

Court File No. CV-23-00092340-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TAYLAN MCRAE-YU

Plaintiff/Responding Party

and

PROFITLY INCORPORATED, DMCB HOLDINGS INC., IVAN AVRAMENKO,  
ALEXANDRA STINSON and JOHN DOE

Defendants/Moving Parties

Proceeding under *The Class Proceedings Act, 1992*

MOVING PARTIES' FACTUM

**CAMBRIDGE LLP**

333 Adelaide Street West  
4th Floor  
Toronto, Ontario M5V 1R5

**N. Joan Kasozi** (LSO# 70332Q)

[jkasozi@cambridgellp.com](mailto:jkasozi@cambridgellp.com)

**Nicholas Patterson** (LSO# 85639U)

[npatterson@cambridgellp.com](mailto:npatterson@cambridgellp.com)

Tel: 416.477.7007

Fax: 289.812.7385

Lawyers for the Defendants/Moving  
Parties

Profitly Incorporated, DMCB Holdings  
Inc., Ivan Avramenko, Alexandra Stinson,  
and John Doe

TO: **DELAWYER PROFESSIONAL CORPORATION**  
Suites of Somerset  
52 Baywater Ave., Suite 1505  
Ottawa, Ontario  
K1Y 4K3

**Sohaib Mohammad** (LSO# 80696K)  
[sohaib@delawyer.io](mailto:sohaib@delawyer.io)  
Tel: 647-535-8706

Lawyers for the Plaintiff/Responding Party  
Taylan McRae-Yu

Court File No. CV-23-00092340-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TAYLAN MCRAE-YU

Plaintiff/Responding Party

and

PROFITLY INCORPORATED, DMCB HOLDINGS INC., IVAN AVRAMENKO,  
ALEXANDRA STINSON and JOHN DOE

Defendants/Moving Parties

Proceeding under *The Class Proceedings Act, 1992*

**MOVING PARTIES' FACTUM**

**PART I - OVERVIEW**

1. This motion is made by the Defendants to set aside the Mareva Injunction Order of the Honourable Justice Hooper made on June 15, 2023, and amended on June 23, 2023 (the “**Mareva Injunction**”) and for the assets listed in Schedule “A” and “B” of the Mareva Injunction to be unfrozen and released to the Moving Parties forthwith.

2. The Plaintiff moved on June 7, 2023, without notice, for a Mareva Injunction to freeze all of the Defendants’ crypto and personal assets. Justice Hooper granted that Order on June 15, 2023 (the “**June 15 Order**”).

3. The Plaintiff's version of events was skewed and material facts were omitted. Non-Fungible Tokens ("NFTs") are novel and evolving. In light of the novelty, the Court was not afforded an opportunity to see the full picture and was not provided with all the material facts on the Plaintiff's *ex parte* motion.

4. As a result, the Defendants' crypto wallets and access to their personal bank accounts were frozen and could not be accessed. This significantly affected the Defendants as they were unable to access their bank accounts to support day-to-day living expenses, as well as expenses required to conduct business.

5. As such, on June 23, 2023, Justice Hooper granted an Order amending the June 15 Order, which allowed the Defendants to pay for living expenses and allowed them to access both corporate and personal bank accounts, as well as credit cards and other credit facilities. The Defendants were still denied access to their cryptocurrency wallets and cryptocurrency assets, which resulted in continued interruption of the Defendant business, Boneheads.

6. It is the Defendants' position that, in light of the foregoing, the Mareva Injunction should be set aside.

## PART II - SUMMARY OF FACTS

### *Parties*

7. Profitly Incorporated (“**Profitly**”) is a corporation incorporated pursuant to the laws of Ontario.<sup>1</sup>

8. DMCB Holdings Inc. (“**DMCB**”) is a corporation incorporated pursuant to the laws of Ontario.<sup>2</sup>

9. Ivan Avramenko (“**Ivan**”) is an individual residing in the Province of Ontario. Ivan is, *inter alia*, an entrepreneur with experience in technology startup companies.<sup>3</sup>

10. Alexandra Stinson (“**Alexandra**”) is an individual who resides in the city of Belleville, Ontario. Alexandra is not a co-founder of the Boneheads NFT project (“**Boneheads**”).<sup>4</sup>

