

CANADA / JUDGMENT

Ratanshi v. Kalra

2024 BCSC 283

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Supreme Court of British Columbia

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2024 BCSC 283 Ratanshi v. Kalra

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ratanshi v. Kalra,

2024 BCSC 283

Date: 20240215

Docket: S229767

Registry: Vancouver

Between:

Hanif Ratanshi, Hanifs Foods Ltd. and Hanif's International Foods Ltd.

Plaintiffs

And

Harvinder Kalra and Guruji Foods Inc.

Defendants

- and -

Docket: S236812

Registry: Vancouver

Between:

Jagdip Gill and Surinderpal Gill

Plaintiffs

And

Harvinder Kalra, Guruji Foods Inc., Anmol Kalra and 1272772 B.C. Ltd.

Defendants

Before: The Honourable Mr Justice Crerar

Oral Reasons for Judgment

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Place and Dates of Hearing:

Vancouver

January 29 & February 12-13, 15, 2024

Place and Date of Judgment:

Vancouver

February 15, 2024

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I. introduction

- [1] The plaintiffs in two separate but largely identical actions all apply for a limited Mareva freezing order against the defendant, Guruji Foods Inc. ("Guruji"), an Indian foods wholesaler, and its principal, Harvinder Kalra. The individual plaintiff in action number S229767, filed on December 7, 2022, is Hanif Ratanshi. The plaintiffs in action number S236812, filed on October 5, 2023, are Jagdip Gill and Surinderpal Gill. The present parties are in general agreement that they would appropriately be tried together, and the Court has made a provisional order to that effect. As the narrative refers to individuals with the same

last name, I will follow counsel's lead in using their clients' first names., I of course mean no disrespect in doing so.

- [2] The three individual plaintiffs claim that in October 2016 they discussed with Harvinder the creation of an Indian wholesale foods business. They reached an oral shareholder agreement under which Harvinder would be the registered owner of all shares in Guruji, but would hold 15% of the shares in trust for Hanif, and 15% in trust for Surinderpal and Jagdip, combined. According to the plaintiffs, the parties agreed that Harvinder would hold all of the shares in his name, as Hanif was concerned that his personal liabilities could adversely impact Guruji's nascent business. The unequal share division reflected greater contribution by Harvinder to the burgeoning enterprise.
- [3] Although Harvinder states in his first and second affidavits that "I founded Guruji on my own", his account of the initial conception of and discussions around Guruji's founding dovetails significantly with that of the plaintiffs, except for the final outcome:

In 2016, I had indeed discussed a potential partnership with Ratanshi and the Gills. At the time we discussed the need for considerable startup funds in order to establish a proper company. I was going to provide \$1.5 million for 50% of the company, Ratanshi \$750,000 for 25% and the Gills \$750,000 for the final 25%.

- [4] The plaintiffs then advanced loans to the company: \$190,000 from the Gills (January 2017, right at the start of Guruji's operations, as documented by bank drafts and cheques) and \$180,000 from Hanif (in August 2017, as documented by a Central 1 money wire statement). They claim that these were shareholder loans, consistent with their co-ownership of Guruji. The Gills specifically confirm that the funds were used for the initial expenses of the company.[1]
- [5] Again, Harvinder acknowledges that Hanif and the Gills provided these amounts to Guruji, although he makes the somewhat surprising claim that Hanif provided the \$180,000 "unbidden." Harvinder argues that while the plaintiffs provided funds to Guruji, and played significant roles in Guruji operations right from its start, they were not shareholders, but rather had a relationship of debtor and creditor, and employer and employee, with the company. Hanif served as a consultant and the main business manager, while the Gills worked in the Guruji warehouse.
- [6] Hanif left Guruji in May 2021, after Harvinder accused him of a conflict of interest due to Hanif's wife's involvement in another grocery business. The Gills left in September 2022, after Harvinder handed them a letter of termination. In considering this dispute at this early interlocutory stage, I remain receptive to the risk that this may well be a claim brought by disgruntled ex-employees.

- [7] Hanif put the defendants on notice of potential litigation with his counsel's October 24, 2022 demand letter (after making similar demands at a June 10, 2022 meeting). He demanded some \$1.5 million, consisting of, among other things, Hanif's 15% shareholding (\$1.375 million), repayment of the outstanding shareholder loan (\$169,697.87), and repayment of an outstanding consulting invoice for \$7,350.
- [8] Five weeks ago, on January 8, 2024, the plaintiffs learned that between October 2022 and May 2023, the defendants had transferred some \$235,000 out of British Columbia to PAR999 Holdings ("PAR999"), a real estate development company operating in Hinton, Alberta. That company is owned in part by Harvinder's wife, Parvinder Kalra.
- [9] On January 12, 2024, the plaintiffs applied ex parte for a Mareva freezing order. Justice Crossin ordered that the application be reset to January 16, 2024, on short notice to the defendants. In short, the present is a somewhat rare inter partes Mareva freezing application, with all parties represented by counsel, thus mollifying the judicial concerns and hesitations about issuing an intrusive freezing order based on incomplete information provided by only one side.
- [10] On January 16, 2024, the parties appeared before Madam Justice Francis. She adjourned the application on interim terms that prohibited the defendants from transferring funds to Parvinder or three companies in which she has an ownership interest: Guru Learning Institute Ltd., Oscar International College Inc., and PAR999. That interim order was time-limited to the date of this hearing.
- [11] The plaintiffs seek an order largely based on the British Columbia model order for preservation of assets (Practice Direction 47 - Model Orders, August 1, 2015). The order would bar the defendants from transferring any assets out of British Columbia, or disposing of or dealing with their assets, if their combined assets in British Columbia total less than \$2.85 million.
- [12] The defendants argue that it is not just and equitable in the circumstances of the case to issue a freezing order. They cite jurisprudence to the effect that the applicant must establish a strong prima facie case to obtain the draconian order of a freezing injunction. They specifically note that courts are especially stringent where an oral trust agreement is alleged, as here, citing *Shakeri-Saleh v. Estate of Ahmadi-Niri*, 2022 BCSC 700. They note that while Hanif worked at Guruji in 2021, he knew that there were transfers between Guruji and Parvinder's companies, yet waited until this year to seek a freezing order. They argue that the plaintiffs have cherry picked extracts from financial documents to paint Guruji in a precarious financial position, contradicted by its present expansion, future expansion ambitions, and economic good health, which indicate that a judgment will not be rendered nugatory at the end of the day.
- [13] For the reasons that follow, it is just and equitable in all of the circumstances to issue a limited freezing order, albeit with slight changes to the draft order proposed by the plaintiffs.

