Federal Court  Cour fédérale

Date: 20230203

Docket: T-1176-20

Citation: 2023 FC 164

Ottawa, Ontario, February 3, 2023

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

WARNER BROS. ENTERTAINMENT INC.
AMAZON CONTENT SERVICES LLC
BELL MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
NETFLIX STUDIOS, LLC
NETFLIX WORLDWIDE ENTERTAINMENT, LLC
PARAMOUNT PICTURES CORPORATION
SONY PICTURES TELEVISION INC.
UNIVERSAL CITY STUDIOS PRODUCTIONS, LLLP

Plaintiffs

and

TYLER WHITE dba BEAST IPTV
COLIN WRIGHT dba BEAST IPTV

Defendants

JUDGMENT AND REASONS

I. Nature of this motion

[1] The Defendant, Tyler White, seeks the Court's authorization to sell certain assets under the terms of an injunction order previously made against him. Mr. White claims that the selling of these assets is necessary to permit payment of his ongoing living expenses and legal fees.

[2] The Plaintiffs challenge this motion. They claim that Mr. White seeks to reopen, vary and effectively dissolve the injunction order to put his assets beyond their reach. The Plaintiffs argue that granting this motion will allow Mr. White to thwart any judgment eventually obtained on the merits of the underlying action.

II. Facts

[3] The Plaintiffs are entertainment companies, which, either directly or indirectly, create, produce, distribute, and control the licensing rights of certain television and cinematographic works available in Canada.

[4] On October 2, 2020, the Plaintiffs commenced an action against Mr. White and the co-defendant at the time, Colin Wright. The Plaintiffs allege that the Defendants unlawfully distributed Plaintiffs' works through the operation of their subscription-based Internet streaming service corporation "Beast IPTV Service".

[5] On that same day, the Plaintiffs filed an *ex parte* motion for interim injunctions to restrain and enjoin Mr. White and Mr. Wright from, generally, continuing their business activities,

disclose information related to their financial assets, and prohibit the dissipation or removal of their assets outside of Canada.

[6] On November 17, 2020, this Court granted the Plaintiffs' motion and issued interim orders (Interim Order) pursuant to Rule 374 of the *Federal Courts Rules*, SOR/98-10 [FCR]. The Interim Order more specifically enjoined and restrained the Defendants from developing, operating, maintaining, promoting, providing support, selling subscriptions for, or authorizing anyone to sell subscriptions for the Beast IPTV Service, or any other similar service. The Defendants were also ordered to transfer custody of aspects of their business to an independent supervising solicitor, and to disclose information relating to their financial assets and those of the Beast IPTV Service.

[7] Paragraph 2M) of the Interim Order prohibited Mr. White from dissipating or removing assets out of this Court's jurisdiction. First, it restricted Mr. White from directly or indirectly selling, assigning, transferring or otherwise disposing of his assets in any way except for the payment of expenses in the normal course of his livelihood during the course of the proceedings. Second, he was not permitted to remove or assist in the removal of his Canadian assets without leave from the Court. Third, Mr. White was barred from converting his assets to foreign currency or to anonymous, encrypted and untraceable formats. The full text of paragraph 2M) is as follows:

> M) Enjoining and restraining the Defendant Tyler White, by himself or by any company, partnership, trust, entity, with which he is associated or affiliated, or person under his authority or control, from directly or indirectly:
>
> > i. selling, assigning, alienating, transferring, or otherwise disposing of his assets, including but not limited to the

> residence located at [**REDACTED**], in any way except for the payment of expenses in the normal course of his livelihood, during the course of the present proceedings;
>
> ii. removing, or assisting in the removal of his assets from Canada, or doing any act, the effect of which is to remove or assist in the removal of his assets from Canada, without leave of the Court;
>
> iii. converting his assets to foreign currency or converting them to anonymous, encrypted and/or untraceable formats (e.g.: cryptocurrency);

[8] The Plaintiffs executed the Interim Order on November 24, 2020. The Interim Order was valid for a period of not more than fourteen (14) days, within such time the Plaintiffs were required to bring a motion to review the execution of the Order and consider any application to convert the interim relief into an interlocutory order. Following a request by both the Defendants' counsel to adjourn the review motion in order to prepare more fully, it was eventually heard on December 18, 2020.