### *Factual Background*

11. Ivan founded Boneheads in an effort to connect the world of fashion and NFTs. Boneheads has been in development for just over two years.<sup>5</sup>

12. NFTs are cryptocurrency-based assets which are created through a process called “minting”. Minting is when the individual information of an NFT gets

---

<sup>1</sup> Affidavit of Ivan Avramenko, sworn September 1, 2023; Tab 2, para 2 of the Moving Parties’ Motion Record (the “Avramenko Affidavit”)

<sup>2</sup> The Avramenko Affidavit, para 3

<sup>3</sup> The Avramenko Affidavit, para 4

<sup>4</sup> The Avramenko Affidavit, para 5

<sup>5</sup> The Avramenko Affidavit, paras 10 and 11

recorded onto a publicly accessible database, called a blockchain. Once an NFT has been minted, it is given a unique identification number which allows it to be distinguishable from other NFTs. This identification number is what allows an NFT to be sold, exchanged, or traded between owners. An NFT's ownership details are also stored onto it, which includes the details of the individual or company that designed it.<sup>6</sup>

13. The value of an NFT (after the initial sale) is attributed to a token on a case-by-case basis – this price is determined by the customer.<sup>7</sup>

14. Boneheads was launched in or around early 2021.<sup>8</sup> Blockchain developers were hired to assist with the engineering side of Boneheads.<sup>9</sup>

15. The developers performed various tasks to assist with the development of the project, including, *inter alia*, art design, app designs, and website design. There were various facets of the project, which required different expertise, therefore, the developers were essential to the development of the project.<sup>10</sup>

16. Each Bonehead NFT represented a specific piece of art. The sale was a surprise blind mint, which is standard practice, therefore, none of the purchasers knew which specific piece of art they were getting. The surprise aspect is part of the appeal for customers, since they have an opportunity to have a rare token. The Plaintiff was aware of this before the sale took place and is the reason he purchased over 36 tokens with the

---

<sup>6</sup> The Avramenko Affidavit, para 12

<sup>7</sup> The Avramenko Affidavit, para 13

<sup>8</sup> The Avramenko Affidavit, para 14

<sup>9</sup>The Avramenko Affidavit, para 17

<sup>10</sup> The Avramenko Affidavit, para 18

hope of obtaining a rare Bonehead NFT. There is an implicit risk in purchasing tokens which is well known to NFT purchasers.<sup>11</sup>

### *Benefits*

17. Boneheads marketed six Benefits that customers could receive with each Boneheads NFT purchase. At the time the Benefits were presented, they were not yet completed. Boneheads made it clear to the public that their Benefits were not yet ready to be launched, by posting a general description for each Benefit as a way to inform potential Bonehead purchasers of potential Benefits once the Benefits were finalized. The marketing of these Benefits was in no way an official offer to potential purchasers.<sup>12</sup>

18. Boneheads was marketed through the social media website Discord (“**Discord**” or the “**Boneheads Discord**”), which is a popular platform where users are able to communicate with the Bonehead NFT community through instant messaging. Discord is a way for the Boneheads team to answer any questions pertaining to their NFTs or to make announcements with respect to upcoming releases.<sup>13</sup>

19. The Plaintiff was one of the Boneheads Discord members who was keen on purchasing a Bonehead NFT due to the numerous unique tokens that Boneheads had to offer.<sup>14</sup>

---

<sup>11</sup> The Avramenko Affidavit, para 19

<sup>12</sup> The Avramenko Affidavit, para 20

<sup>13</sup> The Avramenko Affidavit, para 21

<sup>14</sup> The Avramenko Affidavit, para 22

20. Since 2021, there have been over 4,000 Discord messages shared between Ivan, and the Boneheads Discord community which pertained to, among other things, potential deadlines for new NFT releases, the preview of new products, discussions regarding future releases, and discussions regarding the direction of the company.<sup>15</sup>

21. At all material times the Discord Community was able to exchange ideas with the Boneheads team, including providing input on the progress of the project. In fact, the Boneheads team communicated anticipated changes to the platform, which were well received by the Bonehead Discord Community.<sup>16</sup>

