the aggressive positions that the Mareva Respondents were taking in respect of the AirSprint fractional interests earlier that are now said to have been based on positions taken by their lawyers without their instructions or knowledge.

[29] The shift in positions is facilitated by the lack of any proper corporate books of accounts and records to substantiate either version of events. Page, by his own admission, was the one responsible for creating and keeping these records. The informality of the corporate record keeping and accounting has also been used to try to rationalize significant payments from OTE to pay for personal expenses of the Mareva Respondents (said to be on account of distributions) even though they were at the time improperly accounted for as corporate expenses. There are email records of instructions provided by Page to accounting personnel to record profit distributions as corporate expenses. It appears that, for reasons not explained, at least some of the distributions to the partners were intentionally mischaracterized in the OTE financial records.

[30] For example, in various emails sent by Page in 2019, he instructed that cheques be made payable to various contractors working on their Ontario Residence and be characterized as "Blending Repairs & Maintenance", "Consulting Blending" and "Consulting" and provided similar instructions for how to account for distributions to the Hills and CCD as well (for example, as "professional fees", "maintenance" or "consulting"). There is evidence of this practice continuing in later years and Page admitted on cross-examination that the payments to contractors working on their Ontario Residence that he says were his share of distributions continued to be characterized as company expenses on the OTE Group's financial statements (the example provided being for the financial year ended December 31, 2020).

[31] While this mischaracterization of distributions as expenses appears to have been done in respect of distributions made to the other partners as well, these misleading accounting practices

[1] GPMC is how the parties sometimes refer to 265, using the initials of Page and Cox.

are particularly troubling when considered in the context of other misleading financial information that Page provided to the OTE Group's bank.

[32] When questioned on May 5, 2022 by RBC's wire investigations group about a payment from the OTE Group's corporate bank account to RJB Hotel supplies in St. Lucia, Page responded: "Yes it is correct and it is for a facility we are building." Page admits that this was a payment for new appliances for the house he and Cox own in St. Lucia. When cross-examined he stated that the "facility" they were building was a reference to the house that was already built and that they were renovating for their personal use. To suggest that appliances for a personal residence are legitimate and approved corporate expenses associated with a facility being built by the entity whose bank account was being questioned is blatantly misleading.

[33] Furthermore, it is beyond doubt that the OTE financial statements for the year ended December 31, 2021 are a complete fabrication. Page has now admitted (during his cross-examination on this motion) that the 2021 year-end financial statements that were provided by him to the OTE Group's bank were entirely falsified — that is, made up and placed on the accounting firm's letterhead without its knowledge or approval or involvement. Page claims that this was done without his knowledge by an unnamed accounting clerk. Page acknowledges that he was the one responsible for the financial books, records and accounting for the OTE Group and offers no possible reason for why an accounting clerk would falsify financial statements for the company. It is entirely implausible that Page was not involved in, or at least aware of, this fraud.

[34] This case is not solely about fraud on OTE's limited partners (those who Page says received proportionate distributions and condoned the informal and irregular accounting practices). The accounting fraud and irregularities, for which there is a very strong *prima facie* case, go beyond the equity stakeholders and must be viewed in its full context as a fraud on OTE creditors and other stakeholders.

[35] The Monitor further argues that, given the state of the accounting records, and Page's own admission that he did not do any type of solvency analysis prior to deciding to make the distributions, there was no basis upon which Page could have determined his (or the other partners') entitlement to any profit distributions from OTE in financial years 2021 or 2022. Nevertheless, Page caused millions of dollars to be distributed to himself (or his companies) and the other partners from OTE over that period. He did this while he was (admittedly) intentionally withholding tax remittances. For example, Page stated the following in a March 23, 2022 email:

> CRA are still holding back payments .... However I am holding back equivalent Carbon Tax and Fed Excise Tax funds to force the departments to pressure each other.
>
> …
>
> I have the Ministry of Finance (Ontario) also pushing on the IRS as we owe them approximately $9 million Cdn but they understand the dilemma.

The OTE Group is now facing claims from the tax authorities of in excess of $300 million.

[36] The Monitor's sixth report filed in support of this motion contained some evidence involving historic records it received, reviewed and interpreted that the Monitor considers to be confirmatory of concerns previously identified. That report supplements the evidence that was before the court at the time of the Yacht Mareva Order, when the court found a strong *prima facie* case to have been demonstrated by the Monitor in respect of many of the same impugned transactions as are relied upon for this motion.

[37] Page's explanations about the impugned transactions identified by the Monitor are unsatisfactory (examples of which have shown them to be sometimes inconsistent with the records or other testimony and sometimes implausible) and his shifting positions reinforce the records relied upon by the Monitor as evidence of financial fraud and irregularities. Much of the evidence of the strong *prima facie* case of fraud and breach of fiduciary duty against Page (and 265, the corporate vehicle through which various fraudulent transactions were implemented) comes from Page himself: his actions, his emails and his sometimes shifting, sometimes conflicting and sometimes implausible explanations when confronted with them on cross-examination. Where there is strong evidence of fraud from a paper trail, as there is in this case, the Monitor is not obligated (as the Mareva Respondents appear to suggest) to conduct extensive witness interviews, including of the persons implicated in the fraud, before bringing a motion for a Mareva injunction.

[38] I am satisfied that the onus for establishing a strong *prima facie* case in respect of the claims for misrepresentation, fraud, breach of fiduciary duty and unjust enrichment against Page (and 265, where implicated as the beneficiary) has been met, in that the Monitor has satisfied me that it is "almost certain to win" on these claims based on the evidence presented, even though the full extent of the damages is not yet known. See *10390160 Canada Ltd. v. Casey*, 2022 ONSC 628, at para. 3; see also *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, [2018] 1 S.C.R. 196, at para. 17. See also *Petro-Diamond Inc. v. Verdeo Inc.*, 2014 ONSC 2917, 13 C.B.R. (6th) 211, at para. 25).

[39] Page argues, in the alternative, that the identified impugned transactions (said to have been legitimate distributions, but even if that is not established) only add up to a total of approximately $16,500,000:

a. AirSprint: $9,032,298;

b. Direct Cheques and Bank Wires: $1,281,426;

c. Pride Marine: $4,227,335 ($1.3 million of which the Mareva Respondents say was transferred into the OTE bank account by a financing company, Essex Financial, and never belonged to OTE, but has since been repaid by a company related to Page), so the amount in question for the Yacht may actually be approximately $2.9 million;

d. Alleged Personal Expenses: $1,963,002; and

e. Receiver General/CRA: $79,000.

Thus, Page and 265 suggest that, even if there is a strong *prima facie* case of misrepresentation, fraud, breach of fiduciary duty and/or unjust enrichment in respect of them, the Mareva Injunction

Order should not cover all of their assets, but should only cover (or should be capped at) assets representing the value of the impugned transactions.