[9] On January 14, 2021, following the review motion, the Court issued a judgment granting the Plaintiffs' request for interlocutory injunctions (Interlocutory Order) against both Defendants and issuing show cause orders (see: *Warner Bros. Entertainment Inc. v White (Beast IPTV)*, 2021 FC 53 (January 14 Order)). The Court extended the Interim Order pursuant to Rule 373 of the FCR. On agreement between the parties, the Court amended one clause in the Interlocutory Order against Mr. White to account for the provision of reasonable legal fees and disbursements incurred in defending and responding to all aspects of the proceedings:

> VII. Amendment to the interlocutory order to allow for the payment of reasonable legal fees and disbursements
>
> [134] The parties were in agreement at the hearing of this matter, on December 18, 2020, that clauses 2M)i. and 2N)i. of the injunction, if it were to be continued, ought to account for the provision, to date and in the future, of any retainer and payment of reasonable legal fees and disbursements incurred in defending and responding to all aspects of the claims advanced by the Plaintiffs. Clauses 2M)i. and 2N)i. of the interlocutory injunction are accordingly amended. These amendments are reflected in the formal Order appended herewith.

[10] Accordingly, the formal Interlocutory Order modified paragraph 2M) as follows:

> 4. The following paragraphs of the Interim Orders, with the following modifications, are converted and extended into Interlocutory Orders, and remain valid until a final determination of this proceeding on the merits:
>
> …
>
> b. Paragraph 2M), with modification:
>
> M) Enjoining and restraining the Defendant Tyler White, by himself or by any company, partnership, trust, entity, with which he is associated or affiliated, or person under his authority or control, from directly or indirectly:
>
> i. selling, assigning, alienating, transferring, or otherwise disposing of his assets, including but not limited to the residence located at [**REDACTED**], in any way except for the payment of expenses in the normal course of his livelihood, during the course of the present proceedings and nothing in this Order shall prevent the provision, to date or in the future, of any retainer and payment of reasonable legal fees and disbursements incurred in defending and responding to all aspects of the claims advanced by the Plaintiffs during the course of the present proceedings until the final disposition thereof, including any appeals;
>
> [My emphasis.]

[11] The Court also issued show cause orders against the Defendants under Rule 467 of the FCR, requiring them to appear at a contempt hearing for allegedly breaching the conditions of the Interim Order.

[12] On February 24, 2021, the Defendants filed a notice of appeal of the January 14 Order. Mr. Wright discontinued his appeal with the consent of the Plaintiffs. On February 23, 2022, Mr. White's appeal was dismissed with costs (*White (Beast IPTV) v Warner Bros Entertainment Inc.*, 2022 FCA 34).

[13] As noted above, the execution of the Interim Order also gave rise to contempt proceedings. Mr. White pled guilty to the charges of contempt made against him on September 20, 2021 (*Warner Bros. Entertainment Inc. v White (Beast IPTV)*, 2021 FC 989).

III. The Defendant's Case

[14] Mr. White seeks "leave" to sell or otherwise dispose of his 2022 Dodge Ram truck and real estate properties he either personally owns or controls directly through a corporate entity (collectively the "White Assets").

[15] It was not completely clear what Mr. White is actually seeking from the Court. During the hearing, Mr. White's counsel suggested that his client did not require "leave" to sell the White Assets under the terms of the Interlocutory Order. Rather, Mr. White brings this motion "out of an abundance of caution" to receive guidance on whether his client could dispose of these assets in a manner that is consistent with the Order. His lawyer insisted that the requested relief

did not seek to vary or amend the terms set out in the Interlocutory Order, but rather to abide by it in order to avoid contempt proceedings. Ultimately, counsel had to concede that his client would have to abide by the conclusion the Court would reach, as he is seeking "explicit permission from this Court to proceed to sell some of his assets…" (memorandum of fact and law, para 7).