22. Benefit 1 would give Bonehead purchasers a lifetime access to the Bonehead cabana, digital collectibles, and unlimited access to the Bonehead forging headquarters, which is where purchasers could forge their own physical and digital collectibles. The Bonehead team has not made any details pertaining to Benefit 1 publicly available.<sup>17</sup>

23. Benefit 2 would give Bonehead purchasers exclusive forging rights, allowing purchasers to redesign their NFTs in a manner that was tailored towards their own preference. No timeline was established or communicated for the completion of Benefit 2. Purchasers were well aware that Benefit 2 was an idea that was still being

---

<sup>15</sup> The Avramenko Affidavit, para 23

<sup>16</sup> The Avramenko Affidavit, para 24

<sup>17</sup> The Avramenko Affidavit, paras 25 and 27



developed. Further, it was stated in the description of Benefit 2 that contingencies would be attached to the items purchasers would be permitted to forge.<sup>18</sup>

24. Benefit 3 would allow Bonehead purchasers to have access to claimables that were not yet available on the Bonehead NFT Roadmap (the “**Roadmap**”). Benefit 3 was designed to give purchasers an unprecedented experience with the purchase of their Bonehead NFT. There was no publicly stated timeline of completion for Benefit 3.<sup>19</sup>

25. Benefit 4 would allow Bonehead purchasers priority access in testing upcoming apps before they would be made public. There was no publicly stated release date for Benefit 4.<sup>20</sup>

26. Benefit 5 would allow Bonehead purchasers behind the scenes access to Bonehead products, including but not limited to, sculptures, accessories, playing cards and other Bonehead collectibles. Bonehead Discord members have seen previews of Benefit 5 and have been given previews of both physical and non-physical samples of Benefit 5.<sup>21</sup>

27. Benefit 6 would grant Bonehead purchasers voting rights with respect to the manufacturing of various Bonehead products.<sup>22</sup>

---

<sup>18</sup> The Avramenko Affidavit, para 29 and 31-32

<sup>19</sup> The Avramenko Affidavit, para 33 and 35

<sup>20</sup> The Avramenko Affidavit, para 36 and 38

<sup>21</sup> The Avramenko Affidavit, para 39 and 41

<sup>22</sup> The Avramenko Affidavit, para 42

28. The aforementioned Benefits were presented with the view of Bonehead purchasers owning NFTs for a long period of time. Purchasers knew that the Benefits would be available for long term holders of the NFTs. In fact, the Benefits are only available to purchasers who hold on to their NFTs in their crypto wallets and do not sell them, although Benefits could later be bought from the secondary market.<sup>23</sup>

29. The purchasers of the Bonehead NFT were purchasing what they deemed to be a valuable art piece. Value is created by the purchasers based on the market. Many purchasers bought a Bonehead NFT strictly because of the art, which is standard in the NFT space. Any other Benefits were for long term holders of the NFT. Purchasers knew that many of the Benefits would take time to materialize.<sup>24</sup>

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

30. The issue to be determined by this Court is:

- (a) Whether the Mareva Injunction should be set aside.

#### **Whether the Mareva Injunction Should be Set Aside**

31. Statutes and jurisprudence have imposed a heavy onus and an exceptional duty upon a moving party to establish entitlement to an *ex parte* Mareva Injunction. Given the significant prejudice a responding party faces during the granting of an *ex parte*

---

<sup>23</sup> The Avramenko Affidavit, para 44

<sup>24</sup> The Avramenko Affidavit, para 45

Mareva Injunction, in order to renew the Mareva Injunction, the following test must be met by the Plaintiff:<sup>25</sup>

- (a) The plaintiff must show that he or she has a strong *prima facie* case;
- (b) The Defendant has Assets in the Jurisdiction;
- (c) There is a serious risk that the defendant will remove or dissipate its assets before judgment can be obtained;
- (d) The plaintiff will suffer irreparable harm if the injunction is not granted; and
- (e) The balance of convenience favours granting of the injunction

*The Plaintiff has Failed to Make Full and Frank Disclosure*

32. Any party seeking an *ex parte* Mareva Injunction must make full and frank disclosure of all material matters, which include facts that pertain to the substantive basis for the Injunction. In the present case, the Plaintiff has failed to do so. As such, the Mareva Injunction ought to be set aside.