II. law

- [14] The defendants start with the usual recitation that a Mareva injunction is an extraordinary remedy, described as a "nuclear option" application--the basic premise of a Mareva injunction "is that the defendant is a rogue bent on flouting the process of the court", which justifies "the exceptional and drastic measure of freezing the defendant's assets before trial and before judgment": *Sabourin and Sun Group of Companies v. Laiken*, 2013 ONCA 530 at para. 53, *aff'd Carey v. Laiken*, 2015 SCC 17. They cite *Farmers Edge Inc. v. Precision Weather Solutions Inc.*, 2021 MBQB 58 at para. 28 and *Sabourin and Sun Group of Companies* at para. 53, to emphasise the oppressive nature of the order, and the high burden on the applicants.
- [15] Tellingly, these and several other authorities relied upon by the defendants come from other jurisdictions. The defendants also rely upon certain authorities pre-dating this province's liberal and flexible approach to freezing orders represented by *Silver Standard Resources Inc. v. Joint Stock Co. Geolog* (1998), 59 BCLR (3d) 196 (CA), and subsequent British Columbia Court of Appeal authorities.
- [16] Those authorities confirm that while a freezing order remains an extraordinary remedy, it may be granted where it is just and reasonable to do so in all the circumstances of the case: *Kepis & Pobe Financial Group Inc. v. Timis Corporation*, 2018 BCCA 420 at para. 18. The test is a flexible one that considers the interests of both parties: *ICBC v. Patko*, 2008 BCCA 65 at paras. 17, 24; *Kepis* at para 17.
- [17] The flexible British Columbia approach differs from those in many other jurisdictions, the jurisprudence of which must thus be treated with caution. As noted in *Kepis*:
- [10] In British Columbia, the general approach to applications for Mareva injunctions differs from other jurisdictions. This province has adopted a more "flexible" or "relaxed" approach, as first articulated by Justice Huddart (then of the Supreme Court of British Columbia) in *Mooney v. Orr* (1994), 100 B.C.L.R. (2d) 335 (S.C.) [*Mooney v. Orr* No. 2], from the more rules-based approach of *Aetna*. Under this jurisdiction's approach, once an applicant has established a strong *prima facie* case, the focus of the application shifts to the balance of justice and convenience between the parties. Determination of a Mareva injunction application in this province is governed by *Silver Standard Resources Inc. v. Joint Stock Co. Geolog* (1998), 59 B.C.L.R. (3d) 196 (C.A.) [*Silver Standard*], as clarified in *Tracy v. Instalco Financial Solutions Centres (B.C.) Ltd.*, 2007 BCCA 481 [*Tracy*], and as applied in *ICBC v. Patko*, 2008 BCCA 65.
- .
- [14] Whether applying the two-part or the three-part test for conventional interlocutory injunctions, the overarching consideration in determining whether to grant a Mareva injunction in this province is the balance of justice and convenience between the parties. Since *Aetna*, that element of the test now embraces many additional factors that previously may not have been considered: *Silver Standard* at paras. 19–20. Those factors include the

relative strength of the parties' cases, evidence of irreparable harm or a real risk of dissipation of assets, whether the defendant's assets are inside or outside the jurisdiction, the potential effects on third parties, and factors affecting the public interest. As Newbury J.A. observed in *Silver Standard*:

- [23] It may be that the cautious approach to Mareva injunctions favoured in *Aetna* now requires some refinement almost 15 years later in light of the globalization of business transactions and the speed with which assets may now be moved across borders. As *Mooney v. Orr* indicates, the law is moving incrementally in that direction.
- [18] The *Kepis* Court sets out the framework for the freezing order inquiry:
- [18] In sum, British Columbia has forged a flexible approach to applications for Mareva injunctions from the more stringent rules-based approach in *Aetna*. Under this approach, "[t]he fundamental question in each case is whether the granting of an injunction is just and equitable in all the circumstances of the case": *Mooney v. Orr* No. 2 at para. 43. The legal test requires an applicant to establish: (1) the threshold issue of a strong prima facie or good arguable case; and (2) in balancing the interests of the parties, to consider all the relevant factors, including (i) the existence of exigible assets by the defendant both inside and outside the jurisdiction, and (ii) whether there is evidence of a real risk of disposal or dissipation of those assets that would impede the enforcement of any favourable judgment to the plaintiff.

III. FIRST ENQUIRY: MERITS

A. Law

- [19] As set out above, Mareva orders may be issued upon the applicant demonstrating: (1) evidence of a strong prima facie or good arguable case; and (2) that the balance of convenience favours granting the injunction.
- [20] The difference between a "strong prima facie case" and "good arguable case" is "without practical consequence"--the standard is more than an arguable case, but does not require the case to meet the "bound to succeed" threshold: *Tracy v. Instalogs Financial Solutions Centres (B.C.) Ltd.*, 2007 BCCA 481 at para. 54; *Kareway Homes Ltd. v. 37889 Yukon Inc.*, 2012 YKCA 3 at para. 6; *McKay v Sidhu*, 2024 BCSC 102 at para. 12.
- [21] The defendants have cited *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 at para. 15, a case involving a mandatory injunction to remove identifying information about an underage murder victim, in the context of a Criminal Code publication ban, to suggest that the strong prima facie case standard is one where the burden is on the applicant to show that it is "very likely to succeed at trial". They also cite a recent Ontario case, *Chicago Title Insurance Company v. Nova Diamonds Inc.*, 2023 ONSC 6971, which at para. 30 cites *Canadian Broadcasting Corp.*, without discussion, to the effect that "[t]o demonstrate a strong prima facie case, the moving party must show a strong likelihood on the law and the evidence

presented that, at trial, the moving party will be ultimately successful in proving the allegations set out in the statement of claim."

[22] There is no suggestion in the British Columbia jurisprudence that either case has changed the law of Mareva injunctions in British Columbia. Canadian Broadcasting Corp. itself never referenced Mareva injunctions. It did not comment on the fact that a "good arguable case" is a synonymous standard in that context. It expressly limited its holding to mandatory injunctions that require defendants "to undertake a positive course of action."

[23] Rather, since the seminal case of *Mooney v. Orr* (1994), 100 BCLR (2d) 335 (SC), largely adopted in *Silver Standard* and subsequent British Columbia Court of Appeal jurisprudence, British Columbia courts permit, in appropriate circumstances, a freezing order where the evidence falls short, indeed far short, of a strong likelihood of success at trial. As stated in *Mooney* at para. 25:

Where there is evidence or potential evidence from which facts can be found that give rise to the necessary inferences, it will be difficult to say that there is not a strong prima facie case or a good arguable case, if such evidence is assumed to be credible. In other words, either side "might well win", as Mustill J. expressed the test colloquially in *Ninemia Maritime Corp v. Trave Schiffahrtsgesellschaft mbH* (1983), [1984] 1 All E.R. 398 (C.A.) before going on (at p. 404) to describe the test this way:

In these circumstances, I consider that the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success.

[24] The defendants similarly cite two cases, *Jian Xiang Xu, et al. v. Centre Pacific Management Ltd. et al.*, 2002 BCSC 1039 at para. 21 and *Jeana Ventures Ltd. v. Garrow*, 2021 BCSC 769 at para. 40 to suggest that a strong prima facie case cannot be shown where there is conflicting evidence on the record, as here. But neither case states this as a general principle. Indeed, it would be an incorrect statement of the law, since "[a] Mareva injunction is in essence a discretionary order, based on the particular facts of each case": *First Majestic Silver Corp. v. Davila*, 2014 BCCA 11 at para. 29.

[25] Both *Jian Xiang Xu* and *Jeana* involved serious allegations of fraud, which is not the case here. The Courts' statements were expressly limited to the evidence before them.

[26] The cases do not stand for the broad proposition that the defendants urge on this application. Indeed, *Shakeri-Saleh*, a case relied on significantly by the defendants in the present application, expressly rejected that proposition, with specific reference to *Jeana Ventures*:

- [231] The applicant defendants point to my decision in *Nouhi* where I refused to grant a Mareva injunction in a claim sounding in fraud, in the face of conflicting evidence. The same type of conclusion was reached in *Jeana Ventures*, at para. 72. However, these cases do not stand for the proposition that conflicting evidence forecloses a Mareva injunction in all cases. Again, that would be inconsistent with the descriptor of the test, including the word "arguable".
- [27] Justice Matthews, citing Justice Robert J. Sharpe, *Injunctions and Specific Performance* (Thompson Reuters Proview, 2021), further noted that "it would be unfair to foreclose the plaintiff from obtaining an interlocutory injunction because of the procedural impossibility of assessing conflicting evidence": that is, on affidavits. Accordingly, "[i]n such circumstances, the matter should be decided on the balance of convenience assessment": para. 232. I agree.
- [28] This Court will apply *Kepis*, requiring the plaintiffs to establish "the threshold issue of a strong prima facie or good arguable case" (at para. 18), rather than requiring them at this preliminary stage, with limited discovery, on affidavits, to establish likely victory at trial based on clear and uncontroverted evidence. To proceed otherwise, as urged by the defendants, would result in the denial of most freezing order applications. A freezing application is usually brought pre-discovery, at the start of litigation. The plaintiff will often suffer from a significant knowledge imbalance, occasioned by fraud or breach of trust on the part of the defendant. As, plaintiffs will often possess limited information and proof in support of their freezing application. Further, affidavit evidence is almost always conflicting: defendants usually vociferously dispute the allegations leveled against them.