[40] Their position is that it is unfair to tie up all of their assets when the value of those assets is well beyond the values of the known claims against Page and 265. See *Massa v. Sualim*, 2013 ONSC 7926, at para. 23. There are a few problems with this. First, the total value of their assets is not known as they have not produced a statement of their worldwide assets.

[41] Second, the estimated value of the known claims does not account for the Notices of Assessment. CRA's notice of assessment was for taxes as at September 30, 2023 of $170 million and the Ontario Minister of Finance's notice of assessment was for unremitted fuel and gas taxes of $127 million. Page faces personal liability for some of these tax claims as an officer and director (and the directing mind) of OTE during most of the periods in which the taxes are claimed. If Page breached his fiduciary or other duties to the OTE Group in respect of tax remittances, any amounts for which he is found liable directly to the tax authorities, or to the OTE Group for the value of distributions he improperly received or authorized, would reduce OTE liability to the tax authorities.

[42] In response to this, Page argues that these are as of yet unproven unsecured claims against OTE and they remain under review and are not sufficient to form the basis for finding a strong *prima facie* case against Page personally. While these tax claims may still be unproven, Page admitted under cross examination that it was his responsibility to collect and remit any taxes owing. He also admitted that he did no solvency or tax analysis when he informally announced and implemented distributions to the partners, which further calls into question the legitimacy of all distributions, including even those that he claims were legitimately made pursuant to an informal and oral “approval” process among the three partners in the 2019 to 2022 timeframe.

[43] The failure to undertake a solvency analysis is a breach of the Ontario *Limited Partnerships Act*, R.S.O. 1990, c. L.16, which provides at section 11(2): No payment of a share of the profits or other compensation by way of income shall be made to a limited partner from the assets of the limited partnership or of a general partner if the payment would reduce the assets of the limited partnership to an amount insufficient to discharge the liabilities of the limited partnership to persons who are not general or limited partners.

[44] The third problem is that Page and 265 are essentially saying that they should only be held accountable for the misconduct associated with the transactions they have so far been confronted with, and that they should be left to do what they please with their remaining assets, at least until the Monitor discovers something else that can then be addressed. This is unacceptable in a situation such as this where there has been a demonstrated pattern of failing to keep proper books, records and accounts, financial mismanagement, disproportionate distributions and changing positions to retroactively reconcile them, after the fact re-characterizations of payments now said to be distributions but originally accounted for as expenses, falsification of financial statements, misleading information provided to the bank and significant tax claims.

[45] Having established a strong *prima facie* case against Page and 265 for fraud and breach of fiduciary duty (and unjust enrichment), it would not be in the interests of justice to limit the Mareva Injunction Order to the already frozen assets associated with the fraudulent transactions that have

been identified thus far. This is discussed again in the section dealing with the balance of convenience, which allows for the possibility of a cap being reintroduced at a later time.

[46] This situation is distinguishable from *Massa* relied upon by the Mareva Respondents. In that case, the court was not prepared to freeze assets beyond those sufficient to satisfy the plaintiff's compensatory damages claimed (and some additional amounts for costs and punitive damages) where there existed only the potential at that time for other future similar compensatory claims being brought in the future by other parties. See *Massa*, at paras. 9, 10 and 20.

[47] The concern in *Massa* was about issuing an "uncapped" Mareva injunction on a theoretical or punitive basis. Here the concern is not theoretical or punitive; the full scope of it and the extent of the damages that may have been caused by the breaches is just not yet known, largely due to Page's own breaches of duties with respect to corporate accounting and tax remittances. The full extent of the benefits that Page and his company 265 have received are known only to them right now because of their failure to maintain proper books, records and accounts and because of their fraudulent and misleading accounting practices and reporting.

[48] At least until the disclosure of worldwide assets and accounting contemplated by the Mareva Injunction Order have been provided, it is not in the interests of justice for there to be a cap that is limited to only what has been uncovered by the applicants and the Monitor to date. The Monitor of the OTE entities that are under CCAA protection has an obligation to preserve the assets of potential sources of recovery and the Mareva Injunction Order is in furtherance of that mandate.

The Case Against Cox for Fraud or Knowing Assistance

[49] This is the Monitor's motion. In support of it, the claims asserted against Cox are for fraud, knowing assistance and knowing receipt. To obtain a Mareva, the Monitor has the burden of establishing a strong *prima facie* case against Ms. Cox on at least one cause of action. See *Shaw Communications*, at para. 10; *Christian-Philip v. Rajalingam*, 2020 ONSC 1925, 58 C.P.C. (8th) 146, at paras. 8–9.

[50] Each of the asserted causes of action against Cox has a required element of knowledge — knowledge that the funds or benefits she received or benefitted from were not legitimate distributions to the partners of the OTE LP. It is in this respect that the elements of the claims against Cox are lacking.

[51] The Monitor must establish that Cox had actual knowledge or was reckless or willfully blind to the wrongful conduct to make out a case for knowing assistance. Mere suspicion is not enough. See *Caja Paraguava de Jubilaciones y Pensiones del Personal de Itaipu Binacional v. Garcia*, 2020 ONCA 412, at paras. 33 and 34, leave to appeal refused 2021 CanLII 13274 (SCC). This is a subjective standard of fault that depends on the stranger's actual state of mind, and cannot be based on "constructive knowledge". See *Garcia* at paras. 37 and 38.

[52] To satisfy the "knowledge" element of the test for knowing receipt, the Monitor must establish either that Cox had actual knowledge or that she had "knowledge of facts which would put a reasonable person on inquiry [and] fail[ed] to inquire as to the possible misapplication of the trust property". See *Garcia*, at para. 57 and *Citadel General Assurance Co. v. Lloyds Bank*

Canada, [1997] 3 S.C.R. 805, at para. 49. To the contrary, Cox's evidence is that she believed that the lifestyle that she shared with Page was entirely consistent with his (and their) income and wealth. Her situation is quite different from other cases in which one might reasonably inquire as to "how could a reasonable person think that their minor salary increments and the scanty earnings from [their] side jobs could support the lifestyle they enjoyed?" Constructive knowledge requires some basis for questioning the source of funds. See *Cambrian Excavators Ltd, et al v. Taferner and Taferner*, 2006 MBQB 64, 202 Man. R. (2d) 94, at para. 52 and *Vancouver Coastal Health Authority v. Mascipan*, 2019 BCCA 17, 20 B.C.L.R. (6th) 303, at paras. 30–35, 62–63.