33. In one of the leading Ontario cases on Mareva Injunctions, *Chitel v. Rothbart* held that:

“There is no necessity for citation of any authority to state the obvious that the plaintiff must, in securing an *ex parte* interim injunction, make full and frank disclosure of the relevant

---

<sup>25</sup> *Securitas Technology Canada v. North West Construction* [2023] ONSC 4430 at para 24; *Farah v. Sauvageau Holdings Inc.* [2011] ONSC 1819; *Sibley & Associates LP v. Ross* [2011] ONSC 2951 at para 11

facts, including facts which may explain the defendants' position ... If there is less than this full and accurate disclosure in a material way or if there is a misleading of the court on material facts in the original application, the Court will not exercise its discretion in favour of the plaintiff and continue the injunction...

The relationship between the parties in the instant case was obviously more complicated, complex, and extended than that implied in the affidavit. The shares referred to in the plaintiff's affidavit were only part of the complicated transactions between the parties. The plaintiff's affidavit was inaccurate at least insofar as it was incomplete in material aspects and it was misleading, if only by implication."<sup>26</sup>

34. A plaintiff's strict duties to provide full and frank disclosure when moving for an *ex parte* Mareva Injunction were further cited in the landmark case *United States v. Friedland*, which stated:

"It is a well established principle of our law that a party who seeks the extraordinary relief of an *ex parte* injunction must make full and frank disclosure of the case. The rationale for the rule is obvious; the judge hearing an *ex parte* motion and the absent party are literally at the mercy of the party seeking the injunctive relief. The ordinary checks and balances of the adversary system are not operative. The opposite party is deprived of the opportunity to challenge the factual and legal contentions advanced by the moving party in support of the injunction. The situation is rife with the danger that an injustice will be done to the absent party."<sup>27</sup>

35. As the Honourable Justice Newbould stated in *Petersen v. Petersen*:

"On an *ex parte* motion, often heard on an urgent basis, a judge must be able to rely on counsel to be open and to provide all relevant information to the judge without being asked. The judge usually does not have the luxury of time to sift through all of the written material and of course is in no position to know if material facts have been omitted from the material that has been filed or by counsel in oral argument."<sup>28</sup>

36. The *Rules of Civil Procedure* further support this finding by providing that whenever a motion or application is brought *ex parte*, the moving party shall make full

---

<sup>26</sup> *Chitel v. Rothbart* [1982] Ontario Supreme Court [Court of Appeal] 508 at para 18-19; Moving Parties' Unreported Book of Authorities at Tab 1

<sup>27</sup> *United States v. Friedland* [1996] 5566 at para 26; Moving Parties' Unreported Book of Authorities at Tab 2

<sup>28</sup> *Petersen v. Petersen* [2010] ONSC 2525 at para 21; Moving Parties' Unreported Book of Authorities at Tab 3

and fair disclosure of all material facts, and failure to do so is in itself sufficient grounds for setting aside any order obtained on the motion or application.<sup>29</sup>

37. In *Bank of Nova Scotia v. Rawifilm Inc.*, the Court found that the Plaintiff, who was seeking an *ex parte* order against the Defendant, did not disclose all material facts in the Plaintiff's affidavit, and as such, the Court ordered that the *ex parte* Order be set aside. The Court stated that:<sup>30</sup>

“when a plaintiff seeks an *ex parte* order against the defendant, the plaintiff has an obligation to make full and fair disclosure of all material facts it knows of.”

38. In *Stans Energy Corp. v. Kyrgyz Republic*, the Court held that a material fact in the context of a Mareva Injunction is “any fact that would have been weighed or considered by the motions judge in deciding the issues, regardless of whether its disclosure would have changed the outcome.”<sup>31</sup>

39. In the present case, through the Plaintiff's unbalanced and distorted presentation of the facts to the motions judge, the Plaintiff was able to argue a strong *prima facie* case to obtain the Mareva Injunction without the Defendants having an opportunity to respond.