B. Discussion & decision

- [29] Apart from the legal argument, the defendants argue that the plaintiffs have failed to make out the merits inquiry.
- [30] I am satisfied that under even the more stringent standard, the plaintiffs have satisfied the merits test.
- [31] The plaintiffs have adduced significant direct and circumstantial evidence demonstrating their entitlement to both the return of the outstanding balance of the shareholder loans, and their shareholdings in the company.
- [32] First, Hanif and the two Gills present corroborative narratives respecting the creation of Guruji and the associated shareholder agreement. The evidence of each supports a finding that Harvinder held the plaintiffs' respective 15% shareholdings of Guruji in trust for them.

- [33] As noted in the introduction, Harvinder's evidence confirms most aspects of the plaintiffs' account of the Guruji origin story. He confirms that a potential partnership was discussed, with a 50-25-25 share division, conditional on the provision of start up funds by Harvinder of \$1.5 million and by Hanif and the Gills in an amount of \$750,000 each. He claims that this was never realised, as the plaintiffs failed to provide the stated funds, although all plaintiffs did soon advance funds to the company, albeit in different amounts.
- [34] Second, the plaintiffs played a role more akin to founders than lenders at the birth of Guruji. Right from the outset, they provided significant corporate, operational, and financial contributions integral to the start up of the company.
- [35] The corporate entity now known as Guruji was built on an existing corporate shell, Sabzi Mandi (Newton) Ltd. ("Sabzi Mandi"), incorporated in 2005 and held by Hanif's son, Dr Imran Ratanshi, for Hanif's benefit. In November 2016, weeks after Harvinder and the plaintiffs discussed starting their Indian grocery business together, Imran transferred all shares in Sabzi Mandi to Harvinder. The corporate name was changed to "Guruji Foods Inc." Guruji used Sabzi Mandi's existing \$521,215 in retained losses as tax write-offs in 2017 and 2018. This in turn allowed for significant re-investment of capital in its founding years that contributed to its rapid growth.
- [36] Harvinder accepts that Guruji was built on the Ratanshi corporate entity. He says, however, that Guruji paid \$5,000 in full satisfaction for use of the corporate shell. But the tax advantages, if ultimately proven, would of course far exceed this amount, and provide evidence that Hanif effected the share transfer because of his ownership interest in Guruji.
- [37] Further, the circumstances of the plaintiffs' loans advanced in Guruji's early days are more characteristic of shareholder loans than ordinary loans.
- [38] To come up with the funds for his loan, Hanif had his mother obtain a \$215,000 private mortgage on her condominium, the proceeds of which were then transferred to Hanif. The mortgage was subject to a 10% annual interest rate, compounded monthly, and was guaranteed personally by Hanif and his daughter, Natasha Ratanshi-Stein (the "Gulsun Loan"). It would be odd for Hanif to expose himself and his own family members to this risk and these expenses, for a new start-up company, unless he were a co-owner.
- [39] The Gills obtained their funds for their loan through their savings, and by drawing on their personal lines of credit.
- [40] While Harvinder disputes that the plaintiffs' loans were shareholders loans, internal Guruji documents, dated before the dispute arose, recognized Hanif and the Gills as having extended shareholder loans. For example, a Guruji financial entry dated May 25, 2021 records Hanif as holding a shareholder loan, with an outstanding balance of \$168,197.87.

- [41] Interestingly, the December 9, 2022 general ledger, created after the departure of Hanif, and just two days after the filing of Hanif's notice of civil claim, recharacterised each plaintiff's shareholder loan as an ordinary loan, zeroed out and consolidated under Harvinder's shareholder loans to Guruji.
- [42] Harvinder argues that these changes merely corrected false entries created by Hanif in his business managerial role at Guruji. Given the amounts in question, and the importance of these records, it is a difficult argument for the principal of Guruji to advance.
- [43] Third, similarly, the plaintiffs signed on as guarantors of Guruji's leases, exposing themselves to significant personal liability for no apparent personal benefit. On November 28, 2018 and then January 31, 2019, Hanif indemnified Guruji for the lease of two neighbouring properties on 128th Street in Surrey. Surinderpal, on his and Jagdip's behalf, also agreed to act as indemnifiers on these leases.
- [44] Hanif believes that the plaintiffs remain as indemnifiers for both properties, to considerable exposure. The lease agreement for one of the properties runs until 2029, with an annual rent of \$122,048 plus taxes.
- [45] The plaintiffs state, reasonably, that they would not have provided these indemnities if they were not co-owners of Guruji. A consultant or employee would not expose himself to such liability gratuitously. Such indemnification, to the profound benefit of the defendants, more indicates the act of a shareholder with a stake in the company.
- [46] As with the alleged shareholder loans, Harvinder's explanation for Hanif and the Gills serving as guarantors strains credibility. He claims that the plaintiffs themselves gratuitously offered to serve as guarantors and "at the time my English was quite poor and so I had no idea what this meant." The erudition and fluency of his affidavits sworn only a few years later in this proceeding, coupled with his financial sophistication, undermines this claim.
- [47] Fourth, both Hanif and Harvinder represented to third parties that Hanif was a partner in Guruji. Hanif confirmed that he made such representations to various people between November 2016 and May 2021.
- [48] These representations are confirmed by an independent professional witness: Sameer Sharma, former Associate Vice President of Commercial Banking for CTBC Bank Corp (Canada), who was personally responsible for the bank's relationship with Guruji. He confirms that in his frequent interactions with both Harvinder and Hanif, they both regularly referred to each other as business partners, which he understood to mean that they were both co-founders of Guruji.
- [49] Harvinder, for the most part, does not deny these representations, although he notes that Mr Sharma is Hanif's good friend. He acknowledges that Guruji initially had a business line of credit with CTBC, and switched to the Royal Bank of Canada ("RBC") in July 2022.

- [50] In response to these claimed representations, the defendants provide affidavits from two current Guruji employees (Harjeet Singh, bookkeeper, and Surinder Bains, produce manager) to the effect that Hanif and the Gills never told them that they were owners of Guruji, and that they did not act like owners. I agree that the evidence of these present employees, with a limited perspective while the plaintiffs worked at Guruji, and an interest in keeping their present jobs, is of limited value.
- [51] Finally, there is evidence, supported by contemporaneous documentary evidence, that Harvinder acknowledged the shareholder agreement and the shareholder loan in two meetings attended by multiple persons: a March 1, 2021 meeting with Hanif's daughter, Natasha (with Surinderpal Gill on telephone), and a June 10, 2022 meeting with the plaintiffs, along with Hanif's son, Imran. Before recounting that evidence, I acknowledge that Harvinder disputes certain aspects of the evidence provided by Hanif's children in their affidavits in support of their father.
- [52] In her affidavit, Natasha, a London venture capitalist and businessperson, avers:
16. In light of the apparent tensions between Hanif and Harvinder, I asked Harvinder to meet with me to discuss my concern that all of the shares in Guruji were registered to Harvinder, despite my understanding that Hanif owned 15 percent of the shares of Guruji.
17. Because I remained a guarantor of the Gulsun loan, I wanted to ensure that Hanif's shareholdings in Guruji were secure, and easily controlled by him should he need to liquidate his shares.
- [53] At the March 1, 2021 meeting, Natasha asked Harvinder to sign a one-page document entitled "Guruji Foods Share Agreement". The agreement sets out that the Guruji shares would be registered in accordance with the ownership structure alleged by Hanif and the Gills. It specifically contains a table setting out clearly the 70-15-15 share division between the four men, as alleged by the plaintiffs. Natasha exhibits the document to her affidavit and confirms that it was the document she presented at the March meeting.
- [54] Natasha surreptitiously recorded a portion of the meeting. The defendants do not object to the admission of the recording or its certified transcript, on the basis of *Shalagin v. Mercer Celgar Limited Partnership*, 2023 BCCA 373, or otherwise.
- [55] The certified transcript of the recording consists of a conversation between Natasha and Harvinder, and later a telephone conversation between Natasha, Harvinder, and the plaintiff, Surinderpal Gill. Natasha confirms that Surinderpal Gill is also known as "Lali", by both herself and Harvinder, and that references in the conversations to "Lali" were to Surinder. A contextual reading of the transcript appears to confirm this nickname attribution.