[53] The knowledge requirement for knowing receipt is subject to the same parameters. The cause of action thus "requires an intentional wrongful act on the part of the 'stranger' or accessory to knowingly assist in the fraudulent and dishonest breach of fiduciary duty." See *DBDC Spadina Ltd v. Walton*, 2018 ONCA 60, 56 C.B.R. (6th) 173, at para. 216 (per van Rensburg JA dissenting, whose dissent was adopted in its entirety by the SCC on appeal: *Christine DeJong Medicine Professional Corp. v. DBDC Spadina Ltd.*, 2019 SCC 30, [2019] 2 SCR 530, at para. 1.

[54] It is not sufficient to simply lump Cox in with Page because she was married to him. See *Bank of Montreal v. Garasymovich*, 2023 ONSC 3630, 8 C.B.R. (7th) 136, at para. 33; see also *Royal Bank of Canada v. Korman*, 2010 ONCA 63, 264 O.A.C. 355, at para. 25. The *Rules of Civil Procedure*, RRO 1990, Reg 194, require fraud to be pleaded with particularity: see r. 25.06(8). Nor is it sufficient to implicate her simply because she was a director and minority shareholder of 265, the company that Page controlled and sometimes carried out impugned transactions through, absent some demonstration of independent tortious conduct on her part. *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd*. (1995), 26 O.R. (3d) 481 (C.A.), at p. 491.

[55] There is no evidence that Cox had actual knowledge of the activities that Page was engaged in that form the basis of the claims against him. Cox testified that she was generally aware that Page on occasion directed that his OTE distribution funds be used directly to pay for personal expenses, and believed that this was appropriate and legitimate; she had no involvement in OTE's bookkeeping or financial arrangements in respect of these payments or the distribution payments owed to 265. She was also generally aware that the other partners of OTE (Miles Hill, Scott Hill and CCD) received regular distribution payments. She believed that the lifestyle that she shared with Mr. Page was entirely consistent with his (and their) income and wealth.

[56] Cox argues that her unchallenged and uncontradicted evidence is that she played little to no role in the day-to-day operations or decision-making relating to 265, in which Mr. Page is the President and majority shareholder. She says she had no substantive involvement in and very limited knowledge of the business and financial management of 265, in which she is a director and minority shareholder. She says she signed certain documents and authorized certain wire transfers at the request of Page.

[57] Cox also says she was not involved with OTE's bookkeeping or finances, apart from approving banking transactions when requested. Following her termination from OTE and a transition period, she eventually had very little role in OTE's operations, and had never been involved in its financial management or bookkeeping. The few financial transactions that she did participate in (by approving wire transfers she considered to be consistent with prior distributions to Page and signing documents that Page asked her to sign) are not enough to establish actual

knowledge of any fraud or breach of fiduciary duty by Page, nor is this enough to implicate her directly in any fraud. She says that she did not suspect, and had no reason to suspect.

[58] The Monitor alleges that Page wrongfully directed OTE funds towards his personal expenses, and that Cox benefitted personally from these wrongful expenditures by virtue of her relationship with Page. The Monitor has generally identified the following categories of payments that Cox may have benefitted from personally: (a) $90,000 in "suspicious" transactions directed towards her personally or to her consulting company, Picassofish; (b) payments for the construction of her Ontario Residence and various home renovation-related expenses; (c) a payment to BodyHoliday for a lengthy vacation enjoyed by her and Page and friends and family members; (d) a payment for certain appliances for their St. Lucia home; (e) payments for expenses relating to her wedding in Italy; (f) payments toward the purchase of an RV; and (g) flights taken on the AirSprint airplanes.

[59] The specific transactions that Cox is alleged to have been directly involved in, such as payments to her directly (category (a)), are explained as salary or other compensation for services she was retained to provide to the OTE Group. The payments to Cox and Picassofish, a company under her control, totalling $90,557.74, have been shown, through the OTE Group's own records, to have been made for services rendered by Cox and Picassofish. The cheques issued by OTE LP to Picassofish up to and including April 2020 have no connection to Ms. Cox. The Monitor has not established a strong *prima facie* case that these funds received by Cox were not legitimate payments for services rendered.

[60] With respect to the categories (b) through (f), the evidence proffered by the Monitor indicates that Page arranged for certain personal expenses to be paid using OTE funds. Cox does not deny that she benefitted personally from the goods and services that were purchased with these funds. Page and 265 maintain that the funds used to pay these personal expenses were distribution amounts to which Page was entitled as a partner of OTE LP and/or OTE Logistics, that he directed these distributions to payments for personal expenses, and that all OTE partners were aware of these practices. The Monitor has not established a strong *prima facie* case of that Cox was involved in any of the now challenged practices or decision-making with respect to the distributions that Page and 265 received.

[61] Cox had some peripheral involvement in one of these personal expense transactions, involving the payment to the BodyHoliday Spa. She mistakenly sent a wire transfer of USD $1 million to BodyHoliday in St. Lucia for a deposit for a company retreat for OTE LP, OTE Logistics LP and their related companies which was to take place at the BodyHoliday Spa in St. Lucia in early 2022. The deposit was supposed to be for $100,000. Contemporaneous documentation confirms that until at least mid-December 2021, Mr. Hill, Mr. Capretta and Mr. de Nobriga and their spouses were expected to attend for stays of one or two weeks at BodyHoliday, and rooms had been booked for them.

[62] Cox tried to correct this error when it was identified. BodyHoliday eventually returned $575,408, and kept $424,592, corresponding to the value of the bookings that were at that time held by BodyHoliday in Page's name. There is no evidence that Cox knew that the forfeited deposit towards which the balance of this wire transfer was applied was not a legitimate business expense given that there had been a plan for a company retreat that others were planning to attend before

the pandemic shut things down. There is no evidence that Cox was involved in any of the subsequent bookkeeping or accounting entries regarding her and Page's extended stay at the BodyHoliday Spa in 2020.

[63] The Monitor has also failed to establish a strong *prima facie* case against Cox in respect of the last category, flights taken by Cox on the AirSprint airplanes. It is not contested that she took flights on the AirSprint airplanes, both for business and personal reasons. Cox has explained her understanding, at the time of these flights, regarding the availability of the AirSprint airplanes for use by the OTE partners, and regarding the payments that she understood were being made by 265 or other entities for her use of these planes.

[64] The evidence indicates that Cox also had no involvement in the purchase of the AirSprint interests by 265, was not aware that 265 had purchased the AirSprint interests, and was not involved in any decision-making relating to the purchase of the AirSprint interests or regarding how the purchase would be funded. The required knowledge of misapplication of trust moneys cannot be established in the face of this evidence, which has not been contradicted or contested by the Monitor.

[65] Further, although Cox was shown on paper to have some involvement in the Yacht, she testified that she signed documents that Page asked her to sign believing they were purchasing the Yacht for a separate business to be operated from St. Lucia.

[66] Cox's alternative position is that if a Mareva Order is granted against her, its quantum should be capped at $385,499.95, which is the amount of the harm that can be attributed to her, accepting the Monitor's record against her at its highest.

