

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Dexia Credit Local v. Rogan***,
2008 BCSC 1406

Date: 20080912
Docket: S086398
Registry: Vancouver

Between:

Dexia Credit Local

Plaintiff

And:

**Peter G. Rogan and
Judith K. Rogan**

Defendants

Before: The Honourable Mr. Justice Walker

Oral Reasons for Judgment

In Chambers
September 12, 2008

Counsel for Plaintiff

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No one appearing

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** This is an application for a worldwide *Mareva* injunction against the defendants Peter G. Rogan and Judith K. Rogan pursuant to Rules 45, 46, 52(12.1), and 57 of the ***Rules of Court***, s. 39 of the ***Law and Equity Act***, R.S.B.C. 1996, c. 253, and the inherent jurisdiction of this Court.

[2] The injunction is sought by the plaintiff in the action, Dexia Credit Local, a judgment creditor pursuant to a judgment obtained in the United States District Court for the federal Northern District, Illinois Eastern Division ("U.S. District Court") on May 3, 2007.

[3] The statement of claim prepared for this action is comprehensive and well detailed. I will refer to some of the portions of it for the purpose of describing the nature of the claim.

[4] Paragraphs 5 to 12 of the statement of claim set out that the plaintiff, Dexia Credit Local ("Dexia"), commenced an action and sought and obtained judgment against Mr. Rogan in the U.S. District Court. Dexia's claim arises out of alleged Medicare fraud in which Dexia ended up having its interests under a letter of credit imperilled and ultimately ended up sustaining losses. Dexia then

sought to recover some US\$54 million against Mr. Rogan. Paragraph 20 of the statement of claim points out that there were separate but parallel proceedings in the United States brought against Mr. Rogan in relation to the Medicare fraud. Those separate actions brought by the United States government and others are outlined in paragraphs 20(a) to (c) of the statement of claim. I do not need to discuss or review all of the details of those proceedings for the purpose of this judgment. It is important to note that investigations commenced into the suspected fraud by the American authorities (the Attorney General's office and the FBI) got under way prior to 1996.

[5] In addition to founding the instant application for the *Mareva* injunction upon its judgment from the U.S. District Court, which is a federal and not a state court, Dexia says that there have been fraudulent conveyances out of a trust known as the Peter G. Rogan irrevocable trust (the "Trust"), founded and located in the Bahamas, to Mr. Rogan and his spouse, Mrs. Rogan. Dexia says that those payments have been made for the purpose of defeating creditors, including Dexia. With respect to payments made to Mrs. Rogan, Dexia says that they have been given to Mr. Rogan directly or to others for his benefit.

[6] Dexia's judgment in the United States was obtained after a full hearing. Mr. Rogan was given notice of the action. He attorned to the jurisdiction of the U.S. District Court. He defended the action vigorously until nearly the end of the case, at which time his lawyers applied to withdraw from the record. Judgment was granted in favour of Dexia for its losses in the (approximate) sum of US\$54 million. In addition, an award was made for punitive damages of an equivalent amount so that the punitive damages are said to be on a one-to-one ratio in relation to the claim itself.

[7] In these reasons for judgment, I will read from certain portions of Dexia's written submissions ("Submissions"). I am more than satisfied that there is evidence to support those portions of the Submissions. For example, evidence has been shown to me to support Dexia's submission that since at least January 5, 1996, Peter Rogan and his wife Judith, who currently reside in Vancouver, have engaged in a pattern of disposing of property in an attempt to delay, hinder or defraud Mr. Rogan's creditors of their just and lawful remedies.