### The Boneheads Roadmap

40. The Plaintiff failed to disclose material facts pertaining to the Roadmap.

---

<sup>29</sup> R.R.O. 1990, Reg. 194: *Rules of Civil Procedure* (the “Rules”), Rule 39.01(6)

<sup>30</sup> *Bank of Nova Scotia v. Rawifilm Inc.* [1994] O.C.J. 4186 at para 19; Moving Parties' Unreported Book of Authorities at Tab 4

<sup>31</sup> *Stans Energy Corp. v. Kyrgyz Republic* [2015] O.N.S.C. 3236 at para 5

41. The Plaintiff alleged in his June 6, 2023 Affidavit that the Defendants promised Bonehead NFT purchasers an ambitious Roadmap,<sup>32</sup> and as of June 2023, the Boneheads team had not yet produced a single Roadmap item to Bonehead purchasers.<sup>33</sup>

42. The Plaintiff's objective when making this statement was to imply to the motions judge that Bonehead purchasers were relying on this Roadmap when deciding whether or not to purchase a Bonehead NFT, and because the Roadmap was allegedly not delivered, that the Boneheads team had made a fraudulent misrepresentation.

43. The Plaintiff intentionally failed to disclose material facts about the Roadmap in order to obtain the *ex parte* Mareva Injunction. This was an intentional overstatement by the Plaintiff. The Roadmap was meant to show purchasers the direction Boneheads was going in and which products *might* have been developed over time.<sup>34</sup> The Plaintiff knew that the Roadmap was not a binding promise,<sup>35</sup> yet he intentionally failed to disclose this in his Affidavit as a way to persuade the motions judge to grant the Mareva Injunction.

#### Bonehead Giveaways

44. The Plaintiff alleged in his June 6, 2023 Affidavit that Boneheads had promised token holders that they would receive giveaways (the "**Giveaways**") if they

---

<sup>32</sup> The Affidavit of Taylan-Yu McRae, sworn June 6, 2023; Tab 1 of the Responding Motion Record dated September 22, 2023 at para 29 (the "McRae Affidavit")

<sup>33</sup> The McRae Affidavit at para 41

<sup>34</sup> The Avramenko Affidavit at para 50

<sup>35</sup> The Avramenko Affidavit at para 48

bought a Bonehead NFT. The Giveaways alleged by the Plaintiff consisted of: 1) an opportunity to participate in a secondary credit sale for a chance to win \$1,000,000.00; and 2) that one randomized token holder would get a monetary mystery box valued at \$250,000.00.<sup>36</sup>

45. The Plaintiff intentionally failed to disclose that the Giveaways were never listed on Boneheads' website, nor were they ever part of the NFT smart contract (which is the immediate delivery of the Bonehead NFT to the purchaser).<sup>37</sup>

#### Unconscionable Behaviour by the Plaintiff

46. The Plaintiff stated in his June 6, 2023 Affidavit that the Boneheads team had changed the Boneheads Discord chat to slow mode, alleging that Boneheads was conducting fraudulent activity.<sup>38</sup> The Plaintiff further stated that as a response to him expressing concerns about the slow mode activity, Boneheads had banned him from the channel.<sup>39</sup>

47. What the Plaintiff failed to disclose was that he had made numerous false and damaging statements about Boneheads through Discord, and as a result, was temporarily banned by Discord moderators.<sup>40</sup> Discord requires all users to abide by their rules. Failure to do so would result in a temporary and/or permanent ban, which is exactly

---

<sup>36</sup> The McRae Affidavit at para 30

<sup>37</sup> The Avramenko Affidavit at para 52

<sup>38</sup> The McRae Affidavit at para 38

<sup>39</sup> Ibid

<sup>40</sup> The Avramenko Affidavit at para 54

what happened to the Plaintiff.<sup>41</sup> The Plaintiff intentionally left this material fact out in an effort to illustrate to the motions judge that the Defendants were engaging in fraudulent activity. This was simply not the case.

48. The Plaintiff selectively excluded relevant and materials facts from his Affidavit in an attempt to construe the facts in his favour to obtain the Mareva Injunction. The Plaintiff was fully aware of the aforementioned missing facts but decided to mislead the motions judge by only including material facts which favoured his position.

49. As a result of the Plaintiff's failure to make full and frank disclosure of material facts, the Mareva Injunction should be set aside. The Plaintiff has failed this part of the test.<sup>42</sup>

*There are No Assets at Risk of Dissipation*

50. In light of the extraordinary and prejudicial nature of an *ex parte* Mareva Injunction, the threat of the dissipation of assets must be creditable. In the present case, the Plaintiff has failed to provide any evidentiary support to prove that the Boneheads team is at risk of dissipating their assets and/or funds.