[67] Insofar as Cox's interests may be tied up with Page's, her counsel advised that she does not object, if the court so orders, to assets she jointly owns with Page (including 265) being subject to any Mareva Injunction Order made against Page and 265. In that regard, she has agreed to allow the House Sale Proceeds to remain frozen, which would cover her share of any benefits she received if it is established that payments from the OTE Group for work done or purchases made in respect of the Ontario Home that Page and 265 seek to characterize as distributions were improper. Similarly, to the extent she has any interest in the Yacht, she has consented to the Yacht Sale Proceeds remaining frozen. She does not claim, and has not indicated to have, any interest in the AirSprint fractional interests, but they are in the name of 265 and she would thus not assert any entitlement or interest in or to the proceeds of the sale of those interests through her interest in 265.

[68] The applicants argued at the hearing of this motion that the claim for unjust enrichment against Cox does not have a knowledge requirement and could be relied upon as a foundation for a broader Mareva Injunction Order to freeze her solely assets as well. This was not one of the causes of action that the Monitor's motion had focused on. Cox raised a concern about the procedural fairness of having to respond to this argument, raised for the first time at the hearing by the applicants, not the Monitor, as a basis for justifying a full-blown freezing order in respect of her assets. See *2038724 Ontario Ltd. v. Quizno's Canada Restaurant Corporation*, 2008 CanLII 5978 (Ont. S.C.), at para. 10: "Due process underlies rule 37.06 of the Rules of Civil Procedure, which directs that a notice of motion shall contain the precise relief sought and the grounds to be

argued, and due process requires that a party be given fair notice of the case he or she must meet and a fair opportunity to answer that case."

[69] This type of irregularity cannot be saved by the Notice of Motion indicating reliance upon "such further and other grounds". See *Foster Wheeler Canada Ltd. v. MBB Power Services Inc.*, 2007 CanLII 8017 (Ont. S.C.), at paras. 4–6.

[70] On a Mareva injunction motion a party should be on notice in advance of all causes of action that are relied upon to support the strong *prima facie* case requirement. There may be a claim for unjust enrichment asserted against Cox, but it is not a justification at this time to freeze all of her assets.

[71] The net proceeds of sale from the Ontario Home of $1,874,058.28 are currently being held in trust by Page and 265's counsel. Cox's share of the matrimonial home proceeds (one half interest) amounts to $937,029.14, which is more than the value of the impugned transactions that Cox is even alleged to have been involved in. She is prepared to allow these funds to remain in trust. The existing freezing orders, and her consent to their continuation in respect of jointly held assets, are sufficient at this time to address the current concerns that the Monitor has raised, as against Cox.

[72] The Monitor can come back to court if something is discovered that would warrant a Mareva injunction against Cox. In the meantime, however, the court is concerned that there be transparency and disclosure about all assets that might ultimately be shown to have benefitted from improper distributions from the OTE Group, given the historic pattern that has been demonstrated, in which, even if unknowingly, Cox has benefitted from and been unjustly enriched by distributions controlled by Page. Further, insofar as assets jointly owned by Page and Cox will be covered by the Mareva Injunction Order against Page, those jointly owned assets need to be identified.

[73] Cox is therefore ordered to deliver a statement of her worldwide assets and she remains obligated to co-operate with the Monitor if it seeks information or documents from her. That may include any requested interview by the Monitor.

Are There Grounds for Believing that the Mareva Respondents Have Assets in Ontario?

[74] This ground is not seriously contested. The Mareva Respondents admit to having assets in Ontario, including but not limited to the now frozen net House Sale Proceeds. Given their evidence about their other business interests and ties to Canada, it is reasonable to infer that they have other assets in Ontario.

Are There Grounds for Believing that there is a Serious Risk of Dissipation of Assets or their Removal out of the Reach of the Ontario Court?

[75] The Monitor asks the court to infer from the conduct of the Mareva Respondents that there is a real risk of dissipation of assets. Such an inference may indeed be made when a strong *prima facie* case of fraud is established. See for example, *663309 Ontario Inc. v. Bauman* (2000), 190 D.L.R. (4th) 491 (Ont. S.C.), at para. 41; *Sibley & Associates LP v. Ross*, 2011 ONSC 2951, 106 O.R. (3d) 494, at paras. 63–65.

[76] As was noted by Osborne J. (at para. 47 of the endorsement for the Yacht Mareva Order): "Proof of the risk of removal/dissipation may be inferred from the surrounding circumstances of the responding parties' misconduct. (See *Ontario Professional Fire Fighters Association v. Atkinson et al*, 2019 ONSC 3877 at para. 6-8, quoting with approval from Sibley v. Ross, 2011 ONSC 2951 at paras. 63, 64 and *Amphenol Canada Corp. v. Sunadrum*, 2019 ONSC 849)."

[77] However, the court must carefully take into account the surrounding circumstances to decide whether such an inference is supportable. See *Voysus Connection Experts Inc. v. Shaikk*, 2019 ONSC 6683, 58 C.C.E.L. (4th) 192, at paras. 86–97.

[78] Further, this inference is permissive, not mandatory or inevitable. In *HZC Capital Inc. v. Lee*, 2019 ONSC 4622, despite finding that a strong *prima facie* case of misappropriation of corporate funds had been made out against one of the defendants (para. 66), the court refused to apply the inference, holding that it was not warranted in the circumstances, given the defendants' roots in the jurisdiction, the initiation of legal action by the defendants against the plaintiff, and the plaintiff's delay in bringing the motion for a Mareva injunction (para. 83).

[79] While the circumstances are different now than at the time of the Yacht Mareva Order, when it had been discovered that the Yacht was up for sale, had been deregistered in Canada and was on the move, the strength of the *prima facie* case against Page for fraud, misrepresentation, breach of fiduciary duty and unjust enrichment has increased through the further records and his own evidence. The strong *prima facie* case that has been established against him, combined with the sale of the Ontario Home of Page and Cox and their known ties to St. Lucia, is sufficient for me to infer, as I do, that there is a real risk of Page himself (and 265) dissipating assets or removing them from the reach of this court.

[80] While the inference is permissive, I find that it is warranted here.

[81] The Mareva Respondents ask the court to consider their personal, family and business ties to Ontario as part of the full context, before inferring that there is a risk of removal or dissipation of assets in Ontario, including that:

a. Page states in his affidavit: He is a citizen of Canada and St. Lucia. He is a tax-paying resident of Canada and was in the country when his affidavits were sworn on this motion. He has many familial and financial ties to Ontario and sub-leases a condo. He manages and operates businesses across Ontario, including certain Gen 7 fuel stations.

b. Cox states in her affidavit that she has no plans to leave Ontario. She has significant ties to Canada, including, notably, her two children who continue to reside with her, and her aging mother for whom she provides care. She is only 55 years old, continues to operate businesses in Ontario, and clearly stated that she does not plan to retire any time soon.