[8] The Trust, which is situated in the Bahamas, was created in 1996. When it was created Mr. Rogan put in it the sum of approximately US\$21 million. At the time the Trust was settled, Mr. Rogan indicated that it would be protected from seizure, attachment, or other taking under law. Further, with respect to all funds he transferred to the Trust, it appears that Mr. Rogan retained control of those funds, including control of all of the decision making powers in respect to those funds. Ultimately, after an initial disposition was made of some of those trust funds, it appears that the remaining Trust funds sat *in situ* until 2002 when monies began to be paid out. It is from that point forward, up to at least 2006, that Dexia's counsel has shown me some very significant and detailed evidence indicating monies were paid out to Mr. Rogan and to Mrs. Rogan from the Trust. With respect to monies paid to Mrs. Rogan, they were given, by Mrs. Rogan, to Mr. Rogan directly or paid to others for his benefit, such as for legal fees.

[9] The action brought by Dexia in the United States is described in the Submissions. Dexia commenced an action styled ***Dexia Credit Local, f/k/a Dexia Public Finance Bank and Credit Local de France v. Peter G. Rogan et al.*** in the U.S. District Court. Mr. Rogan and entities called Braddock Management LP, Bainbridge Management LP, and Bainbridge Management Inc., are the defendants in that action. Entities known as Edgewater Property Company and PGR Properties Inc. are counterclaim plaintiffs. In that action ("the U.S. proceeding"), Dexia alleged, amongst other things, that "from at least in or about 1998 and continuing until in or about 2001, Mr. Rogan, Braddock, Bainbridge LP, Bainbridge Inc., and others knowingly, intentionally and recklessly participated in a scheme to defraud Dexia by misleading Dexia through false statements and material admissions as to the financial operations at Edgewater Medical Center ... a hospital operating in Chicago, Illinois." As I say, judgment was eventually obtained from the U.S. District Court.

[10] A further order of the U.S. District Court was made on September 4, 2008, against Mr. and Mrs. Rogan enjoining them from disposing of their assets.

[11] I turn now to the purpose of a *Mareva* injunction, which is to prevent the dissipation of the assets that are the very subject matter of the dispute. Here that subject matter is the money sought by

Dexia as judgment creditor.

[12] The fundamental question for consideration on an application for a *Mareva* injunction is whether it is just and equitable in all of the circumstances of the case. In the decision of **Tracy v. Installoys Financial Solution Centres (B.C.) Ltd.**, 2007 BCCA 481, 285 D.L.R. (4th) 413, the Court of Appeal recently described the two part test for the granting of a *Mareva* injunction: firstly, the applicant must show a "strong *prima facie*" or "good arguable case", and then, secondly, the balance of convenience must favour granting the injunction.

[13] In **Tracy**, Saunders J.A., writing for the court, conducted a detailed review of the law in British Columbia pertaining to the granting of a *Mareva* injunction. There she said in part at para. 34:

The law on *Mareva* injunctions sits within this general framework. The history of *Mareva* injunctions is recounted in **Aetna Financial** by Estey J. The convenient starting place is **Lister & Co. v. Stubbs** [1886–90] All .E.R. 797 (C.A.). There, Cotton L.J. affirmed the rule that security for a debt will not be ordered before the judgment even where success of the claim is highly probable. Exceptions to this referred to in **Aetna Financial** at pp. 12 to 14 are:

1. for the preservation of assets, the very subject matter in dispute, where to allow the adversarial process to proceed unguided would see their destruction before the resolution of the dispute...;
2. where generally the processes of the court must be protected even by initiatives taken by the court itself;
3. to prevent fraud on the court and on the adversary...

[14] I will not read the fourth exception because it deals with *quia timet* injunctions.

[15] Moreover, in **Tracy**, the court said at paras. 46 to 47:

In all cases, great caution is to be shown to avoid the mischief of litigious blackmail or bullying, and due regard must be paid to the basic premise that a claim is not established until the matter is tried. Great unfairness may be occasioned, and the administration of justice brought into disrepute, by an order which impounds assets before the merits of the claim are decided. It is useful to recall the words of Huddart J.A. in **Greenzservice Expeditions Ges.m.b.H. et al. v. Jans et al.** (1995), 125 D.L.R. (4th) 733, 15 B.C.L.R. (3d) 370 (S.C.) at 755-756:

[*Mareva* injunctions or orders] represent an extraordinary assumption of power by the judiciary. Judges must be prudent and cautious in their issue.

