CITATION: Foremost Second Mortgage Holding Corp. v. Major C.C. Investments Inc. et al, 2026 ONSC 5773
COURT FILE NO.: CV-26-00007985-0000
DATE: 20261026

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SUPERIOR COURT OF JUSTICE - ONTARIO

RE: FOREMOST SECOND MORTGAGE HOLDING CORPORATION, Plaintiff

AND:

MAJOR C.C. INVERSTMENT INC., WERGER HOLDINGS INC., HOWARD LAWRENCE FEIN, BEVERLEY FEIN, BRIAN SVERSKY, JOHN FRANCIS BENCZKOWSKI AND DEBORAH BENCZKOWSKI, Defendants

BEFORE: Justice Carissima Mathen

COUNSEL: *Derek Ketelaars* and *Syed Jawad Quader*, for the Plaintiff

Syed Abid Hussain, for the Defendants

HEARD: October 08, 2026

ENDORSEMENT

OVERVIEW

[1] This is a motion for a Mareva injunction restraining the Defendants from further encumbering a property pretrial; and an order compelling the Defendants to pay equity from any proceeds of sale of that property into court, pending the disposition of this Action.

[2] The Defendants, John and Deborah Benczkowski ("John" and "Deborah"), are married.

[3] The action relates to two properties: the Defendants' jointly owned matrimonial home located at 301 Keewatin Avenue ("Keewatin"); and another property solely owned by Deborah at which both Defendants reside, located at 9 Promenade Way, Fort Erie (the "Beach House").

[4] The Plaintiff, Foremost Second Mortgage Holding Corporation ("Foremost"), commenced a claim against John on October 23, 2024, to enforce a commercial mortgage that John had guaranteed. On January 3, 2025, Foremost obtained default judgment for over four million dollars. A substantial portion of the judgment remains unpaid.

[5] Foremost commenced an action on May 6, 2026, initially seeking relief against not only John and Deborah, but several lenders who registered charges against the Defendants' property. Foremost alleged that "the non-arm's length defendants colluded to systematically strip John of

his equity" in Keewatin and "through fraudulent conveyance and unjust preference", transfer that equity to the Beach House, which is registered solely to Deborah.

[6] Foremost has since settled with the other defendants but continues the main action against John and Deborah. On this motion, Foremost argues that John is a beneficial owner in the Beach House, which must therefore be subject to injunctive relief.

[7] The issues are:

a. Should the Benczkowski's be restrained by an interlocutory injunction from transferring or further encumbering the Beach House?

b. Should the Court order that, in the case that the Beach House is sold by any of its chargees, the Benczkowski's shall pay into court the sale proceeds, net of taxes, commissions, closing costs and payments to its chargees?

[8] Briefly, the motion is granted. Foremost has established a strong *prima facie* case that John has a beneficial interest in the Beach House. There is a risk of irreparable harm to Foremost flowing from a risk of dissipation of that asset. Deborah has not established the irreparable harm to her arising from an order preventing her from further encumbering the property or having to deposit any proceeds of sale into the court. The balance of convenience favours the relief sought.

BACKGROUND

[9] The Defendants purchased the Beach House on September 27, 2021, for $1,740,000 with a down payment of $600,000. It is encumbered by several mortgages, all of which are guaranteed by John.

[10] In 2025, in a separate mortgage enforcement relating to a commercial property, Foremost obtained a default judgment against John and several other persons.

[11] On April 2, 2025, Foremost subsequently registered a writ of seizure and sale against John's interest in the matrimonial home, Keewatin. Keewatin is jointly owned by John and Deborah.

[12] During its enforcement efforts, Foremost became concerned about transactions involving Keewatin and the Beach House.

[13] In late 2025, the Defendants sought to sell the Keewatin property and requested that Foremost lift its writ. Foremost declined.

[14] On February 20, 2026, Major C.C. Investments, one of the mortgagees of Keewatin, commenced a power of sale proceeding. Major C.C. is owned by Martin Sversky, the Defendants' longtime accountant and friend.

