

CITATION: McRae Imaging Inc. V. Murthy et al. 2025 ONSC 6547
COURT FILE NO.: CV-25-00755687-0000
DATE: 20251124

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: MCRAE IMAGING INC.

Plaintiff

AND:

NAVIN MURTHY, SAPNA MURTHY, ADA YIU,
2583725 ONTARIO LIMITED, 2583805 ONTARIO LIMITED and
CAPTIVATE VISUAL INC.

Defendant

BEFORE: Koehnen J.

COUNSEL: J. Daniel McConville, Nicole Davidson for the plaintiff

HEARD: In writing

ENDORSEMENT

- [1] This is an ex parte application for a Mareva injunction and a Norwich order with respect to the defendants Navin Murthy, 2583725 Ontario Limited, 2583805 Ontario Limited and Captivate Visual Inc. (the “Primary Defendants”).
- [2] I am satisfied that both orders should issue.
- [3] The plaintiff initially retained the defendant Navin Murthy as a financial consultant. Due to health issues that Robert Murray, the principal of the plaintiff, had encountered, Mr.

Murthy began assuming a greater role within the plaintiff corporation. When Mr. Murray recovered and began reviewing financial matters, he noticed that Mr. Murthy had paid himself expenses of \$358,579.09 between March 2024 and October 2025. The expense forms were approved by Mr. Murthy alone, were not accompanied by receipts or invoices and included a pattern of round numbered transactions. Several of the invoices were repeat invoices from Henderson Partners LLP and Norton McMullen LLP. When the plaintiff made inquiries with those organizations, it was advised that they had no relationship with the plaintiff. When Mr. Murthy was confronted with these issues he initially said he would provide invoices, then prevaricated, then stopped appearing for work and then resigned without ever providing invoices or receipts.

- [4] In addition, Mr. Murthy advised the plaintiff that he had arranged a distributorship arrangement with a Chinese supplier known as Captivate Visual Inc. There is no distributorship agreement between the plaintiff and the alleged Chinese supplier. There are, however, distributorship agreements between Mr. Murthy and a Chinese company called Shenzhen Filmbase and two companies Mr. Murthy controls: Captivate Visual and 2583805 Ontario Limited. Mr. Murthy caused the plaintiff to pay Captivate Visual almost \$445,136.24. Captivate Visual is a Delaware company. The other numbered company against which the plaintiff seeks relief, 2583725 Ontario Limited is the corporation into which the plaintiff was making consulting payments for Mr. Murthy. Given his close association with Mr. Murthy, it would also be appropriate to included within the ambit of relief provided.

[5] The plaintiff's materials include a letter from a lawyer acting for Mr. Murthy. In circumstances where a defendant is already represented by counsel, the typical practice would be for the court to require short notice on the opposing party. I have considered whether that should be done here. I have nevertheless decided to proceed to issue the Mareva injunction and the Norwich order without providing notice. The letter from Mr. Murthy's counsel does not satisfy me that there is a genuine defence to the issues of the alleged fraud. The overall gist of the letter is more that Mr. Murthy was not required to produce invoices or receipts rather than one that explains the merits or legitimacy of the transactions involved. It provides no explanation for the merits of any transactions. Rather, it asserts that Mr. Murray told Mr. Murthy that it was not necessary to provide receipts or invoices. I find that explanation highly implausible. A business would be required to produce receipts and invoices at a minimum for tax purposes.

[6] In those circumstances, it strikes me that the most efficient use of party and judicial resources is for me to issue the injunction as requested but make myself available on a same day basis should the Primary Defendants wish to set aside or vary the injunction. That same day hearing may occur outside of ordinary court hours in order to ensure that Mr. Murthy has immediate access to a judge to vary or set aside the order.

[7] To obtain a Mareva injunction, the applicant must establish:

- a. A strong *prima facie* case of dishonesty or fraud;
- b. The defendants have assets in the jurisdiction;

- c. A real or genuine risk that assets will be dissipated or otherwise be put beyond the reach of the applicant for the purpose of avoiding judgment;
- d. The applicant will suffer irreparable harm if the assets are not frozen; and
- e. The balance of convenience favours the applicant. See Aetna Financial Services Ltd. v Feigelman et al [1985] 1 SCR 2, at para 255 (SCC); and Christian-Philip v Rajalingam, 2020 ONSC 1925, at paras 8-9, 36 (SCJ).

[8] I am satisfied that the Applicant has met this test.

[9] The plaintiff has established a strong *prima facie* case that approximately \$795,000 of its funds have been transferred to Mr. Murthy or for the benefit of Mr. Murthy without benefit to the plaintiff. Mr. Murthy appears to have assets in Ontario in the form of bank accounts and real estate. Courts have long been prepared to infer a risk of dissipation where there is a strong *prima facie* case of fraud: Wallace v Pristine Developments, 2021 ONSC 2794, at para 29; and Sibley & Associates LP v Ross, 2011 ONSC 2951, at para 63. The plaintiff faces a strong risk of irreparable harm if the assets of the Primary Defendants are not frozen. The failure to freeze their assets would allow them to put those monies further beyond the reach of the plaintiff and the court. I am satisfied that the balance of convenience favours the applicant given that the order will only be in effect for a maximum of 10 days and given my availability to give the Primary Defendants a same day hearing before the expiry of 10 days should they wish to have one.

[10] The plaintiff seeks a Norwich order against Royal Bank of Canada where one or more of the Primary Defendants has accounts. In GEA Group AG v. Flex-N-Gate Corporation, 2009 ONCA 619 the Ontario Court of Appeal identified the following factors to consider when determining whether Norwich orders should be granted:

- i. Whether the applicant has provided evidence sufficient to raise a valid, bona fide or reasonable claim;
- ii. Whether the applicant has established a relationship with the third party from whom the information is sought such that it establishes that the third party is somehow involved in the acts complained of;
- iii. Whether the third party is the only practicable source of the information available;
- iv. Whether the third party can be indemnified for costs to which the third party may be exposed because of the disclosure, some authorities refer to the associated expenses of complying with the orders, while others speak of damages; and
- v. Whether the interests of justice favour the obtaining of the disclosure.

[11] I am satisfied that the plaintiff has met this test. The plaintiff has demonstrated a bona fide claim. The plaintiff has established a relationship between the Primary Defendants and RBC. Given the nature of Mr. Murthy's past response, RBC is likely to be the only practicable source of information about the whereabouts of funds transferred from the

plaintiff. The order shall provide that the plaintiff shall indemnify RBC for its reasonable costs in complying with the order. I am satisfied that the interests of justice favour granting the Norwich order. Given that the bank will be compensated for any expenses it reasonably incurs in producing information, there is no real prejudice to it. On the other hand, depriving the applicant of access to that information seriously impedes its ability to recover its funds.

- [12] The plaintiff also seeks a certificate of pending litigation over property municipally known as 1384 Pinery Crescent in Oakville Ontario. Given the nature of the Mareva injunction that I am granting, a certificate of pending litigation does not impose any greater obligation than does the Mareva but provides additional and assurance that the property will not be transferred or encumbered without court approval. As a result I at least provisionally grant leave to register a certificate of pending litigation.
- [13] This matter shall return for a hearing December 4, 2025.

Date: November 24, 2025



Koehnen J.