At the same time, assets are easily moved from jurisdiction to jurisdiction, and if, as in **Mooney**, a party seeks the intervention of the court and also seeks to put its assets beyond reach, the court has the ability to respond. As said by Newbury J. in **Mooney No. 1**:

[11]... The reasons for extending *Mareva* injunctions to apply to foreign assets are valid in British Columbia no less than in England and Australia – the notion that a court should not permit a defendant to take action designed to frustrate existing or subsequent orders of the court, and the practical consideration that in this day of instant communication and paperless cross-border transfers, the courts must, in order to preserve the effectiveness of their judgments, adapt to new circumstances. Such adaptability has always been, and continues to be, the genius of the common law.

[16] In this case, being mindful of the potential for great mischief or blackmail to be done and having balanced all of the equities, which I will get into later, there is no question in my mind that a *Mareva*

injunction should be granted in this case.

[17] Also, counsel has drawn on my attention the jurisdiction of this Court to grant an injunction on a worldwide basis where appropriate; authority comes from *Tracy* and also from *Mooney v. Orr* (1994), 98 B.C.L.R. (2d) 318 at paras. 11 and 12, [1995] 1 W.W.R. 517 (S.C.).

[18] This Court has jurisdiction over the defendants as they presently reside in Vancouver. As noted, part of the claim advanced by Dexia is in respect of an alleged fraudulent conveyance. Before I turn to a summary of the facts I will set out the law in relation to a claim for a fraudulent conveyance. The law is very nicely set out in paras. 92 to 95 of Dexia's Submissions and includes:

The **Fraudulent Conveyance Act** provides [that if a conveyance is] made to delay, hinder or defraud creditors and others of their just and lawful remedies, a disposition of property by writing or otherwise is void and of no effect against a person or the person's assignee or personal representative whose rights and obligations by collusion, guile, malice or fraud are or might be disturbed, hindered, delayed or defrauded, despite a pretense or other matter to the contrary.

[19] The next section in the Submissions states:

This [**Fraudulent Conveyance**] **Act** does not apply to a disposition of property for good consideration and in good faith lawfully transferred to a person who, at the time of the transfer, has no notice or knowledge of collusion or fraud". Thus the essential preconditions to a finding of fraudulent conveyance are (a) a disposition of property; (b) with fraudulent intent.

[20] With respect to the **Fraudulent Preference Act**, R.S.B.C, c. 164, Dexia's Submissions state:

Similarly, the **Fraudulent Preference Act** provides that a disposition of property by a person who is insolvent or on the eve of insolvency, with the intent to defeat, hinder, delay or prejudice creditors is void as against the injured creditor.

There are two primary ways by which a fraudulent preference claim differs from an allegation of fraudulent conveyance:

- (a) in a fraudulent preference case, the transferee must be proved to be a creditor of the transferor; and
- (b) in order to prove a fraudulent preference, the plaintiff must establish that the transferor was insolvent or on the eve of insolvency at the time of the transfer.

[21] The nature of a claim for a fraudulent conveyance is well set out in the decision of the Court of Appeal in *Sykes (Re)* (1998), 156 D.L.R. (4th) 105, 48 B.C.L.R. (3d) 169 (C.A.). At para. 67, McEachern C.J.B.C., as he was then, cited the following remarks from decision of Gonthier J. in *Royal Bank of Canada v. North American Life Assurance Co.*, [1996] 1 S.C.R. 325 at 365, 132 D.L.R. (4th) 193:

However, the other provincial statutes all refer to some sort of "conveyance" or "disposition" of "property" with the "intent to defeat" creditors' claims. All the provincial fraud provisions are clearly remedial in nature, and their purpose is to ensure that creditors may set aside a broad range of transactions involving a broad range of property interests, where such transactions were effected for the purpose of defeating the legitimate claims of creditors. Therefore, the statutes should be given the fair, large and liberal construction and interpretation that best ensures the attainment of their objects as required by provincial statutory interpretation legislation...