[56] According to both Natasha's recollection and the certified transcript of the recording, Harvinder at the meeting acknowledged Hanif and the Gills' share entitlement, as set out in the document. It also confirms most aspects of the plaintiffs' account of the shareholder loans.

[57] Early in the transcript, Natasha refers to her father, and expresses her concern that "I have no security". Harvinder reassures her:

Don't worry. Still you are money

I have written - - I show Lali I have given written to my lawyer. He is partner with me, 15 percent, 15 percent Lali, and 35 percent my brother-in-law, and 35 me.

[58] Natasha offered to "cut any words" from the document, to which Harvinder stated that: "I don't need to cut anything. This is--nothing is wrong." Harvinder indicated that he would sign the agreement in front of the plaintiffs no later than March 31, 2021:

This is nothing wrong. Only we have to do this in front of everyone. I am coming back within 20 days. Don't worry. He is also coming with me, that--my brother-in-law. Just--you can talk to Lali, what I told him. What he--I--and you talk to my brother-in-law also. So they--he was here when When he call me, then he was with me. Lali was with me. Jagdeep the was also with me. This is a--Lali.

[59] After providing this reassurance, Harvinder himself then calls Surinderpal (i.e., Lali). On speakerphone, with Harvinder listening, Natasha explains to Surinderpal that Harvinder has agreed to sign the document setting out the share division:

I'm with Harvinder uncle right now and I've asked him if he could just sign one paper that says he has 70 percent between him and his brother-in-law. You and Jagdeep uncle have 15 percent. And my dad has 15 percent. Super simple.

[60] Harvinder does not deny Natasha's evidence: indeed, how could he, given the transcript? Instead, he claims that his statements were made to "deflect [Natasha's] demands and did not sign the paper."

[61] Harvinder's counsel argues that the transcript should be regarded with scepticism, as it is incomplete: parts are marked as "indiscernible", and portions are noted to be in Punjabi and left untranslated. However, the audio recording was listed by the plaintiffs in March 2023, with the audio itself provided in April 2023. Harvinder has had more than ample time to translate any Punjabi portions that might cast a different light on the transcript.

[62] Harvinder's counsel also notes that, at the meeting, Natasha refers to the document she seeks to have Harvinder sign as consisting of only "20 words": in contrast to her exhibited document, which consists of some 15 lines. I accept that the reference to "20 words" is not meant to be a specific word count, but rather is a decent approximation of the operative words in the document:

The parties involved with this agreement acknowledge the intention to have shares in GURUJI FOODS INC. registered in a manner satisfied and agreed to on by all parties by 31 March 2021 and in accordance with the above shareholdings.

- [63] Further, Natasha affirms in her affidavit that the attached document is that presented to Harvinder at the meeting. The defendants have made no effort to cross-examine her on her affidavit.
- [64] Harvinder also allegedly acknowledged the share division over a year later, in his June 10, 2022 meeting with the Gills, Hanif, and Hanif's son, Imran, to discuss the value of Hanif's investment in Guruji.
- [65] In an email sent June 9, 2022, the day before the meeting, Hanif confirmed the meeting. The email also sets out, in five detailed pages, his view of the shareholder agreement and history of the company, and sets out a proposal for the valuation of his shares, for discussion at the meeting. Hanif proposed an exit payment for his 15% stake at approximately \$1.6 million. He confirmed that Imran would attend the meeting.
- [66] In his affidavit, Imran asserts that Harvinder, Jagdip, and Surinderpal acknowledged and agreed to the 70-15-15 share ownership. Harvinder did not object to the share ownership structure, but only to the valuation calculation. Imran invited Harvinder to take steps to provide his own valuation, supported by a count or record of Guruji's inventory, backed up by reliable supporting financial documents.
- [67] While Harvinder refers to the June 9, 2022 email as containing a "wild" estimation of value, and refers to Hanif's email as containing "nonsense", he does not deny that the meeting referenced in the email in fact took place on or around the following day.
- [68] Before departing the merits inquiry, I will refer to the key authority relied upon by the defendants on this issue: Shakeri-Saleh, and its cited case of *Heartley v. Nicholson* (1875), LR 19 Eq 233 (Eng Ch) at 242, an 1875 decision of the English Chancery Court requiring clear evidence of an oral trust agreement:
- [285] The parties agree that express trusts can exist where there is no written trust indenture, even where the settlor does not use the word "trust" in its creation, so long as the three certainties of trusts are established: certainty of intention, certainty of subject, and certainty of object: *Engle v. Carswell*, 2014 NWTSC 18 at paras. 30-32; *Xu v. Hu*, 2021 BCCA 2 at paras. 12-18.
- [286] Where there is no trust documentation, the court must look at the surrounding circumstances and the evidence as to what the parties intended. Those surrounding circumstances must be such that there is a clear declaration of trust by acts that "admit of no other interpretation that he himself has ceased to be, and that the other person has become, the beneficial owner": *Heartley v. Nicholson* (1875), L.R. 19 Eq. 233 (Eng. Ch.) at 242, cited in *Xu* at para. 17.

[69] Justice Matthews in Shakeri-Saleh proceeds to find that the circumstantial evidence before her was insufficient to establish an express trust, and thus to continue a Mareva based on such a claim on those grounds:

[287] Ms. Shakeri-Saleh asserts that the contextual circumstances give rise to a strong prima facie case (for knowing assistance) or a substantial question to be tried (for knowing receipt) that there was an express trust. These contextual circumstances are:

- a) the circumstances of their marriage in 1990;
- b) the discussions Majid Ahmadi-Niri and Ms. Shakeri-Saleh had about her adopting the role of a housewife and looking after the children, and that he would take of her and her family;
- c) that after their separation in 2010 she agreed to trust him, despite not having the information she wanted about their finances, and he agreed to take care of her; and
- d) that the real properties they held personally were held in both of their names jointly until he severed the joint tenancies shortly before his death.

[288] While that is some evidence, there are interpretations that can be placed on it other than a declaration by Majid Ahmadi-Niri that he was holding these assets, in whole or in part, in trust for Ms. Shakeri-Saleh as the beneficial owner. There is simply not enough evidence at this time to support a finding that there is a good arguable case or a substantive issue to be tried on the certainty of intention for an express trust.

[emphasis added]

[70] As set out in the Shakeri-Saleh list in para. 287, quoted above, the contextual evidence in that case was, indeed, very tenuous, lacking any direct discussions of the creation of a trust. This is miles from the trebly-corroborated allegation of an express trust in the present case, which is further confirmed and corroborated by the multiple compelling pieces of evidence listed above. Shakeri-Saleh offers no assistance to the defendants.

[71] In any case, the plaintiffs also base their claim in unjust enrichment. I am satisfied that there is a strong prima facie case or, at a minimum, a good arguable case for the claim of unjust enrichment against the defendants, based on the plaintiffs' contributions to Guruji, including the loans, the indemnities, and the transfer of the Sabzi Mandi shares.