[82] Given the unreliability of Page's testimony (based on changes in his testimony and implausible explanations previously noted in this endorsement), his testimony is not sufficient to rebut the presumption that there is a risk that he will relocate himself and/or his or 265's assets to St. Lucia (or elsewhere) and out of the reach of this court.

[83] The Mareva Respondents primarily rely upon the delay in bringing this motion to rebut any inference of a risk of removal or dissipation of assets from Ontario. They maintain that all, or virtually all, of the allegations made on this motion were made: (a) in the OTE Statement of Claim in October 2022 (the "Statement of Claim") which asserts various causes of action including breach of fiduciary duty, theft and misappropriation of funds; (b) in Scott Hill's Affidavit on the Initial CCAA Application in January 2023; and (c) on OTE's motion for a Mareva Injunction in respect of the Yacht in March 2023.

[84] The Mareva Respondents have prepared a timeline dating back to October 2022 identifying the evidence and allegations that KPMG knew about prior to or at the time of its appointment as Monitor. Since its appointment, as Monitor KPMG has had enhanced investigative powers to obtain any supporting evidence it needed. The Monitor had enhanced investigative powers from the outset under the Initial Order that gave it the right to investigate and compel production of information and to examine witnesses under oath, beyond the normal powers that are typically granted under the Commercial List model initial CCAA order.

[85] It is well-established that delay can be fatal to any injunction application if the plaintiff fails to act in a reasonable time, and injunctions should not be awarded to parties who show no sense of urgency. As stated in Robert J. Sharpe, *Injunctions and Specific Performance* (Toronto: Thomson Reuters, 2023) at § 1:28:

> On interlocutory applications, delay has somewhat different implications. The evidentiary factor becomes much more significant. To succeed, the plaintiff must show a substantial risk of irreparable harm in the period leading up to trial. The very fact of delay by the plaintiff, quite apart from any question of prejudice to the defendant, may often serve as evidence that the risk is not significant enough to warrant interlocutory relief.
>
> See also: *Lee v. Chang*, 2018 ONSC 2091, at para. 3 (Div Ct.); *Erie Manufacturing Co. (Canada) v. Rogers*, 1981 CarswellOnt 417 (Ont. H.C.), at paras. 2-4; *Hollinger Inc. et al. v. Radler et al*., 2006 BCSC 1712, at para. 26, aff'd 2006 BCCA 539, at para. 31; *Union Bank of Switzerland v. Batky*, 1998 CanLII 14887, at paras. 33, 76 (Div Ct.); *Chiu v. Jao*, 1998 CanLII 6693, at paras., 15-16 (BCSC).

[86] In *Hollinger*, the court concluded that an eleven-month delay in bringing the motion for a Mareva order was evidence from which an inference could be drawn that the risk of dissipation of assets was not immediate or significant enough to warrant relief. In *Lee*, a delay of six weeks (pending a motion for leave to appeal) was enough for the court to conclude (at paras. 1 and 3) that "[i]f harm was urgently feared, it would have happened by now [...] There is nothing an injunction can do to help the plaintiffs today."

[87] The Mareva Respondents contend that the fact that no motion was brought long ago and that Page has been an active participant in these proceedings, including having recently agreed to the orders freezing a total of approximately $13 million in sale proceeds, demonstrates that there is no risk of dissipation.

[88] Each case will depend on its own circumstances in terms of when there has been enough delay to cause the court to infer that there is no urgency to a Mareva injunction request. In this case, the process has been iterative. KPMG's role has evolved, as has its authority and powers. It was only at the time of the October 2023 Order that the Monitor obtained "super-monitor" powers and was mandated to "preserve and protect" the property of the OTE Group. It brought this motion on November 8, 2023.

[89] It is not clear to me that the Monitor (as opposed to the applicants) even had the authority or power to bring a motion for a Mareva injunction prior to the October 2023 Order. The Yacht Mareva Order was made on a motion by the applicants after the Monitor had been appointed. But even if the Monitor could have done so, the trigger for this motion was the discovery, shortly after the October 2023 Order, of the sale of the Ontario Home of Page and Cox (one of their residences that was improved through renovations and accoutrements paid for by OTE directly that Page now seeks to justify as his legitimate distributions) and the closing was imminent. The sale of the Ontario Home is not something that the Mareva Respondents disclosed, but rather they say it was "discoverable" through public listing records.

[90] With its enhanced powers, and having learned of the imminent closing of the Ontario Home of Page and Cox, the Monitor considered some of the other (previously known) concerns that had been identified in a different light, such as that Page and Cox:

a. have another home in, and are both citizens of, St. Lucia;

b. have companies and bank accounts in St. Lucia; and

c. have confirmed that they did receive the benefit of the significant payments from OTE previously identified by the Monitor (in the Statement of Claim and the Monitor's sixth report previously filed) as having been for their personal expenses — for their homes, wedding, private jets, pool, stays at resorts — and that these benefits are not denied, but rather should be accounted for as legitimate profit distributions.

[91] In the latter respect, and as discussed earlier in this endorsement, the Monitor's focus has now shifted from establishing that these were payments applied towards personal uses of the Mareva Respondents (now admitted by them, for the most part) to verifying the legitimacy of the distributions in the face of the shifting positions that Page has taken, for example in respect of the ownership of the AirSprint fractional interests, the accounting for distributions and the complete falsification of the 2021 financial statements (originally denied and now blamed on an accounting clerk).

[92] Each time a sale or potential transaction was identified, steps were taken by the Monitor that have led to the pool of approximately $13 million in Frozen Assets (the House Sale Proceeds, Yacht Sale Proceeds and AirSprint Proceeds). However, it is not unreasonable for the Monitor, now in possession of the assets and undertaking of the applicants and now charged expressly with the responsibility of identifying, preserving and protecting those assets for the benefit of all stakeholders under the October 2023 Order, to carry through with this motion even after Page and Cox agreed to freeze their net House Sale Proceeds.

[93] The Monitor has determined that it must be proactive, rather than reactive. That is not an unreasonable determination having regard to the past conduct of Page, in particular. But this is not a case of over a year of "delay" by the Monitor in bringing this motion, but is rather a case of cumulative concerns finally coming to a head. Unlike in the *Hollinger* case relied on by the Mareva Respondents, the requested Mareva Injunction Order in this case is not based only on previously identified misconduct, but on that conduct considered in light of new events and evolving positions.

[94] As detailed earlier in this endorsement, there are still questions about the alleged distributions that Page claims were legitimate and approved, for the benefit of all of the OTE Group partners. Some of the details only came to light through the review of documents and examinations of Page and Cox on this motion. Since, by his own admission, Page was the one who called all of the shots with respect to the distributions, it is not unreasonable for the Monitor to want to have his version of what happened pinned down before asking others who may have been involved, including the other partners and third parties.