[22] In writing for the court, Mr. Justice McEachern continued at para. 68:

Applying the remedial and the liberal approach advocated by Mr. Justice Gonthier in this passage, we have no hesitation in finding that the transfer of R.R.S.P. funds from the non-exempt accounts to the R.R.S.P. account, and, in particular, the designation of Mrs. Sykes as the beneficiary of the latter account constituted a “disposition of property” within s. 1 of the **Fraudulent Conveyance Act**. We are reinforced in this conclusion by reference to the broad definition of the word “dispose” in s. 29 of the **Interpretation Act**, R.S.B.C. 1996, c. 238 which provides as follows:

29. In an enactment:

...

“dispose” means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things.

[23] It is a question of fact, for the court to determine, whether the disposition was made with an intention to defeat, hinder, delay, or prejudice creditors. In **Banton v. Westcoast Landfill Diversion Corp.**, 2004 BCCA 293 Braidwood J.A., writing for the court, cited at para. 5 a number of factual *indicia* of fraudulent intention or “badges of fraud” from **Frimer v. Lurcher**, [1984] B.C.J. No. 728 (S.C.):

- (1) The state of the debtor's financial affairs at the time of the transaction, including his income, assets and debts;
- (2) The relationship between the parties to the transfer;
- (3) The effect of the disposition on the assets of the debtor, i.e. whether the transfer effectively divests the debtor of a substantial portion or all of his assets;
- (4) Evidence of haste in making the disposition;
- (5) The timing of the transfer relative to notice of the debts or claims against the debtor;
- (6) Whether the transferee gave valuable consideration for the transfer.

[24] There are other *indicia* or badges of fraud that include continuing to remain in possession following a conveyance and secrecy respecting the transactions.

[25] While not a presumption, there is a suspicion that where a transaction is made between near relatives, particularly husband and wife, the transaction was not made in good faith. The burden of establishing the *bona fides* of the transaction in such a situation shifts from a plaintiff to the parties to the transaction: **Jennings v. Chow**, 2008 BCSC 110 at para. 18 and **CIBC Mortgage Corp. v. Pender**, [1999] B.C.J. No. 2162 at para. 18 (S.C.).

[26] In my view, having looked at all of the evidence shown to me in considerable detail by counsel for Dexia, this case involves more than a suspicion between husband and wife. There has been evidence of actual dispositions of cash from the Trust not only to Mr. Rogan but from the Trust to Mrs. Rogan that involve many of the *indicia* or badges discussed by Braidwood J.A.

[27] The badges of fraud identified in the written and oral submissions made on behalf of Dexia when considered in relation to the temporal element of the various transactions, the Medicare fraud investigation in the United States, and the actions brought by Dexia and others in that country suggest that they were all designed to defeat creditors. I cite, as one example, an e-mail dated November 2, 2005 from Mr. Rogan’s attorney named Mr. Cuppy, a representative and possibly an agent of Mr. Rogan, which is found as part of Exhibit “VV” to the affidavit of Scott Mendeloff no. 1.

[28] That exhibit consists of a string of e-mails from the Oceanic Bank and Trust Co. and Mr. Cuppy. That company, which is the trustee that administers the Trust in the Bahamas, inquired of Mr. Cuppy why a separate account was set up in the name of Mrs. Rogan. The answer from Mr. Cuppy is telling.

On November 2, 2005, Mr. Cuppy wrote:

Dear Ms. Marshall, the reason that a separate account was set up is that after received a distribution from the trust as a beneficiary she [Mrs. Rogan] then wanted that distribution to be in her name alone separate from her husband and from the trust. As you will recall, by reviewing the file, her husband is involved in some lengthy hospital litigation here in the states so she didn't want to be involved with that once a distribution was made to her.