51. In *Kirshenberg v. Schneider*, the Plaintiff moved for an *ex parte* Mareva Injunction over the Defendant's cryptocurrency funds and cryptocurrency assets.<sup>43</sup> The Court held that although the Plaintiff had satisfied majority of the factors required for a

---

<sup>41</sup> The Avramenko Affidavit at para 53

<sup>42</sup> *Sibley & Associates LP v. Ross* [2011] ONSC 2951

<sup>43</sup> *Kirshenberg v. Schneider* [2023] ONSC 2809 ("*Kirshenberg*")



Mareva Injunction, the motion ultimately failed because the Plaintiff could not establish a risk of dissipation of assets “for the purposes of avoiding judgment.”<sup>44</sup> In his reasons for denying the Mareva Injunction, the Honourable Justice Akbarali stated:

“I accept that the nature of cryptocurrency is that it is easy to instantaneously and anonymously dissipate it... however, if this alone were enough to make out the risk of dissipation of assets, cryptocurrency or other digital assets would routinely become the subject of Mareva injunctions, when a Mareva injunction is meant to be an extraordinary remedy.

The question is not so much whether the cryptocurrency can be easily dissipated, but whether there is a risk that it will be dissipated to avoid judgment.”<sup>45</sup>

52. The Plaintiff alleges that the Defendants have moved Bonehead funds to different centralized exchanges, and as such, has orchestrated a fraudulent scheme.<sup>46</sup>

53. The Plaintiff’s allegations are pure speculation and are without any evidentiary foundation. The Plaintiff provides no evidence to suggest that the Boneheads team is planning to distribute their crypto assets and funds.

54. The test in *Kirshenberg* for granting a Mareva Injunction for cryptocurrency assets is whether the Plaintiff can prove that there is a real risk of dissipation of assets for the purposes of avoiding judgment.<sup>47</sup> The Plaintiff has failed to provide evidence to prove that the Boneheads team is dissipating funds or assets in order to avoid judgment.

55. The Boneheads team has not disappeared, nor have they made any attempt to disappear. In fact, they have been developing their product. Furthermore, the Boneheads website is still active, and many of the Roadmaps are still being developed

---

<sup>44</sup> Ibid at para 40

<sup>45</sup> Ibid at para 42 and 43

<sup>46</sup> The McRae Affidavit at para 59 and 66

<sup>47</sup> *Kirshenberg* at para 42 and 43

and delivered to consumers. If the risk of dissipation of assets to avoid judgment was present, it would be unlikely that Boneheads would still be developing their product. If they were attempting to dissipate their assets to avoid judgment, they would have already done so by now.

56. The Plaintiff failed to mention that what is often the case in “rug pulls” is that immediately after the NFT is minted, the developers/owners of the project disappear. That is not the case here. In fact, some of the deliverables within the Roadmaps have been delivered. There was no timeline stipulated for most deliverables. The primary reason that people purchased these NFTs is for the artwork.

57. The Plaintiff is attempting to use the complex nature of NFTs and cryptocurrency as a disguise to mask the reality of what has happened. Once funds were received by the Boneheads team from purchasers, they were dispersed into separate centralized crypto wallets controlled by Ivan.<sup>48</sup> This is common practice in the cryptocurrency and NFT world.

58. 15% of funds were dispersed to a centralized crypto wallet which went directly to Bonehead developers, while the remaining 85% was dispersed into other centralized crypto wallets which went directly to the Boneheads team.<sup>49</sup>

---

<sup>48</sup> The Avramenko Affidavit at para 64

<sup>49</sup> Ibid at para 66

59. In *Di Menza v. Richardson Greenshields of Canada Ltd.*, wherein the Court set aside a Mareva Injunction on the grounds that it failed the dissipation of assets test, the Court stated that:

“Unless there is a genuine risk of the disappearance of assets either inside or outside the jurisdictions, the injunction will not issue.”<sup>50</sup>

60. In the present case, no genuine risk of the disappearance of assets exists.

61. The Plaintiff has mistaken common NFT practices with the alleged dissipation of assets. If the funds earned by Boneheads were not dispersed into separate centralized crypto wallets, the funds would have been automatically frozen. The Boneheads team was required to disperse the funds into separate crypto wallets in order to access those funds.