[72] The plaintiffs have satisfied the first prong of the freezing order inquiry.

IV. SECOND ENQUIRY: BALANCE OF CONVENIENCE

[73] 567 Hornby Apartments Ltd. v. Le Soleil Hospitality, 2009 BCSC 711 at para. 16 provides a useful non-exhaustive list of considerations in weighing the balance of convenience:

- (a) evidence showing the existence of assets within British Columbia or outside;

- (b) evidence showing a real risk of the disposal or dissipation of assets to render a judgment nugatory;
- (c) evidence of irreparable harm;
- (d) the strength of the plaintiff's case;
- (e) the nature of the transaction giving rise to the action;
- (f) the risks inherent in the transaction;
- (g) the amount of the claim;
- (h) the defendants assets; and
- (i) the history of the defendant's conduct.

[74] Informed by these factors in the overall balancing exercise, three considerations in particular tilt the balance of convenience in favour of granting the relief sought by the plaintiffs:

- (a) the risk of dissipation of assets, based on the defendants' conduct and financial circumstances;
- (b) the risk of irreparable harm to the plaintiffs absent the order; and
- (c) the absence of clear evidence of prejudice to the defendants should the order be granted.

A. Risk of dissipation of assets

[75] On January 8, 2024, counsel for PAR999 provided a document to counsel for the plaintiffs confirming that, between October 12, 2022 and May 5, 2023, Guruji had transferred \$160,000 to PAR999 and that Harvinder had transferred \$75,000 to PAR999, for a total of \$235,000.

[76] Guruji's February 2023 bank statement further shows transfers out of Guruji to PAR999 (February 6) and Oscar International College Inc. (February 21) totalling \$60,000, and a final cash balance of negative \$51,896.

[77] Additional ledger disclosure shows further transfers from Guruji to Parvinder, Guru Learning Institute Inc., and Oscar International College Inc. made in 2023 and 2024, after the notice of civil claim was filed.

[78] Parvinder admits that she is a shareholder in PAR999 and is the sole director and owner of Oscar International College Inc. and Guru Learning Institute Inc., other recipients of transfers from Guruji.

[79] All of the transfers occurred after the June 10, 2022 meeting; all but the first transfer took place after Hanif's counsel put the defendants on notice of the claim, and all but \$75,000 was transferred after the notice of civil claim was filed.

- [80] Harvinder does not deny that transfers have been made to Parvinder and her affiliated companies. Rather, he seeks to explain the transfers as indirect repayments of 2021 loans by Parvinder to the company, which he claims total \$800,000. Harvinder argues that there is nothing untoward in these significant transfers to a non-arms-length person and entities, and that they occurred in the ordinary course of business.
- [81] Of course, it is not unusual in fact scenarios leading to applications for freezing orders, in which freezing orders are granted, for defendants to transfer funds to family members and related companies, in the guise of shareholder distributions, salaries, and loan repayments. The Court of Appeal has accordingly noted that such discretionary transfers are properly treated with scepticism, as occurring *prima facie* outside of the ordinary course of business. As stated in *Kepis*:
- [71] As was noted in *Silver Standard* (at para. 16), payments to third party creditors who are owed monies for services or goods supplied by them in the ordinary course of a defendant's business, which must be paid in order to keep an enterprise operating, are generally excluded from the risk of dissipation assessment. However, distributions to shareholders, which are made at the discretion of the directors of a company, are different in nature, and I would suggest require an evidentiary basis to demonstrate that they are made in the ordinary course of business. While *Newbury J.A.* observed that each of these payments may simply be a different side of the same coin, that determination will necessarily be a question of fact in each case based on the circumstances in which they were made. In my respectful view, it was open to the judge in this case to find the evidentiary record did not support a determination that the distribution to the shareholders of that magnitude, at that time, and in that context when the Minimum Success Fee was being claimed by *Kepis*, was one that was made in the ordinary course of business. This did not amount to a shifting of the burden to *Timis* but was simply a finding, based on the evidence tendered, that the payment to the shareholders was not made in the ordinary course of business.

[emphasis added]

- [82] Such discretionary transfers should be viewed with even greater skepticism, with an enhanced expectation that the respondent will provide compelling evidence of the legitimacy and veracity of the underlying loans, where they are made not to arms-length shareholders but rather to immediate family members and their companies, as here, and as in *Kepis*.
- [83] Not only do the defendants fail to establish an evidentiary basis to establish, as expected in *Kepis*, that these transfers were made in the ordinary course of business. But, the totality of the evidence undermines the legitimacy of these transfers and the claimed underlying loans.
- [84] The large round dollar transferred amounts in themselves raise suspicions.

- [85] Further, the putative loans from Parvinder to Guruji are largely undocumented, generally, let alone by objective contemporaneous documents. Harvinder and Parvinder provide few details of the circumstances of the alleged loans.
- [86] In their first affidavits, both Parvinder and Harvinder attest that Parvinder gave Guruji \$800,000 in three interest-free loans, repayable on demand, to support its operations. In her affidavit, Parvinder claims that she first advanced \$250,000 on August 13, 2021. She then loaned Guruji a further \$250,000 on September 23, 2021. She then loaned Guruji a further \$300,000, a mere five days later, on September 28, 2021. The sequence itself is suspicious.
- [87] The documentary evidence produced by Harvinder and Parvinder in support of the putative loans also does not inspire confidence.
- [88] The August 2021 \$250,000 cheque from Parvinder, from her personal account, to Guruji, is uncleared.
- [89] The September 23 cheque, that both Harvinder and Parvinder attest in their affidavits was written by Parvinder to Guruji from her own account, is in fact signed by Harvinder, and comes not from her personal bank account, but their joint bank account.
- [90] As for the September 28 cheque for \$300,000, Parvinder first states that "I have searched my records but have yet to obtain a photograph of the cheque I used to advance these funds." In his late-breaking February 8 affidavit, Harvinder attaches a Vancity cheque of that date for \$300,000. Again, the cheque is not signed by Parvinder, but by Harvinder. Again, it comes not from a personal Parvinder account, but from their joint account.
- [91] Aside from the single, uncleared August cheque, there is no documentary evidence that supports the existence of a loan from Parvinder herself to Guruji, or the loan arrangement itself: there is no promissory note, no invoice for payment, and no written demand from Parvinder to Guruji for repayment of the loan.
- [92] Further, Guruji's 2021 financial statements record no such loans from Parvinder. Such transactions would have constituted "related party transactions." As such, they would have to be disclosed on the financial statements, in accordance with the accounting standards for private enterprises, under which standards the financial statements were purportedly prepared.
- [93] In Harvinder's second affidavit, made 12 days after his first affidavit, he explains that "many of Parvinder's loans are recorded in Guruji's ledger [sic] as my loans to the company" and "[t]hat is because I consider the loans as being made to me personally, and then I have in turn loaned the funds to Guruji". He acknowledges that, in any event, "Guruji's ledger [sic] entries do not fully capture all of Parvinder's contributions or the payments back to her".