Hope this answers your question

Have a good evening and thanks for your continued efforts on the Rogan's behalf.

[29] Further evidence is found at Exhibit "ZZ" of that affidavit. Within that exhibit is a letter from Mrs. Rogan to Oceanic Bank. There does not seem to be a date on that document, although the fax transmittal document suggests that it was sent on May 5, 2005. In that letter, Mrs. Rogan wrote to request that the sum of US\$1.2 million be wired to her. She cautioned:

Please do not send me any confirmation of the request for transfer or the transfer itself. You may however, confirm the receipt of the request, and/or transfer with my attorney/financial adviser, Mr. Cuppie.

Sometime later this fall/winter I plan on travelling in Italy. To facilitate my travel, I anticipate opening an account in an Italian bank, if necessary. Once I have selected the bank, I will request that some funds be transferred to that Italian bank.

[Emphasis in original].

[30] I stop also to note that other evidence has been drawn to my attention during this hearing showing that Mr. Rogan made the same request for secrecy; specifically, that there be no confirmation sent to him in relation to his requests for the payment out of funds.

[31] In *Flightcraft Inc. v. Parsons (Trustee of)* (1998), 49 B.C.L.R. (3d) 357, [1998] 8 W.W.R. 384 (S.C.) a decision of this court, Williamson J. said it is not necessary for the debt to actually be in existence at the time of the transfer if the intent is to defraud creditors generally. I must say that beyond a general intent shown on the evidence, in this case it would certainly seem from the temporal element of the transactions in evidence that a *prima facie* case has been made out of Mr. Rogan's intent to defraud Dexia itself.

[32] I turn now to the Dexia's judgment itself against Mr. Rogan obtained in the U.S. District Court, which includes an award of US\$53,082,978.03 for punitive damages. That award appears to be a one-to-one ratio in terms of the actual value of the claim. The judgment itself is found at Exhibit "B" to Mr. Mendeloff's affidavit no.1.

[33] Even though punitive damage awards in Canada have never reached the levels that they have in the United States, and even though the considerations in calculating a punitive damage award are substantially different between the United States and Canada – and I refer to the distinctions between *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595 in Canada and in the United States *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003) and the *Philip Morris USA v. Williams*, 549 U.S. 346 (2007), both heard and determined by the U.S. Supreme Court – the Supreme Court of Canada in *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416 said that it does not matter and allowed enforcement of a large punitive damage award from a U.S. District Court. In writing for the majority, Major J. said, in part, at paras. 73-77:

[73] The appellants submitted that the defence of public policy should be broadened to include the case where neither the defence of natural justice nor the current defence of public policy would apply but where the outcome is so egregious that it justifies a domestic court's refusal to enforce the foreign judgment. The appellants argued that, as a matter of Canadian public policy, a foreign judgment should not be enforced if the

award is excessive, would shock the conscience of, or would be unacceptable to, reasonable Canadians. The appellants claimed that the public policy defence provides a remedy where the judgment, by its amount alone, would shock the conscience of the reasonable Canadian. It was argued that, if the respondents and their witnesses were truthful in the Florida proceeding, it must follow that the laws in Florida permit a grossly excessive award for lost profits absent a causal connection between the acts giving rise to liability and the damages suffered. Such a result, the appellants submitted, would shock the conscience of the reasonable Canadian. I do not agree.

...

[75] The use of the defence of public policy to challenge the enforcement of a foreign judgment involves impeachment of that judgment by condemning the foreign law on which the judgment is based. It is not a remedy to be used lightly. The expansion of this defence to include perceived injustices that do not offend our sense of morality is unwarranted. The defence of public policy should continue to have a narrow application.

[76] The award of damages by the Florida jury does not violate our principles of morality. The sums involved, although they have grown large, are not by themselves a basis to refuse enforcement of the foreign judgment in Canada. Even if it could be argued in another case that the arbitrariness of the award can properly fit into a public policy argument, the record here does not provide any basis allowing the Canadian court to re-evaluate the amount of the award. The public policy defence is not meant to bar enforcement of a judgment rendered by a foreign court with a real and substantial connection to the cause of action for the sole reason that the claim in that foreign jurisdiction would not yield comparable damages in Canada.