[95] Conversely, it is not reasonable to suggest, as the Mareva Respondents do, that the Monitor should fully exhaust its investigative powers before seeking a Mareva Injunction Order, in the face of the identified concerns and the evolving events and explanations so far provided. As discussed earlier in this endorsement, it only came out or was confirmed in the context of the development of the evidentiary record for this motion that:

a. OTE, and not 265, owned the AirSprint fractional interests. This was a complete reversal of earlier positions asserted on behalf of all of the Mareva Respondents (at the time, made to purportedly justify their continued use of the corporate private jets after the Initial CCAA Order was made); and

b. the OTE 2021 year-end financial statements were falsified. While there were concerns about this much earlier, it was only in the face of the confirmation from the accountants that they did not prepare these financial statements (which had been presented on their letterhead) that Page acknowledged that they were falsified and pivoted to try to blame a former employee in the OTE accounting group.

[96] In the circumstances of this case, I do not find that the considered actions of the Monitor in identifying, isolating and challenging known suspicious transactions and eventually determining that a Mareva injunction was necessary when the alarm bells went off that Page and Cox may be imminently relocating to St. Lucia where they have citizenship, a residence, businesses and assets, to reflect undue delay in the pursuit of this Mareva Injunction Order.

[97] It is also a relevant consideration that Page and 265 have led no evidence of prejudice to them caused by the timing of bringing this motion. Such failure to establish prejudice can be fatal to an asserted delay defence on a Mareva motion. See, for example, *Sabourin and Sun Group of Companies v. Laikin*, 2006 CanLII 32915 (Ont. S.C.), at para. 14; *Henenghaixin Corp v. Deng*, 2021 ABQB 168, at para. 83. See also, *United States Securities and Exchange Commission v. Sharp*, 2023 BCSC 425, 528 C.R.R. (2d) 66, where the plaintiff brought a Mareva injunction in British Columbia one year after filing a related complaint in the US. The BC Supreme Court held at para. 95: “[E]ach case must be decided on its own facts and the issue of delay must be considered

in the context of the case as a whole. In the circumstances of this case, given the seriousness of the fraud alleged, I cannot find that the delay undermines the real risk that assets will be depleted such as to impair the ability of the plaintiff to collect on a future judgment in the U.S. Proceeding."

[98] I agree with the Monitor that, in this case, the seriousness of the strong *prima facie* case of fraud and misappropriation against Page and 265 gives rise to a legitimate apprehension of immediate risk of dissipation of assets by them that offsets any delay.

[99] While the same risk may exist for Cox, her circumstances are one-step removed from the alleged fraud and breaches by Page. Since I have not found that there is a strong *prima facie* case against her directly for fraud or breach of fiduciary duty or knowing assistance in the facilitation of Page's misconduct, there is not a strong inference that can be drawn against her. See *1773907 Alberta Ltd. v. Davidson*, 2016 ABQB 2 at paras. 86, 89–91, aff'd 2017 ABCA 267.

[100] Nor can that inference be drawn from Cox's refusal to answer broad questions about her assets while being cross-examined on this motion, as the Monitor suggested it be. That is the relief that this motion seeks, if successful. She should not be penalized for waiting for the court's decision about whether to order that aspect of the relief sought. In any event, the inference of a risk would not have been a ground to grant an injunction against Cox in the absence of proof of a strong *prima facie* case against her.

Will the Applicants Suffer Irreparable Harm if the Mareva Injunction Order is not Granted?

[101] In this case, the alleged irreparable harm is tied to the risk of dissipation or removal of assets in Ontario. In the case of Page and 265, irreparable harm has been established for the reasons outlined in the previous section of this endorsement.

Does the Balance of Convenience Favour Granting of the Mareva Injunction Order?

[102] The court must balance the established risk of dissipation or removal of assets and the corresponding irreparable harm to the Monitor (and other OTE stakeholders) if that risk were to become a reality against the inconvenience to the affected parties in having their assets frozen. As noted earlier in this endorsement, the Mareva Respondents have not led any evidence of prejudice, aside from the speculative concern that the existence of a Mareva Injunction Order against them might cause third parties with whom they deal in their other businesses (such as the Gen 7 Gas Stations, some of whose shares will be frozen by the Mareva Injunction Order if held by Page or 265) to treat them differently because of the stigma of the Mareva Injunction.

[103] Page and 265 have not offered any concrete evidence that the banks or other third parties will change their manner of dealing with Gen 7 Gas Stations — nor is there any evidence of personal guarantees or cross-collateralization or default provisions that might provide a foundation for the theoretical concerns raised. There have already been two freezing orders in this case (the Yacht Mareva Order and the Frozen Funds Order) and no evidence of stigma-related prejudice or inconvenience to the Mareva Respondents arising out of those orders. This theoretical concern is not a reason not to grant a Mareva injunction.

[104] The absence of proof of prejudice to the Mareva Respondents is also discussed earlier in this endorsement, in connection with the alleged delay. On a related point, Page and 265 have not

advanced any justification for the court declining to exercise its discretion to grant the requested Mareva Injunction.

[105] The balance of convenience is what typically drives the standard exception to Mareva injunction orders, that the affected parties be afforded the right to seek access to their frozen assets to cover reasonable living and legal expenses. This exception is provided for in the proposed Mareva Injunction Order in this case.

[106] Another consideration in the balance of convenience is whether there should be a cap on the assets to be frozen. In this case, the Mareva Respondents propose that the cap be limited to the $13 million pool of already Frozen Assets.

[107] The already Frozen Assets are said to represent a viable alternative remedy to protect the assets about which concerns have been raised. Page and 265 contend that when the subject asset is already protected that alone is a reason not to grant the Mareva Injunction. See *Access Human Resources v. Earl,* 2018 BCSC 2347, at para. 38. This again is tied to the assumption that the only concerns that can be raised for the court's consideration are the ones that have been admitted to, and that there is no legitimate basis for a concern that there have been other instances of misconduct.

[108] For the reasons previously outlined in this endorsement, I do not consider the proposed cap for the Mareva Injunction Order, limiting it to the Frozen Assets, to be in the interests of justice. In this case, imposing a Mareva cap equal to the frozen assets would not serve the fundamental principle that a Mareva order is meant to protect a moving party's ability to recover the fruits of the judgment it can demonstrate that it might obtain (*Massa*, at paras. 6–10) when court has found that the fraud is likely broader than what the Monitor has thus far been able to untangle and discover from the woefully deficient accounting and other records that were maintained when Page was in control of the business of the OTE Group.