- [94] In short, he admits that Guruji's business records do not support the putative Parvinder loans to Guruji. He also admits that the Guruji business records are incomplete with respect to transfers from Guruji to Parvinder. He also admits what is very clear on the record: Guruji records are incomplete and unreliable, in particular with respect to the state of Guruji's indebtedness to various parties.
- [95] Even on Harvinder's explanation, the general ledgers provided by the defendants in this action do not show any amounts paid to Guruji corresponding with Parvinder's \$800,000 loan, even on those recorded as registered against Harvinder's shareholder loan account, at the relevant time period. Further, there is no evidence on the record, in the general ledgers or otherwise, showing any reduction in Harvinder's shareholder loan account following these transfers to non-arms-length parties.
- [96] Finally, Guruji's recent aged payables statement, as of November 2023, disclosed to the plaintiffs on December 18, 2023, indicates that monies are not owed to Parvinder and her companies, but rather records that the following Parvinder entities owe the following amounts to Guruji:
- (a) Guru Learning Institute Inc.: \$247,500;
 - (b) Oscar International College Inc. - PK: \$20,000;
 - (c) PAR999: \$77,500; and
 - (d) Parvinder Kalra: \$55,298.
- [97] In any event, all of the transfers made by Guruji to Parvinder, Guru Learning Institute Inc., Oscar International College Inc., and PAR999 were, again, made to non-arms-length parties at a time when the defendants were put on notice of the plaintiffs' claims and when Guruji had been servicing a growing line of credit to a secured creditor, RBC.
- [98] The defendants have fallen far short of establishing through compelling evidence, as expected by Kepis, that the transfers to Parvinder and her companies were benign or in the ordinary course of business. In this, I reach a similar conclusion to the Court in *Field v. Poole*, 1994 CanLII 1628 (BCSC). I acknowledge that the defendant in that case advanced little evidence to support its argument that its transfer of mortgage proceeds to a related non-party was the "rightful removal of an asset in ordinary course of business": less evidence than advanced by the present defendants. That said, the Field Court's conclusions parallel those of the present Court. At p. 20, the Field Court granted the Mareva order, rejecting the contention that such a transfer was in the ordinary course of business:

As heretofore stated on the basis of the material before this court, it is far from clear what is the current status of this alleged debt from Trappers to Go-Well Enterprises Ltd. I cannot conclude on the basis of the material before this court that any assignment of the full proceeds of the mortgage or any part thereof would be a legitimate transfer or disposal of Trappers' funds in ordinary course of business.

- [99] As in *Field*, it is "far from clear what is the current status of [the] alleged debt" between Parvinder, Harvinder, and/or Guruji. The affidavits of Harvinder and Parvinder are not supported and indeed are contradicted by Guruji's own financial documents. In the face of this conflict between the inconsistent evidence of interested witnesses, and contemporary records made in the ordinary course of business, "the most reliable evidence as to what transpired will likely be found in contemporaneous documentation": *Wu v. Sun-Gifford, Fine Line Interiors Group Ltd. & Bluerock Developments Ltd.*, 2001 BCSC 191 at para. 29.
- [100] The continued opacity of the defendants' financial circumstances renders the plaintiffs subject to the mercy of the defendants' disclosure: both with regard to the company's assets and the accuracy of its records. The payments made by Guruji to Parvinder and her associated entities should not be seen as to have occurred in the ordinary course of business.
- [101] The defendants argue that when he worked at Guruji in 2021, Hanif knew that there were transfers between Guruji and Parvinder's companies, but took no steps until now to challenge those transfers. But the evidence is not clear about whether and to what extent Hanif knew about transfers of funds outside of the jurisdiction of British Columbia. In any case, it is reasonable for Hanif not to object to non-arms-length transfers while he felt secure that he was a shareholder, and was due to receive repayment of his shareholder loan: that reassurance changes utterly when he is expelled from the company, and his demands rejected, putting his perceived shareholding and shareholder loan at peril.
- [102] Further, I accept that the plaintiffs were not in a position to bring this application until they received word in January 2024 that Harvinder was directing transfers outside of British Columbia and thus more profoundly beyond the reach of execution.
- [103] Kepis rejected a laches argument at para. 76, even where the delay was occasioned solely by the applicant, in contrast to the present application. *Vidcom Communications Ltd. v. Rattan*, 2022 BCSC 1379 at para. 45 similarly rejected a delay argument, albeit in a claim against an actively deceptive fiduciary. I accept the Gill plaintiffs' argument that a laches or a delay argument will generally not succeed where the defendant itself has been deceptive or dilatory in providing documents or information that would ground the basis for a *Mareva* application.
- [104] The defendants also argue that the non-arms-length transfers should not be regarded with suspicion or as evidence of dissipation: had Harvinder wished to dissipate the assets of the company, he would have done so more thoroughly, and not stopped at these transfers. Further, the pace or amounts of the transfers did not quicken after the claim was filed. With respect, this argument is based on a relative privation fallacy: "you should be thankful I did not do worse acts". In any case, it is a rare case that the defendant-respondent to a *Mareva* application fully drains an active corporate entity, which needs some assets to function. Further, Guruji is a closely held family corporation, under the full control of Harvinder. Without restraints as represented by this order, Harvinder could drain the company at the

drop of a hat.

B. Risk of irreparable harm to the plaintiffs

[105] For the reasons set out above, as expanded below, I am satisfied that if an order is not granted, the plaintiffs will face irreparable harm in the sense of a dry judgment through the defendants' dissipation of assets. The dry judgment would not consist of an unfulfilled damages claim, but would represent the loss of, in theory, a 30% ownership interest in an ongoing company. The plaintiffs face further irreparable harm insofar as they are personal indemnifiers to Guruji's leases. If Guruji is drained of assets, Hanif and Surinderpal further risk the loss of their personal assets to Guruji's creditors in the event of any default on the pertinent leases.

[106] I agree that the risk of dissipation is also significantly elevated in circumstances where there are serious questions about:

- a) Guruji's finances, financial strength, financial records, and the ability of Guruji to meet its obligations as they become due;
- b) Harvinder's unchecked and total control over the company's finances; and
- c) the defendants' failure to agree to cease these transfers to non-arms-length third parties.

[107] The risk of dissipation and irreparable harm is also significantly elevated by the contradictions in Harvinder's statements about his own finances. He has disclosed the ownership of two properties (one in Surrey, and one in Hinton, Alberta) owned jointly with his wife, with a modest combined equity of \$594,000. Despite this, he has, through his counsel, asserted that he requires \$27,915 a month for personal spending.

[108] The defendants argue that Guruji is in good economic health, and that the plaintiffs have failed to establish that, Parvinder transfers aside, there is any indication that Guruji will not be able to satisfy a judgment if the plaintiffs establish their claims at trial.

[109] The first answer to this position is, of course, the hundreds of thousands of transfers of funds to non-arms-length parties since the rise of the dispute, as set out above.

[110] Further, those transfers occur while Guruji is, on one hand, putatively expanding its operations, and on the other hand, increasing its debt load. Bank indebtedness grew from \$1.47 million in 2020, to \$1.7 million in 2021, to \$2.7 million in 2022. By October 31, 2023, that amount had increased to \$3.02 million. The statement indicates that Guruji's credit limit is \$3.98 million. The interest rate listed in the statement is 8.2%. The bank debt is secured against all inventory, equipment, and accounts receivable of the company.

[111] Harvinder's first affidavit (sworn less than a month ago, on January 16, 2024) itself raises questions about Guruji's financial stability:

34. Guruji is a young company with a bright future. However, it owns no assets, operates on thin profit margins and carries a lot of debt. Guruji must have access to both its bank accounts and credit facilities as it is a very cash heavy business which purchases inventory upfront and holds inventory for its franchises until it can be so. However, this reality does not amount to fraudulent removal of assets.
35. Food prices vary frequently, and Guruji's margins are thin. The industry is very competitive and Guruji must be able to offer its customers competitive prices and the entire range of products that the customers need, when they need it. If Guruji is unable to do this, and meet its customer's demands, the customers will go to a competitor to fulfill these demands and Guruji will go bankrupt.