62. The Defendants submit that the Plaintiff’s lack of knowledge in cryptocurrency is what has led to the Plaintiff’s dissipation of assets allegations. It would be impossible for the Boneheads team to dissipate their cryptocurrency funds if the Plaintiff claims he is able to track the movement of those funds. The dispersing of funds is a necessary component for Boneheads to pay for operating expenses, content, domains, contractors, and developers.

### *No Irreparable Harm*

---

<sup>50</sup> *Di Menza v. Richardson Greenshields of Canada Ltd.* [1989] Ont. Gen. Div. 476 at para 10; Moving Parties’ Unreported Book of Authorities at Tab 5

63. Perhaps fatally, the Plaintiff has failed to show that he has suffered any damage. He has not attempted to sell his NFT and experienced a loss. In any event, if any loss was incurred, which is denied, such a loss would be related to the market, which is an external factor, beyond the Defendant company's control.

64. In *RBC Dexia Investor Services Trust v. Goran Capital Inc.*, the Plaintiff, RBC, sought a Mareva Injunction over the Defendant's \$1.1 million that was held in a capital account with RBC. In their argument, RBC claimed that they would suffer irreparable harm should the motion not be granted. The motion was dismissed. In its reasons, the Court was not satisfied that RBC would suffer irreparable harm on the basis that RBC was only concerned that they would not be able to collect on a future judgment against the Defendant if the funds in the capital account were not secured via a Mareva Injunction. The Court made it clear that this is not enough to satisfy the irreparable harm requirement.<sup>51</sup>

65. In the present case, the Plaintiff seeks to renew the Mareva Injunction on the grounds that should it not be renewed, he will not be able to collect any future judgment, if any. This is not a sufficient ground for irreparable harm.

66. In *1839392 Ontario Limited v. 1839314 Ontario Inc. et al.*, a motion for a Mareva Injunction was dismissed. In its ruling, the Court found that the Applicant, who was involved in an investment scheme, would not suffer irreparable harm because the Applicant "has not clarified what irreparable harm it would suffer other than the alleged

---

<sup>51</sup> *RBC Dexia Investor Services Trust v. Goran Capital Inc.* [2016] ONSC 1138 at para 11(c)

dissipation of assets... the Applicant might not have received a return on its investment and is therefore in no different position than other investors.”<sup>52</sup>

67. In the present case, the Plaintiff has failed to show irreparable harm and cannot obtain execution before judgment. As noted in the aforementioned cases, the threshold for awarding a Mareva Injunction should remain high, due to its intrusive nature.

68. The Plaintiff intentionally failed to state the irreparable harm element of the test to grant a Mareva Injunction because he knew he would not suffer any harm should the Injunction not have been granted.

69. In any event, the Plaintiff has not suffered any harm because he has commenced a Small Claims Court Action against Profitly, which he has not yet withdrawn.<sup>53</sup>

70. The evidence in support of an allegation of dissipation of assets cannot be a general statement or suspicion provided for by the Plaintiff. The Plaintiff has failed to provide concrete evidence of any dissipation of assets.

71. Furthermore, the assessment of the balance of conveniences is the core of the analysis in granting a Mareva Injunction. It is an analysis that is compendious. The relative strength of the Plaintiff's case, the relative likelihood of irreparable harm, and the likely amount and nature of such harm will typically all be relevant considerations of the

---

<sup>52</sup> 1839392 *Ontario Limited v. 1839314 Ontario Inc. et al.* [2020] ONSC 2244 at para 66

<sup>53</sup> The McRae Affidavit at Exhibit AY

balance of convenience.<sup>54</sup> Based on the facts and law stated herein, the balance of convenience favours the Defendants.

72. With respect to the Defendant, Alexander Stinson, she has never been involved in the Bonehead business. She is not a director of Boneheads and has no knowledge of the matters in this action. No evidence was provided by the Plaintiff that suggests she was involved in the business.