[109] The Monitor raises an important consideration about the inextricable joint ownership of assets and bank accounts that Cox has with Page, requiring that any freezing order must cover their joint assets. As outlined previously in this endorsement, Cox has agreed to allow her share to remain frozen of any jointly owned assets or assets subject to a joint interest that she may assert if a freezing/Mareva injunction order is made against Page and 265 and their assets.

Should the Monitor be Required to Provide an Undertaking as to Damages?

[110] The undertaking as to damages is typically required to mitigate against the potential prejudice to the parties affected by a Mareva injunction, as a part of the balance of convenience. Page and 265 argue that it is patently unfair for there to be no undertaking as to damages from the Monitor.

[111] The situation as it relates to this undertaking as to damages remains essentially the same as existed when Osborne J. determined that one was not required for purposes of the Yacht Mareva Injunction Order.

[112] Osborne J. concluded in his endorsement on the Yacht Mareva Order (at para. 51) that:

> [P]ursuant to rule 40.03, I am persuaded that the requirement for an undertaking, although provided by the moving parties here, should be dispensed with in the circumstances. The case put forward by the OTE group is strong, and the OTE group is insolvent and in ongoing CCAA protection from its creditors. In my view, it is appropriate to dispense with the requirement for an undertaking as to damages where, as here, the case of the moving parties is strong and they are insolvent: *Sabourin & Sun Group of Cos. v. Laiken*, [2006] OJ No. 3847 at para. 16.

[113] More information has come to light, as a result of which, more assets have been frozen, but the situation remains unchanged. If anything, the solvency concerns in respect of the OTE Group have gotten worse. I consider it to be appropriate to dispense with the requirement for an undertaking as to damages from the Monitor in the context of the Mareva Injunction Order that I am granting against Page and 265, in the circumstances of this case.

Final Order and Costs

[114] The requested Mareva Injunction is granted as against the respondents Page and 265. The only order made at this time against the respondent Cox is for her to provide a statement of her worldwide assets, which is required, in part, as a result of the acknowledged benefits that she has enjoyed from the misconduct of Page (whether knowingly or otherwise), the extent of her jointly owned assets with the other Mareva Respondents and the concession made by her that if an order is not made against her but is made against the others, she would agree that assets she jointly owns with the others can remain subject to the Mareva Injunction Order if made. The Monitor and the court require transparency and a full appreciation of the jointly held assets of the Mareva Respondents and what they claim to be their separate assets so that the court's order can be put into effect and can be properly monitored.

[115] All other terms of the proposed draft order submitted by the Monitor are approved, with the necessary modifications.

[116] The parties agreed to exchange cost outlines and submissions by January 5, 2023. That exchange occurred and the parties subsequently confirmed in an email to the court that a costs arrangement satisfactory to the Monitor, Page and Cox has been settled through their respective counsel. Unless further directions are requested, the court does not expect to review or consider the costs outlines that were exchanged and does not expect to receive any further submissions or make any other direction or order as to costs at this time.

[117] The Monitor shall submit a revised form of order to reflect the above first for approval as to form and content by the Mareva Respondents and then for the court's signature. If the parties have difficulty settling the form of order, a case conference before me may be requested through the Commercial List Office.

Kimmel J.

Date: January 16, 2024

Appendix “F”

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To: MAG.CSD.To.SCJCom@ontario.ca
Cc: sgraff@airdberlis.com; mhenderson@airdberlis.com; shans@airdberlis.com; Lau, Duncan; Van Eyk, Paul; Fatima, Tahreem; Lomax, Broderick; swanr@bennettjones.com; sahnir@bennettjones.com; tolanis@bennettjones.com; grayt@bennettjones.com; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; edward.park@justice.gc.ca; Insolvency.Unit@ontario.ca; Ron.Hester@Ontario.ca; Enzo.Sorgente@ontario.ca; Dave.Gerald@ontario.ca; Steven.Groeneveld@ontario.ca; Brent.McPherson@ontario.ca; adam.mortimer@ontario.ca; laura.brazil@ontario.ca; rjaipargas@blg.com; kthomas@kimberlythomas.com; info@elfc.ca; ccaruana@wvllp.ca; Jason.Cowley@volvo.com; aarin.welch@volvo.com; marie.hassen.2@consultant.volvo.com; customerservice@cwbnationalleasing.com; client.service@meridianonecap.ca; jmaclellan@blg.com; jdutrizac@blg.com; dullmann@blaney.com; IFerreira@blaney.com; mjilesen@litigate.com; jchen@litigate.com; bgreenaway@litigate.com; kkinley@litigate.com; jorkin@goldblattpartners.com; nshelsen@goldblattpartners.com; jsmith@gsnh.com; dmacdonald@wnj.com; bwassom@wnj.com; mpendery@honigman.com; rdawson@honigman.com; plevitt@shutts.com; arodz@shutts.com; ashtivelman@shutts.com; RMuscolino@weaversimmons.com; cjunior@grllp.com; bldelorenzi@saultlawyers.com; abeites@edc.ca; apiekarska@edc.ca; rclark2@edc.ca; mhb@blakes.com; kelly.bourassa@blakes.com; brendan.macarthur-stevens@blakes.com; christopher.keliher@blakes.com; sales@alliedmarine.com; Justin.sullivan@alliedmarine.com; andy@hcbyachts.com; info@breweryacht.com; Max.Starnino@paliareroland.com; joseph.berger@paliareroland.com; agatensby@blaney.com; am@amck.law; morgan.crilly@parkland.ca; Kevin.Dias@justice.gc.ca; grayt@bennettjones.com; hvwinssen@tmlegal.ca; jng@tmlegal.ca
Subject: Original Traders Energy; CV-23-00693758-00CL [IWOV-PRiManage.FID390548] [EXTERNAL]
Date: Tuesday, February 27, 2024 1:35:20 PM
Attachments: image001.png

Good afternoon,

Please be advised that the issues giving rise to the motion by OTE USA LLC scheduled for hearing on March 22nd in respect of the above referenced matter have been resolved and, accordingly, OTE USA LLC is withdrawing its motion and will no longer need the court time.


Paliare Roland

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IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO INC.
Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

Eighth Report of the Monitor

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Lawyers for the Monitor

TAB 3

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 27TH
	)	
JUSTICE KIMMEL	)	DAY OF MARCH, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC. (each, an "Applicant" and collectively, the "Applicants")

ORDER
(AirSprint Funds Order)

THIS MOTION, made by KPMG Inc., in its capacity as the monitor (in such capacity, the "**Monitor**") of the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "**OTE Group**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**") for an order, among other things, approving the AirSprint Settlement (as defined below) and determining that the OTE Group is entitled to the AirSprint Funds (as defined below) was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Motion Record of the Monitor, including the Eighth Report of the Monitor dated March 18, 2024 (the "**Eighth Report**"), and on hearing the submissions of counsel for the Monitor and those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the affidavit of service of Thomas Gray, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record of the Monitor is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used within this Order and not expressly defined herein shall have the meanings set forth in the Eighth Report.