[emphasis added]

- [112] Perhaps realising the adverse effects of his first affidavit on the balance of convenience assessment at this hearing, Harvinder's second affidavit is more bullish. He now rejects the suggestion that Guruji is in precarious financial health, stating that it has "strong monthly sales that are more than sufficient to meet all of its liabilities and debt obligations", that "Guruji turns a profit", and that "its increased debt load is not an issue". He cites Guruji's steady increase in sales--from \$4.0 million in 2017 to \$25 million in 2023. He adds that "Guruji has substantial inventory, accounts receivable, and does own equipment". His evidence still does not acknowledge that all of those assets are encumbered by the RBC line of credit.
- [113] Harvinder implausibly purports to clarify his earlier sworn statement that Guruji has no assets: he now states he was only thinking of assets in terms of real property, even though he referred to assets in a general sense, with respect to dissipation, throughout his affidavit.
- [114] A prevalent theme of all of Harvinder's affidavits is his widespread solicitation of loans from friends and family members: "I put everything on the line to start Guruji as a company, including by mortgaging my home and borrowing from friends and relatives." It is likely that many if not most of these loans, as with the putative Parvinder loans, are undocumented, and based on amorphous terms. I do not have confidence, on the defendants' own evidence, that we have a full picture of the debt obligations of either Guruji or Harvinder.
- [115] The documents disclosed by the defendants to date, while incomplete, also raise independent red flags about Guruji's financial health.
- [116] For example, a November 2023 aged payables statement shows significant debts--almost half a million dollars--payable to multiple suppliers, exceeding 60 days, 90 days, and 120 days.
- [117] The defendants now provide letters of good standing from these suppliers to attempt to mollify these concerns. Again, the Court prefers the contemporaneous documents generated in the course of business, over after-the-fact letters created for this litigation,

particularly where such letters are provided by suppliers who, no doubt, wish to continue a long-term economic relationship with Guruji, with a vested interest in Guruji's ability to repay them, rather than other claimants such as these plaintiffs. Those letters are also sparse on details of Guruji's payments of the aged accounts, and its credit and business history with those suppliers.

- [118] The defendants argue that on the books presently, Guruji possesses ample assets to satisfy any judgment. They note the reported inventory value of \$8.45 million, and total net operating assets of \$8.72 million in 2022, and that the RBC line of credit is capped at \$4 million. Accordingly, even if Guruji drew upon its entire line of credit, it would still leave significant sums for execution on its present books.
- [119] Again, this argument is based upon a selective reading of the RBC credit facility. As indicated above, RBC holds a charge over all inventory, equipment, and accounts receivable: not just up to the \$4 million limit. And again, this argument does not address the concerns of the Court and the plaintiffs about the full extent of the debt obligations, documented and undocumented, outside of the RBC credit facility.
- [120] Further, the reported inventory value is undermined by Guruji's historic failure to perform audits or regular checks of its inventory, as well as the concerns about the completeness and accuracy of Guruji's records. The defendants have denied that the inventory value is inflated, although there is no specific denial about the lack of audits or regular checks.
- [121] The defendants point to the most recent financial statements and the most recent Harvinder affidavit. He emphasises that Guruji continues to expand, and is in good financial health.
- [122] Harvinder points to six Day to Day Indian food franchise locations, as a "major expansion of Guruji's business". Although he provides storefront photographs, he provides no details of the corporate or contractual relationship between these franchise holders and Guruji, and their financial benefits or burdens, or financing details. He does not attempt to present these franchise stores as offering any solace to the plaintiffs as security against a dry judgment.
- [123] The second Harvinder affidavit refers to recent Guruji purchases of equipment: a freezer, a packaging machine, and a refrigerated container. But their value totals only around \$100,000 presently, and will presumably decrease over time. And, again, this equipment is encumbered by the RBC priority, and offers little solace to the plaintiffs.
- [124] The defendants' own produced affidavits also indicate that the Guruji expansion may be more aspirational than real, and may be more in the future than the past. The Guruji produce manager, Surinder Bains, for example, refers to Guruji's business having grown significantly over the past few years, and its "planned expansion of Guruji's produce side of the business." Harvinder's affidavits convey similar ambitions. Of course, once again, this is a mixed message. While it is presented in an attempt to present Guruji's robust good health,

such expansion will require greater indebtedness and expose Guruji, and thus the plaintiffs, to financial risk by the time of trial and judgment.

- [125] The risk of dissipation and a dry judgment is further heightened by documentary failures on the part of the defendants, both with respect to their day-to-day financial documents, as well as disclosure in this litigation.
- [126] Financial disclosure has been the subject of repeated document demands by the plaintiffs, dating back to June 22, 2023. These demands, in the form of particularised lists of requested categories of documents, sought expansive and comprehensive documentation that would provide financial transparency for Guruji, including funds going in and out of the company. For the most part, these documents would be appropriately producible as relevant to litigation in which the plaintiffs assert ownership interests, as well as seek evaluation of the company.
- [127] While the defendants have provided several amended lists, it is clear that vast swaths of key documents relevant to this litigation remain unproduced or partially produced. As a critical example, only one RBC statement for the Guruji business account has been produced. Other financial documents have been produced with heavy redaction. A party's failure to produce documents and otherwise comply with court obligations itself infers a risk of dissipation of assets and provides a basis in part for the granting of a freezing order: *Le Soleil Hospitality Inc. v. Louie*, 2009 BCSC 1442 at paras. 9-11.
- [128] This difficulty answers the defendants' overarching argument: that the plaintiffs cherry pick financial evidence, to portray Guruji in a precarious financial situation, such that it will not have assets to satisfy a future judgment. Without complete information, which may not exist given the fluid and informal manner in which Guruji is operated, and loans are documented, received, and repaid, the plaintiffs can only work with what they have received. The plaintiffs only received the 2023 financial records, on which the defendants rely, last month.
- [129] Further, the plaintiffs are perfectly entitled to quote Harvinder's own words from his affidavits back to him. The mixed messages set out in Harvinder's affidavits convey the reality that Guruji is far from an established or stable company. Rosy results this year do not necessarily indicate any long-term stability or ability to satisfy a judgment that realistically will not be obtained at best until next year. Aggressive expansion and ambition can lead to ruin just as much as to prosperity (as it apparently did to Hanif in his past business ventures, leading to the structuring of the shareholder's agreement as he alleges). The contradictory messages in Harvinder's affidavits in themselves fail to reassure the Court of the stability and integrity of his company.

C. Absence of clear evidence of prejudice to the defendants

- [130] The balance of convenience requires the Court to consider the harm inflicted by the freezing order on the defendants if granted.

- [131] I agree that the defendants have not provided convincing evidence that the order as sought would inflict harm, let alone irreparable harm, on the business. Many of the preceding comments about the failure of Guruji to keep and provide accurate records about its financial status also work against Guruji under this consideration.
- [132] The defendants have generally not identified a specific expense or class of expenses that would be captured by the Mareva order in a way that would prejudice the defendants. Rather, they have made general statements about the prejudice that would be inflicted by a Mareva order. Failure to demonstrate specific prejudice can tip the balance of convenience in favour of the order: 567 Hornby Apartments Ltd. at paras. 2, 20.
- [133] Further, the draft order as presented, and as I will issue, contains the standard protections and exemptions. As is usual, it does not prohibit the defendants from dealing with or disposing of any of their assets in the ordinary and proper course of business. As proposed, ordinary and proper business expenses expressly include "payroll, building leases, car leases, bank loan payment and credit card payments in relation to ordinary and proper business expenses", the very expenses the defendants need to maintain operations as per their affidavits.
- [134] The order also does not prohibit Harvinder "from spending reasonable amounts on ordinary living expenses, including mortgage payments, food, utilities, gas and coffee", again the very expenses Harvinder stated he would need.
- [135] The proposed Mareva order does, however, prohibit the impugned transactions discussed in this judgment: extraordinary and abnormal business expenses, such as payments to non-arms-length third parties on the basis of alleged undocumented agreements.
- [136] Further, in contrast to most Mareva orders which rely on financial institutions to freeze the assets in question, the proposed order removes all terms that would seek to bind third parties, namely financial institutions, from releasing funds, thereby deputising them to police the order. In other words, there is no direct risk to the defendants' access to their bank accounts or credit facilities, or indeed to their financial reputation.
- [137] To this end, to reassure the defendants, I will add to the order an express prohibition barring any of the plaintiffs, directly or indirectly, from serving or providing the order on or to any financial institutions with which the defendants do business.
- [138] I am satisfied that the plaintiffs have made a strong case that the balance of convenience, on these and all of the factors, favours the granting of a freezing order.