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[15] Foremost then commenced the present action, alleging that the transactions involving the Keewatin property and the Beach House had the effect of transferring or sheltering John's equity from creditors.

[16] On May 11, 2026, Des Rosiers J. ordered that the net proceeds of any sale of the Keewatin property be paid into court.

[17] On August 31, 2026, Foremost settled its claims against a number of defendants, which did not include John and Deborah.

ANALYSIS

[18] My findings are contained in the following analysis.

The Law

[19] Under s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the court may grant interlocutory injunctions where it appears to be "just and convenient to do so". The purpose of an interlocutory injunction is to ensure that a party who asserts rights in an action is able to enforce those rights if they succeed at trial: *City of London v. Talbot Square Ltd* (1978), 1978 CanLII 1595 (Ont. H.C.), 22 O.R. (2d) 21 (H.C.).

[20] Under the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, an interlocutory injunction "may be obtained on motion to a judge by a party to a pending or intended proceeding": r. 40.01. This Court may make "an interim order for the custody or preservation of any property in question in a proceeding or relevant to an issue in the proceeding": r. 45.01. The Court may also order that, where the right of a party to a specific fund is in question, the fund shall be paid into court: r. 45.02.

[21] To obtain an interlocutory injunction, the moving party must establish that (a) there is a serious issue for trial; (b) they will suffer irreparable harm if the motion is not granted; and (c) the balance of convenience favours the requested relief: *RJR MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311, at pp. 348-349. Strength in one factor may be countered by weakness in one or more of the others. The court must consider what outcome will promote the interests of justice: *SBG-Skill Based Games Inc. v. Ontario (Alcohol and Gaming Commission)*, 2025 ONCA 692, 178 O.R. (3d) 511, at paras. 12-13.

[22] A Mareva injunction is an extraordinary order that freezes a defendant's assets during civil litigation. The moving party must establish (a) a strong *prima facie* case; (b) irreparable harm if the remedy for the defendant's misconduct were left to be granted at trial; (c) that the balance of convenience favours relief; (d) the defendant has assets in the jurisdiction; and (e) that there is a serious risk that the defendant will remove property or dissipate assets before judgment: *Asif v. Khan*, 2025 ONSC 260, at para. 16.

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[23] A purchase money resulting trust arises when a person advances funds to contribute to the purchase price of property but does not take legal title to that property: *Nishi v. Rascal Trucking*, 2013 SCC 33, [2013] 2 S.C.R. 438, at para. 1. In that situation, it is presumed that the parties intended for the person who advanced the funds to hold a beneficial interest in the property in proportion to that person's contribution. Under s. 14 of the *Family Law Act*, RSO 1990, c F.3, the presumption of a resulting trust applies between spouses. The presumption, however, does not negate the need to investigate the transferor's intention: *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795, at para. 5.

Application

Should the Defendants be restrained by interlocutory injunction from transferring or further encumbering the Beach House?

[24] For the following reasons, I find that the Plaintiff has made out their case that a Mareva injunction is merited.

Strong Prima Facie Case

[25] Based on the record, there is a strong *prima facie* case that John has a beneficial interest in the Beach House.

[26] First, John provided substantial funds to purchase the Beach Property. There is no dispute that John contributed just under $430,000—or 72 percent—of the downpayment. I agree with the Plaintiff that that contribution creates a strong presumption of a resulting trust.

[27] Second, John's claim that his contribution to the Beach House was a "gift" to his wife is not evidence of intention sufficient to overcome the strong presumption of a resulting trust. Having reviewed the record, I am satisfied of the following:

a. John is currently insolvent;

b. John has previously declared bankruptcy;

c. John has stated an intent to claim bankruptcy in the future;

d. John cannot pay all his debts;

e. John has not filed his income taxes since 2020;

f. John does not intend to make any further payments towards Foremost's judgment;

g. John treats the Beach House as his own; and

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h. John pledged his own assets to protect the mortgages on the Beach House while they were in his wife's sole name.