73. As such, the Mareva Injunction should be set aside.

#### **PART IV- ORDER REQUESTED**

74. The Moving Party respectfully requests:

- (a) An Order setting aside the Mareva Injunction;
- (b) An Order requiring the Plaintiff to pay an undertaking to damages by posting security in the amount of \$4,118,385.43 CDN; and
- (c) Such further and other relief as this Honourable Court may permit.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20 day of October, 2023.



---

N. Joan Kasozi

---

<sup>54</sup> *Loraas v. Loraas* [2018] SKQB 130 at para 37; Moving Parties' Unreported Book of Authorities at Tab 6

**CAMBRIDGE LLP**

333 Adelaide Street West  
4th Floor  
Toronto, Ontario  
M5V 1R5

**N. Joan Kasozi** (LSO# 70332Q)

[jkasozi@cambridgellp.com](mailto:jkasozi@cambridgellp.com)

**Nicholas Patterson** (LSO# 85639U)

Tel: 416.477.7007 ext. 345

[npatterson@cambridgellp.com](mailto:npatterson@cambridgellp.com)

Tel: 416.477.7007

Fax: 289.812.7385

Lawyers for the Defendants/Moving  
Parties

Profitly Incorporated, DMCB Holdings  
Inc., Ivan Avramenko, Alexandra  
Stinson, and John Doe

## SCHEDULE "A"

### LIST OF AUTHORITIES

1. [Securitas Technology Canada v. North West Construction](#) [2023] ONSC 4430
2. [Farah v. Sauvageau Holdings Inc.](#) [2011] ONSC 1819
3. [Sibley & Associates LP v. Ross](#) [2011] ONSC 2951
4. [Chitel v. Rothbart](#) [1982] OSC [Court of Appeal] 508 (at Moving Parties' Unreported Book of Authorities; Tab 1)
5. [United States v. Friedland](#) [1996] 5566 (at Moving Parties' Unreported Book of Authorities; Tab 2)
6. [Petersen v. Petersen](#) [2010] ONSC 2525 (at Moving Parties' Unreported Book of Authorities; Tab 3)
7. [Bank of Nova Scotia v. Rawifilm Inc.](#) [1994] Ocj 4186 (at Moving Parties' Unreported Book of Authorities; Tab 4)
8. [Stans Energy Corp. v. Kyrgyz Republic](#) [2015] ONSC 3236
9. [Kirshenberg v. Schneider](#) [2023] ONSC 2809



10. [\*Di Menza v. Richardson Greenshields of Canada Ltd.\*](#) [1989] Ont. Gen. Div. 476 (at Moving Parties' Unreported Book of Authorities; Tab 5)
11. [\*RBC Dexia Investor Services Trust v. Goran Capital Inc.\*](#) [2016] ONSC 1138
12. [\*1839392 Ontario Limited v. 1839314 Ontario Inc. et al.\*](#) [2020] ONSC 2244
13. [\*Loraas v. Loraas\*](#) [2018] SKQB 130 (at Moving Parties' Unreported Book of Authorities; Tab 6)

## **SCHEDULE "B"**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

1. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 39.01(6)

#### **Full and Fair Disclosure on Motion or Application Without Notice**

**39.01 (6)** Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application. R.R.O. 1990, Reg. 194, r. 39.01 (6).

TAYLAN MCRAE-YU  
Plaintiff

-and- PROFITLY INCORPORATED et al.  
Defendants

Court File No. CV-23-00092340-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
OTTAWA

**MOVING PARTIES' FACTUM**

**CAMBRIDGE LLP**

333 Adelaide Street West  
4th Floor  
Toronto, Ontario  
M5V 1R5

**N. Joan Kasozi** (LSO# 70332Q)

[jkasozi@cambridgellp.com](mailto:jkasozi@cambridgellp.com)

**Nicholas Patterson** (LSO# 85639U)

[npatterson@cambridgellp.com](mailto:npatterson@cambridgellp.com)

Tel: 416.477.7007 ext. 345

Lawyers for the Defendants/Moving Parties  
Profitly Incorporated, DMCB Holdings Inc., Ivan  
Avramenko, Alexandra Stinson, and John Doe

Email for party served:

Sohaib Mohammad: [sohaib@delawyer.io](mailto:sohaib@delawyer.io)