V. SECURITY

- [139] The plaintiffs in both actions have provided an undertaking for damages in the form under the model order. Surinderpal has also furnished an affidavit that demonstrates that his undertaking is backed up by financial resources.

- [140] The plaintiffs acknowledge that Hanif's undertaking is not accompanied by evidence of his financial resources.
- [141] While the failure to provide clear evidence that the undertaking is supported by real financial resources may be fatal to a Mareva injunction, the Court may address this by requiring a bond to secure the undertaking: *Trucut Logging v. Moyie River Campground*, 2003 BCSC 441 at para. 6. Counsel for Hanif has advised the Court that he has instructions to provide such security for the undertaking, if required. This in itself provides some reassurance of the undertaking.
- [142] In these circumstances, however, the Court agrees that he need not post such security, for two reasons particular to this case. First, as noted, Surinderpal Gill in the parallel action has provided specific evidence of financial resources to back his undertaking, thus supporting the joint freezing order that will be issued. Second, the defendants already hold significant assets of the plaintiffs even on their own telling: the loans (that is, the shareholder loans alleged by the plaintiffs), totalling approximately \$360,000, of which some \$170,000 is due to Hanif.

VI. ORDER

- [143] The Court will grant a modified version of the order set out in tab 47 of the application record, which is in turn based upon the model order of this Court. As is appropriate, the plaintiffs have provided a black-line version showing departures from the Court model order.
- [144] Paragraph 2 bars the defendants from transferring any assets out of British Columbia, or disposing of or dealing with their assets, if their combined assets in British Columbia total less than \$2.85 million. They base this on 30% of their expert valuation of Guruji, running between \$4.32 and \$7.32 million, plus the amounts owed under the claimed shareholder loans, plus interest.
- [145] The defendants cite their own expert valuator's conclusion that the plaintiffs' report overstates Guruji's value. They suggest that the plaintiffs' collective 30% claimed ownership of Guruji would be worth a range of \$1.2 to \$2.2 million, and encourage use of the lower figure. While acknowledging that the defendants' incomplete document disclosure, and the murkiness of underlying Guruji documentation in any case, makes valuation a difficult exercise, I agree that the \$2.85 million freeze amount is excessive. With the further modifications that I will arrive at momentarily, I adjust this number down to \$2 million.
- [146] Paragraph 3(c) permits the defendants to spend up to \$20,000 per month. The model order provides two options: either that format, or otherwise the general phrase permitting "reasonable amounts". The defendants argue that the "reasonable amounts" phrase should be used, as the \$20,000 allowance may not be sufficient as trial approaches. Given the intensity and complexity of this litigation, I will rephrase that matter to "[t]his order does not prohibit .both of the defendants, Kalra and Guruji, from spending up to \$30,000 per

month on legal advice and representation, or such other amounts as may be agreed to by the parties or ordered by the Court." Without providing a formal direction or order, the Court encourages the plaintiffs not to be unreasonable in consenting to amounts above that cap, for months where the litigation is time-intensive, or where key steps such as discoveries take place.

- [147] The plaintiffs have already agreed to change the wording of paragraph 4, to allow the defendants to advise the plaintiffs of the source of the funds used for permitted living, business, or legal expenses with documentation at the end of the month, after the fact, rather than at the beginning of the month, prior to those expenditures. I have inserted the phrase "with full documentation" under paragraph 4 of the order, given the difficulties with the defendants' document disclosure. That documentation will be limited by and subject to, reasonably, solicitor-client privilege: I anticipate significant permissible redactions of the back up documentation provided for the legal expenses.
- [148] Paragraph 8 contains the standard provision that the order will cease to have effect if the defendants pay the frozen claim amount in court or otherwise provide security. In their draft order, the plaintiffs modify the model order to require each defendant to pay the frozen claim amount of \$2.85 million into Court. I agree with the defendants that this is inappropriate double counting. This term will be changed to "this order will cease to have effect against the defendants if the defendants provide security by paying the sum of \$2.6 million into court "
- [149] I have reduced the claimed frozen amount down to \$2 million (and the security noted above to \$2.6 million), as the existing provisional order of Madam Justice Francis, dated January 16, 2024, addresses the primary mischief complained of by the plaintiffs: dissipation of Guruji assets through transfers to Kalra family members and, in particular, to Parvinder and her companies. The Francis J order also prevented sale or encumbrance of the two properties co-owned by Harvinder and Parvinder, with a combined equity of just under \$600,000, which those individuals reassure the Court that they have no need or plans to sell or encumber. Keeping those properties frozen from transfer or encumbrance will allow the Court to reduce the frozen claim amount, and the potential payment into court, as noted above.
- [150] Accordingly, the draft order will continue, as a separate incorporated term, and the existing Francis J order, varied as follows:
2. The Kalra and Guruji Defendants shall not transfer, directly or indirectly, any funds exceeding \$10,000 a month, to any immediate family members, or any entity any of those individuals own or control, including but not limited to of the following:
 - (a) Parvinder Kalra;
 - (b) PAR999 Holdings Inc.;

- (c) Guru Learning Institute Inc.;
 - (d) Oscar International College Inc.
3. The Kalra and Guruji Defendants shall not convey beneficial or legal interest to, or reduce equity in, the real properties with the following civic addresses:
- (a) [address omitted for published judgment] 97A Avenue, Surrey, British Columbia, V3V 2H1; and
 - (b) [address omitted for published judgment] Trestle Place, Hinton, Alberta, T7V 0B8.

[151] In addition to the standard disclosure order, I have earlier in this hearing issued orders requiring the parties to provide prompt and full document production, and to accelerate the process towards trial, on a court-imposed schedule. While those orders are directed towards all parties, they are primarily designed to ensure timely and complete transparency and document production with respect to every aspect of the Guruji business and the personal finances of Harvinder and Parvinder.

[152] The defendants express concerns that the plaintiffs will misuse documents disclosed pursuant to this order, and in the litigation generally, as they claim that Hanif and his wife are potential competitors to Guruji. They thus seek specific orders prohibiting such disclosure. The defendants have not provided the Court with a sufficient evidentiary basis for such limitations, and I decline to grant such specific orders. In any case, the model order undertaking with respect to the affidavit of assets, coupled with the implied undertaking with respect to documents disclosed in the course of litigation, provide adequate safeguards against misuse and abuse of such documents and information in the hands of the plaintiffs. The Court reminds the plaintiffs that the typical remedy for misuse or abuse of documents, in breach of an undertaking to the Court, is a finding of contempt of court, with potential criminal ramifications.

VII. conclusion

[153] As indicated earlier in these proceedings, given the complexity of scheduling three sets of counsel, along with my own judicial schedule, I am not seised of this matter. I expressly confirm that contrary to the convention of bringing applications to set aside or vary injunctions back to the issuing judge (as per *Gulf Islands Navigation Ltd. v. Seafarers' International Union of North America (Canadian District) et al.* (1959), 18 DLR (2d) 625 (BCCA) at 518), counsel may go straight to Chambers. If they wish, they may request that I hear the matter if I am available, which is unlikely.

[154] The Court commends and thanks counsel for their able submissions and assemblage of evidence in this complicated dispute.

"Crerar J"

- [1] These reasons will refer to the plaintiffs' loans as "shareholder loans", as asserted by the plaintiffs, recognizing that the defendants dispute this characterisation, and that the Court may at the end of the day find them to be ordinary loans.
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