[28] The Defendants say that John's assertion of a gift is supported by the facts that (a) title to the Beach House was taken solely in Deborah's name, and (b) the Beach House was purchased long before Foremost commenced its action. However, the issue is not whether the Defendants were dishonest when they purchased the Beach House, but whether there is evidence that could meaningfully weaken Foremost's argument that John never made a gift to his wife. I find there is not. John's evidence consists of statements made years after the transaction. The contemporaneous documentary record contains no express declaration of gift, forgiveness of John's contribution, or that surrender to Deborah of any beneficial interest he might otherwise. Therefore, John's assertion of a gift—which was delivered through answers to undertakings in September 2026—does not displace the strong *prima faci*e case Foremost has made, based on: John's substantial contribution to the purchase price; his ongoing involvement in the financing of the property post 2021; his guarantees of the mortgages; and that fact that he lives in the property.

Can the Alleged Beneficial Interest be Preserved under Rule 45.02?

[29] The Defendants argue that the motion cannot be sought under r. 45.02 because Foremost seeks not to preserve an identifiable asset that is the subject matter of the litigation, but rather to secure a future money judgment.

[30] The Defendants' argument rests on three premises:

a. Foremost is trying to satisfy a debt against John. Therefore, Foremost's underlying action is not about the Beach House against which Foremost makes no claims of ownership. Rule 45.02 is intended to preserve a party's right to property directly in issue, not provide security for a judgment creditor.

b. The rule contemplates preserving a "specific fund". Here, there is no pending sale, no existing fund, and, therefore, no identifiable property against which to make a preservation order. Rather, the requested relief is contingent upon a future event – a sale of the property – that may never occur.

c. Foremost's order is really a request for prejudgment security. A plaintiff may not seek an order under r. 45.02 simply because they fear that a future judgment may go unsatisfied.

[31] I do not find the above arguments persuasive. Foremost argues that John's alleged beneficial interest in the Beach House is something that must be addressed as part of Foremost's efforts to enforce its judgment. Given that I have found that there is a strong *prima facie* case for that beneficial interest, the Beach House is more than a mere source of judgment recovery. It is a specific asset whose ownership must be adjudicated.

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[32] I appreciate that there is presently no pending sale of the property and therefore no existing fund that can be segregated. Nevertheless, the equity represented by the Beach House is sufficiently concrete that any proceeds realized upon a sale would constitute a fund traceable to the alleged beneficial interest.

Irreparable Harm

[33] Foremost must establish that it stands to suffer irreparable harm if the injunction is not granted. Irreparable harm refers to the nature of the harm rather than its magnitude. The harm must be such that it cannot be quantified in monetary terms, or, if quantifiable, cannot be cured: *RJR*, at p. 341. The moving party must show "a high degree of probability that permanent and non-compensable harm will in fact occur": *Temagami (Municipality) v. Temagami Barge Limited*, 2024 ONCA 859, at para. 11. The probability of irreparable harm increases as the probability of recovering damages decreases: *Wallace v Pristine Developments*, 2021 ONSC 2794, at para. 33.

[34] I am satisfied that irreparable harm is established in this case because:

a. Foremost is seeking to realize on a judgment it has already obtained.

b. Foremost's action is against John about whom there is a strong *prima facie* case of a beneficial interest in the Beach House.

c. Given John's admitted insolvency, if the Beach House is sold or transferred or its existing equity otherwise depleted, Foremost will be left without a remedy, even if it succeeds in establishing John's beneficial interest.

Assets in the Jurisdiction

[35] The subject property is located in Ontario.

Risk of dissipation

[36] I am satisfied that John's beneficial interest in the Beach House is at serious risk of dissipation. Legally, John has no control over the property. Deborah is free to put further charges on the home. If she did, that would create difficulties for Foremost, even if it prevailed in its underlying action for a declaration that John has a beneficial interest in the property.