APPROVAL OF AIRSPRINT SETTLEMENT AND DETERMINATION OF ENTITLEMENT TO AIRSPRINT FUNDS

3. **THIS COURT ORDERS** that the AirSprint Settlement between AirSprint Inc. ("**AirSprint**") and the OTE Group, as detailed in the Eighth Report, is hereby approved.

4. **THIS COURT ORDERS** that AirSprint is authorized and directed to forthwith remit US$535,000.00 (the "**Remaining AirSprint Funds**") to the Monitor.

5. **THIS COURT ORDERS** that upon the Monitor's receipt of the Remaining AirSprint Funds, AirSprint shall be released from all liability to the OTE Group, the Monitor, or to Glenn Page ("**Page**"), Mandy Cox ("**Cox**"), 2658658 Ontario Inc. ("**265**"), and 1000267493 Ontario Inc. (together with Page, Cox, and 265, the "**Other Parties**"), or any entities related to or controlled by the Other Parties, in connection with any fractional jet interests purchased prior to these CCAA Proceedings, save and except for any liability stemming from gross negligence or wilful misconduct.

6. **THIS COURT ORDERS AND DECLARES** that the US$5,482,779.85 remitted by AirSprint to the Monitor pursuant to this Court's Order dated July 17, 2023, and all interest accrued thereon, and the Remaining AirSprint Funds (together, the "**AirSprint Funds**") is the property of the OTE Group.

7. **THIS COURT ORDERS** that the Other Parties and any other entity related to or controlled by the Other Parties, shall have no further claim of any kind against, or entitlement of any kind to, the AirSprint Funds.

8. **THIS COURT ORDERS** that nothing in this Order shall prejudice (i) the ability of the Monitor to compel the production of Requested Information (as defined in the Amended and Restated Initial Order) from AirSprint or to continue to request any other information or documents from AirSprint in connection with the Monitor's ongoing duties pursuant to the CCAA, the Amended and Restated Initial Order, or any other Order of this Court; (ii) AirSprint's ongoing obligation to respond to information requests from the Monitor in connection with the Monitor's investigation; or (iii) the Monitor's ability to continue to seek payment on behalf of the OTE Group against any person aside from AirSprint or its directors, officers, employees, or other persons acting on its behalf, for usage of any of the aircraft held on behalf of the OTE Group or to seek any further directions or remedies before this Court in respect thereof.

GENERAL

9. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its respective agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order is effective as of 12:01am EST on the date of this Order without the need for entry or filing.

_____

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

ORDER
(AirSprint Funds Order)

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Lawyers for the Monitor

TAB 4

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 27TH
	)	
JUSTICE KIMMEL	)	DAY OF MARCH, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC. (each, an "Applicant" and collectively, the "Applicants")

ORDER
(Distribution Order)

THIS MOTION, made by KPMG Inc., in its capacity as the monitor (in such capacity, the "**Monitor**") of the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "**OTE Group**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**") for an order, among other things, approving a distribution from the proceeds of the Vehicle Transaction (as defined in the Eighth Report) to certain equipment leasing and financing companies, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Motion Record of the Monitor, including the Eighth Report of the Monitor dated March 18, 2024 (the "**Eighth Report**"), and on hearing the submissions of counsel for the Monitor and those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the affidavit of service of Thomas Gray, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record of the Monitor is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used within this Order and not expressly defined herein shall have the meanings set forth in the Eighth Report.

DISTRIBUTION OF VEHICLE TRANSACTION PROCEEDS

3. **THIS COURT ORDERS** that the Monitor, on behalf of the OTE Group, is hereby authorized, at such time or times as it determines appropriate, to make the Distributions from the proceeds of the Vehicle Transaction to CWB, Essex, Meridian and Volvo, or to affiliates designated by CWB, Essex, Meridian or Volvo (as applicable), as described at paragraphs 31 and 32 of the Eighth Report.

4. **THIS COURT ORDERS** that the Distributions shall be in full and final satisfaction of any and all claims and security of CWB, Essex, Meridian and Volvo against the OTE Group, including any and all claims and security in respect of the Vehicles.

5. **THIS COURT ORDERS** that the Distributions shall be free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by Order in these CCAA proceedings; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system in any province or territory in Canada.

6. **THIS COURT ORDERS** that the Distributions shall not constitute a “distribution” by any director, officer, employee or agent of the OTE Group or the Monitor, including their respective legal counsel, and such persons shall not constitute a “legal representative”,

"representative" or a "responsible representative" of the OTE Group or the Monitor or "other person" for purposes of Section 159, 227.1 and 227(5) of the *Income Tax Act* (Canada), Section 117 of the *Taxation Act*, 2007 (Ontario), Section 270 of the *Excise Tax Act* (Canada), Sections 46 and 86 of the *Employment Insurance Act* (Canada), Section 22 of the *Retail Sales Tax Act* (Ontario), Section 107 of the *Corporations Tax Act* (Ontario), or any federal, provincial, state or territorial tax legislation (collectively, the "**Statutes**"), and such persons, including the Monitor, in causing or assisting the OTE Group to make any Distribution in accordance with this Order is not "distributing", nor shall it be considered to have "distributed", such funds for the purposes of the Statutes, and such persons shall not incur any liability under the Statutes for causing or assisting the OTE Group in making any Distributions in accordance with this Order or failing to withhold amounts, ordered or permitted hereunder, and such persons shall not have any liability for any of the OTE Group's tax liabilities regardless of how or when such liabilities may have arisen, and are hereby forever released, remised and discharged from any claims against such person under or pursuant to the Statutes or otherwise at law arising as a result of the Distributions contemplated in this Order, and any claims of such nature are hereby forever barred.

7. **THIS COURT ORDERS** that the Monitor is hereby authorized, directed and empowered to take any further steps that it deems necessary or desirable to complete the Distributions described in this Order.

8. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings or the termination of these proceedings;

(b) the pendency of any applications for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the "**BIA**"), in respect of the OTE Group or its property, and any bankruptcy or receivership order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of the OTE Group; and

(d) the provision of any federal, provincial or other statute;

any Distributions made pursuant to this Order are final and irreversible and shall be binding upon any trustee in bankruptcy or receiver that may be appointed in respect of the OTE Group or its property, and shall not be void or voidable by creditors of the OTE Group, nor shall any such distributions constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers-at-undervalue or other reviewable transactions under the BIA or any other applicable federal, provincial or other law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the OTE Group or its property.

GENERAL

9. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its respective agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order is effective as of 12:01am EST on the date of this Order without the need for entry or filing.

_____

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

ORDER
(Distribution Order)

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced in Toronto

MOTION RECORD
(Returnable March 27, 2024)

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