A. *Financial Need*

[16] In two affidavits put forth in support of his motion, Mr. White claims that he has incurred substantial debt since November 2020. He states that his financial need stems from being largely unemployed throughout the course of the litigation and living with an unemployed partner while caring for his eleven-year-old son (White Supplementary Affidavit, para 13). No details are offered as to why Mr. White has remained unemployed for that long period of time. Mr. White states that while he receives $8,000 per month in rental income, this amount is insufficient to pay for his ordinary living monthly expenses of approximately $13,000 (White Supplementary Affidavit, para 18). Again, it is unclear why Mr. White needs upward of $150,000 per year, presumably of after-tax resources for what would constitute a normal course of livelihood, especially if unemployed.

[17] Moreover, Mr. White claims that he lacks the funds to pay for ongoing legal expenses related to the underlying action. Although he does not provide particulars on the amount paid to his counsel other than a retainer of $400,000 for legal fees (memorandum of fact and law, para 21), he claims that recent invoices have not been paid (White Affidavit, para 17).

[18] Finally, Mr. White claims that he cannot afford over $80,000 in legal costs from judgments rendered against him by the Federal Court ($65,836.85), the Federal Court of Appel ($5,000) and the Nova Scotia Small Claims Court ($9,415.86) (White Affidavit, paras 14-18).

B. *Requested Relief*

[19] In his written materials, Mr. White seeks relief in the form of orders to be issued by the Court under Rule 53(1) of the FCR. In the first order, Mr. White requests the Court to grant him "leave" to sell or otherwise dispose of the White Assets pursuant to paragraph 2M) of the Interim Order as amended by the Interlocutory Order (Applicant Factum, para 57). In the second requested order, Mr. White asks the Court to assign the net proceeds from the sale of the White Assets to a third-party trustee appointed by Mr. White's lawyers or a designated person. There are no particular instructions to be given to the trustee to be chosen by Mr. White. At its highest, Mr. White simply states that he "will provide any directions that are necessary to have the net proceeds from any sale or other disposition of his assets sent directly to a third party trustee or other person designated by this Court who will be responsible to disburse the net proceeds as necessary for the purposes listed in sub-paragraph 4(b) of the Interlocutory Order" (memorandum of fact and law, para 7). As can be seen, Mr. White proposes to dispose of his assets, for the proceeds of that sale to go to an unidentified trustee who, presumably, would decide on the amount for expenses in the "normal course" of the Defendant's livelihood and what constitutes reasonable legal fees and disbursements. There are no conditions that are provided for how the assets would be disposed of and for how much, or who the purchaser may be. He merely asks the Court to charge this trustee with disbursing the proceeds of the trust in the order set out of paragraph 26 of his affidavit, where he states:

> If necessary, I am prepared to provide directions regarding funds received from the sale of any of my assets to have all net proceeds of any real estate transaction and Dodge Ram disposition payable directly to a third party Trustee or such person as the Court may designate. I understand that the third party Trustee or such person will then use the net proceeds as follows and in this order, and to account to this Court on an annual basis:
>
> a. $8,000 per month payable to me for monthly expenses for me and my family in the ordinary course of my livelihood;
>
> b. Payment of $5,000 in costs as ordered by the Federal Court of Appeal payable forthwith;
>
> c. Payment of the debts listed in Exhibit "E" of my affidavit, which includes credit cards debts, payment for windows and doors, and a Nova Scotia Small Claims Court judgment of $9,415.86;
>
> d. Payment of my outstanding and future legal bills for fees and disbursements as they become due on a monthly basis relating to this lawsuit;
>
> e. Payment in due course of costs ordered by Justice Roy on May 18, 2021 in which costs were assessed against me in the amount of $48,500 in legal fees and $17,336.85 in disbursements payable "in any event of the cause";
>
> f. Payment of any other costs or fines in this litigation if and when such payments are due, subject to any appeal(s);
>
> g. Payment of any amount that may be agreed upon for settlement of this litigation; and,
>
> h. Payment of any other amounts ordered by this Court pursuant to the final disposition of this matter, subject to any appeal.