[37] In addition, over the years, the Defendants have engaged in numerous transactions involving both Keewatin and the Beach House. I need not conclude that the prior transactions were fraudulent. It is sufficient that the evidence establishes a pattern by which substantial equity was repeatedly shifted, refinanced, cross-collateralized, or otherwise restructured – including while Foremost was attempting to enforce its 2025 judgment against John.

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[38] I find there is a real risk that the Defendants would continue their pattern of behaviour in the ensuing months, possibly years, that it might take to resolve the within Action. That establishes a sufficient risk of dissipation to satisfy this factor.

Balance of Convenience

[39] I find that Foremost will suffer more risk of harm if the injunction is not granted than Deborah will suffer if it is. Foremost seeks to enforce its judgment against a debtor —John —who is delinquent and insolvent. That fact weighs heavily in Foremost's favour: *Paunovski v. Risteski et al.*, 2025 ONSC 6260, at para. 110.

[40] It is true that Foremost has no direct claim against Deborah and her legal title will be affected if she is unable to further collateralize the Beach House. But Deborah has given no evidence that she requires access to the home's equity for any particular purpose. Indeed, Deborah says that the home's value is not at risk since she intends to live there for the foreseeable future. Additionally, as discussed below, Foremost does not seek to prevent Deborah from selling the home.

[41] Deborah says that an injunction would impair any attempts at refinancing. However, she has given no evidence of her need to refinance the Beach House or that any such transaction is pending. Therefore, any effect on refinancing carries only modest weight.

[42] I find any prejudice that Deborah might suffer is considerably less than what Foremost might suffer. Foremost has not asked that the property be frozen entirely – only that it not be further encumbered and that the net proceeds of any sale be paid into court. That remedy is less intrusive of Deborah's rights than a freezing order, a fact that also tilts the balance of convenience in Foremost's favour.

[43] Therefore, I am satisfied that Foremost has established the five factors for a Mareva injunction.

Should the Court order that, in the case that the Beach House is sold by any of its chargees, the Defendants shall pay into court the sale proceeds net of taxes, commissions, closing costs and payments to its chargees?

[44] Foremost does not seek an injunction that prevents the sale of the Beach House. Therefore, any injunctive relief against further encumbering the Beach House will be meaningless without an order to govern the proceeds of any sale.

[45] Foremost's action is against John. Deborah is the sole registered owner of the Beach House. Without an order to control the proceeds of any sale, Deborah could sell the home and use the resulting equity as she wishes.

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[46] Deborah says that she has no intention of selling the home and she does not say that she anticipates any need to draw on her equity in it. There can therefore be no prejudice to her from such an order beyond the interference with her immediate receipt of equity in the event that she does decide to sell.

[47] Deborah also states that it is inappropriate to require all of the net proceeds to be paid into court when Foremost has no claim against her and she holds at least some equity in the property. I find that argument unpersuasive. At this interlocutory stage, the extent of John's beneficial interest remains unresolved. Preserving all net proceeds avoids the practical difficulty of attempting to apportion disputed ownership before trial. Any excess may ultimately be returned to Deborah, should the underlying Action fail.

[48] The order Foremost seeks will preserve any proceeds traceable to Foremost's alleged interest in the Beach House based on John's alleged beneficial ownership. The order falls within the authority of the court and the purpose of r. 45.02. I find that it is warranted.

ORDER

[49] In conclusion, I make the following order:

a. The motion is granted, as follows:

   i. THIS COURT ORDERS that, pending further court order, the Defendants, John Francis Benczkowski and Deborah Benczkowski, shall not transfer, charge, mortgage, or further encumber the property located at 9 Promenade Way, Fort Erie ("the Beach House").

   ii. THIS COURT ORDERS that, in the event the Beach House is sold, the net proceeds of sale, after payment of all registered encumbrances, ordinary closing costs and adjustments, shall be paid into court forthwith and shall not be distributed except by further order of this Court.

b. The parties are urged to come to an agreement on costs. Should they not, the parties may each submit argument limited to 3 pages, with any bills or offers to settle. Both parties shall submit their arguments within 30 days. There shall be no right of reply.

Mathen, J.

Released: October 26, 2026

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