[34] Therefore, Major J. said:

[77] There was no evidence that the Florida procedure would offend the Canadian concept of justice. I disagree for the foregoing reasons that enforcement of the Florida monetary judgement would shock the conscience of the reasonable Canadian.

[35] I stop to note that, at the time Dexia's action in the United States was brought and prosecuted, Mr. Rogan was subject to the jurisdiction of the U.S. District Court, and in fact attorned to it, and heavily resisted that litigation until nearly the end.

[36] In *Beals*, the ratio of the punitive damage award to the value of the claim was much larger than one-to-one, as is the case with Dexia's award in the United States.

[37] Mr. Justice Binnie dissented in *Beals*, not on the matter of the amount, but only on the issue of notice: *Beals* at paras. 82 and 83.

[38] In this case, the claim of punitive damages was advanced in the originating process filed with the U.S. District Court. That document, called the Complaint, is also contained in the affidavit materials filed in this application. As I noted before, Mr. Rogan attorned to the jurisdiction of the U.S. District Court, engaged counsel, and engaged in a lengthy and vigorous defence of Dexia's claim. He had notice of the claim for punitive damages and notice of the manner in which punitive damages are calculated in the United States.

[39] In *Clarke v. Lo Bianco* (1991), 84 D.L.R. (4th) 244 at 252-253, 59 B.C.L.R. (2d) 334 (S.C.), Josephson J. said in respect of punitive damage awards from the United States:

The only issue raised by the defendant in this regard was concern and alarm at the quantum of damages awarded by the Superior Court of California. Why should it be otherwise? Why should there be imposed upon the plaintiff any British Columbia standards on quantum of damages simply because the defendant chose to move to this province after the cause of action arose? This is so particularly where the judgment was a judicially considered one, rendered after the hearing of evidence and after offering

the defendant due process.

[40] Those comments are certainly applicable to this case.

[41] So that there can be no further question about the issue, I refer to the decision of the Ontario Superior Court of Justice in **U.S.A. v. Ivey** (1995), 26 O.R. (3d) 533 at 553-554, 130 D.L.R. (4th) 674 (Ct. J. (Gen. Div.)), where the punitive damage award was enforced. Although the sum awarded by the court in the United States was, by Canadian standards, alarming, it was certainly made by a U.S. federal court after a hearing with due process.

[42] I have dealt with the punitive damages issue. The basis on which I may grant a worldwide *Mareva* injunction must be considered next. I must be satisfied that there is a basis to grant such an injunction on a worldwide spectre as opposed to limiting its effect to British Columbia.

[43] Counsel for Dexia has shown me considerable evidence of a good and arguable case. Much of the evidence contained in the sworn affidavits is compelling. In my view, this is not simply a matter of Dexia having proven a *prima facie* case. The evidence demonstrates more than that. I have been shown, in significant detail, transfers out of the Trust, transfers and payments made to or for the benefit of Mr. Rogan as well as transfers from the Trust to Mrs. Rogan that then, in turn, were transferred back to Mr. Rogan or paid to others for Mr. Rogan's benefit.

[44] The evidence shown before me indicates: that there were efforts by Mr. Rogan to move funds out of the Trust he set up in the Bahamas; that this was done to defeat anticipated creditors arising from the U.S. Medicare fraud litigation, which includes Dexia; and that some of those funds were transferred to Mrs. Rogan so that she could, in turn, distribute them either directly to Mr. Rogan or make payments on his behalf.

[45] The evidence shows significant distributions paid out of the Trust. As I said earlier in these reasons, it appears the Trust was established with payment into it of approximately US\$21 million. The evidence shown to me, which was reviewed in detail by counsel for Dexia on this application, is that approximately US\$8.1 million of that amount was paid to Mr. Rogan or his nominee and US\$6.2 million was paid to Mrs. Rogan commencing in 2002.