[20] Mr. White asks the Court to order said trustee to provide an account of disbursements to the Court and the Plaintiffs on an annual basis under Rule 151 of the FCR. During the hearing, Mr. White's counsel conceded that the record did not contain information detailing who the trustee might be and what directions that they should act upon.

IV. The Plaintiffs' Case

[21] The Plaintiffs, Warner Bros. Entertainment Inc. et al, were able to paint a picture that was significantly different from the general allegations made by the Defendant as part of his motion. In effect, they were able to scrutinize some of the use of financial resources by Mr. White from the time the Interim Order was served on him on November 24, 2020.

[22] The Interim Order enjoined and refrained Mr. White from disposing of his assets "in any way except for the payment of expenses in the normal course of his livelihood" (it is only two months later that a further exception for "reasonable legal fees and expenses" was granted).

[23] The Plaintiffs refer to findings made in the Judgment and Reasons of this Court of January 14, 2021 (2021 FC 53) about the concealment of assets conducted by Mr. White immediately after being served with the Interim Order. I reproduce paragraph 38 from that Order:

> [38] The concealment of assets is also discussed during the November 25 telephone conversation with a third party:
>
> **[14min43sec]**
>
> **Mr. White:** ...[muffled] to the bank took everything I could out and then you know obviously they'll see that and they'll say 'where's that'... and I'll be like 'I don't know. I stashed it, sorry. I f****d up'. Whatever it's civil court not criminal... right... but I'll still have what I took out, you know what I mean.
>
> **[16mins15sec]**
>
> **Mr. White:** I think if I ...if I just friggen you know... just take out what I've got and then they sue me for whatever but I claim bankrupt and say I don't have it ... at least then I know that with the amount I can take out... I know that... you know... I'm good.

> ... what are they gonna do... I mean the amount to keep will keep me going for a while, right?
>
> **[21mins43s]**
>
> **3rd Party:** Ahhh... man... this is bad news, man.
>
> **White:** Ah whatever man. Like I said... worst case scenario I'll friggin I got I guess I got enough to keep me keep me going.... You know... you know what I mean
>
> **[22min46sec]**
>
> **3rd Party:** Did they tell you not to take not to erase evidence and things like that...not to start wiping things down? Did they warn you about that?
>
> **Mr. White:** Yeah.. They said don't... yeah...in the order it says I can't sell... I can't sell my house or nothing... I can't sell any assets... I can't move like... wire money or transfer money and I can't like change it into cryptocurrency or anything like that.
>
> **3rd Party:** This is a court order or what they said?
>
> **Mr. White:** Yeah it's a court order... for 14 days... the Court order only lasts 14 days.
>
> But like I said... yeah sure it's a court order... but like even if they look and say you didn't listen to the court... I don't know I could even play it off... my dad's here... 'tell them you're a drug addict'... I could play it off say 'sorry man I friggen went on a bender'... what [muffled] I need help... you know what I mean.

[24] Plaintiffs' counsel conducted the painstaking work of attempting to identify financial assets which, according to the evidence gathered and presented on the motion, were concealed, transferred and/or dissipated in spite of the Order in place. Mr. White, say the Plaintiffs, "appears to have proceeded to carry out his stated objective of withdrawing and concealing as much money as possible" (memorandum of fact and law, para 8). The Plaintiffs argue that allowing the motion would enable Mr. White to dissipate the remaining known assets. The Plaintiffs do not profess having located all financial assets.

[25] It is now known that, at the time the Interim Order was executed (November 24, 2020), Mr. White detained in seven bank accounts the sum of $744,000. Only three of those bank accounts were disclosed and, with respect to two of those accounts, the records between April/May 2021 and April/May 2022 are missing. The Plaintiffs claim that the credit card statements provided by Mr. White were limited to a short period (1 to 3 months) immediately preceding the filing of his motion. Very few transactions appear on those statements.