[46] It is of considerable significance that the tax return documentation from Mrs. Rogan from 1996 up to and including 2004 shows her gross adjusted annual income to be as low as US\$201 and as high as US\$9,802. There appears to be no consideration for the payments made to Mrs. Rogan from the Trust, which is one of the badges of fraud identified in the cases. There also appears to be secrecy and some haste to the payments, although I have seen more evidence of secrecy and the lack of consideration as opposed to haste. In a couple of those instances, there is a real temporal connection between an impending order or event in the U.S. litigation and payments out of the Trust.

[47] I have highlighted only one piece of evidence showing Mrs. Rogan's desire to keep the distributions to her from the Trust secret; more evidence was shown to me during the hearing of Dexia's application.

[48] There is evidence that shows that Mrs. Rogan plans to travel Italy, to set up a bank account there, and to move funds there.

[49] From a temporal point of view, the distributions from the Trust do not appear to be coincidental, but appear linked to the U.S. litigation. I draw attention to the disposition of some US\$4 million to Mrs. Rogan and its subsequent distribution and transfer as set out in Exhibit "XX" to the affidavit of Mr. Mendeloff no. 1. The evidence also shows that the Rogans were concerned about the outcome of the litigation in the United States.

[50] The balance of convenience in this case more than favours a worldwide injunction against Mr. and Mrs. Rogan. They have only recently moved to British Columbia and, as the one document suggests, Mrs. Rogan may move to Italy.

[51] Having regard to Mr. and Mrs. Rogan's presence in the United States, the Bahamas and Canada, and the spectre of Mrs. Rogan's move to Italy, and considering the remarks made in **Mooney**

as to the ability to move assets worldwide “in a near paperless way”, it is my view that a worldwide *Mareva* injunction is warranted on the facts of this case.

[52] Dexia has presented more than just a good arguable case: it has shown compelling evidence. In my view, the risk of harm to Dexia is significant, owing to the evidence showing a pattern of conduct on the Rogans’ part to move assets in a surreptitious manner.

[53] Unless the injunction is granted against both defendants, Mrs. Rogan will be able to dispose of Mr. Rogan’s assets, at least those assets that are presently in her name. I understand a bank account at the Hong Kong Service Bank of Canada (“HSBC”) in Vancouver has been set up in her name. It is clear that the injection of funds into that HSBC account came from Trust funds.

[54] Dexia acknowledges that judges must act prudently when considering whether to issue a *Mareva* injunction. In that regard, Dexia has signed an undertaking with respect to the costs of these proceedings and to the costs involved in carrying out the injunction process itself.

[55] This is not a case where the issuance of the injunction will lead to bullying or litigation blackmail in advance of the proof of the claim. As I say, I would not have made this order on a worldwide basis absent very clear and compelling evidence.

[56] The primary effect of the injunction is to prevent the Rogans from dissipating or transferring their assets so that Dexia’s claim can be determined before this Court. I grant the *Mareva* injunction sought by Dexia. I have, a few moments ago, signed an order granting the *Mareva* injunction on a worldwide basis that contains exceptions to the scope of that injunction so that Mr. and Mrs. Rogan may establish a reasonable amount for living expenses and for legal advice and representation and that caps the amount covered by the injunction to assets valued at or below US\$124,280,712.79, which is the amount of the judgment of the U.S. District Court.

[57] I have also approved an order compelling Mr. and Mrs. Rogan to deliver an affidavit that sets out their assets, both legally owned and beneficially owned. The order also contains provision for the protection of third parties. Lastly, it contains provisions as to confidentiality.

[58] Finally, I should note that I signed an order yesterday relating to a sealing of the file which, in my view, having seen the evidence shown to me over the course of at least two days, was entirely warranted in the circumstances.

The Honourable Mr. Justice Paul Walker