[26] In spite of the limited disclosure relative to his financial assets made by Mr. White, the Plaintiffs were able to piece together the following:

- shortly after the execution of the Interim Order, Mr. White withdrew $10,000 (100 X $100 denominations);
- ATM withdrawals of $6,000, $3,950 and $403;
- cash/coin withdrawals of $20,000;
- withdrawal of $5,000 (27 X $100 denominations and 46 X $50 denominations);
- withdrawal of $5,000.

That totals upwards of $50,000 between November 24, 2020 and January 2021.

[27] There were also “e-transfers” for over $45,000 to third parties, and PayPal transactions amounting to $22,000 (between November 24, 2020 and March 31, 2021). Were discovered a number of expenses that can hardly be in the “normal course of livelihood”: $10,000 in clothing, apparel and electronic devices. There is even a gift of an elective plastic surgery procedure worth more than $7,000. The total amount reaches $84,000.

[28] Out of financial assets of at least $744,000, some $134,000 have been withdrawn by the Defendant. Some of the transfers made by Mr. White were to his domestic partner (close to $20,000) and to the mother of his child who does not have custody ($14,000). There was no disclosure of the purpose of those transfers, nor, obviously, of the existence of the transfers.

[29] The Plaintiffs argue that the effect of the Defendant's motion is to seek to be relieved from the *Mareva* injunction imposed in the Interim Order and continued with the Interlocutory Order. Relying on *Business Depot Ltd. v Canadian Office Depot Inc.*, 2000 CanLII 16100, a decision of the Federal Court of Appeal, they suggest that in order to be successful the test to be met by the Defendant has to be a heavy one, because that constitutes an extraordinary remedy (at paras 4 and 6).

[30] The Plaintiffs' main contention however is that the Defendant had, on his motion, to establish that he does not have other assets available before disposing of the tangible assets as proposed in his motion. The case of *Canadian Imperial Bank of Commerce v Credit Valley Institute of Business and Technology*, 2003 CanLII 12916 [*CIBC*], from the Ontario Superior Court, constitutes the guiding light which this Court ought to follow. The four-part test was not satisfied in our case in view of the requirement that it be "established on the evidence that [the Defendant] has no other assets available to pay expenses other than those frozen by the injunction" (at para 26). The evidence shows that annual revenues of close to $100,000 per year of rental income, which would disappear if the Defendant is allowed to dispose of the tangible assets, have been generated. That did not prevent the Defendant from withdrawing, transferring and concealing significant amounts of cash. Indeed some of those transfers were to the

Defendant's domestic partner and the mother of the Defendant's child (Mr. White has the custody of the child).

[31] There is little evidence on this record that can satisfy the burden of the Defendant to show that he does not have other assets to pay for reasonable living expenses, and reasonable legal fees and disbursements. There has been a lack of transparency on the part of the Defendant as to his assets and where the financial resources have gone. There are no "particulars of expenditures, employment, earnings, economic expectations, amongst other things" (*Canadian National Railway Company v Holmes et al.*, 2015 ONSC 1475 at para 14). This is fatal; indeed the lack of explanation as to the use of significant amounts of money adds to the failure.

[32] Moreover, the Defendant failed to explain how spending $13,000 per month can be legitimate or reasonable. The same can be said of the legal expenses incurred by the Defendant: there is no evidence of the reasonableness of the legal costs. They assert at paragraph 43 of their memorandum of fact and law the following:

> 43. It was only on cross-examination that Mr. White acknowledged having already paid a retainer of $400,000 to his defence counsel in this matter. But when asked about how much of a retainer was needed to proceed with counsel, Mr. White stated that "We haven't talked about that yet". Thus, it is unclear on what basis Mr. White has calculated how much cashflow may actually be needed.

[33] Finally, the Plaintiffs note the complete lack of any explanation for the Defendant's assertion that he has been unable to find steady employment: why he has been unable to maintain a job and what efforts have gone in finding employment were unknown for lack of any evidence.

V. Analysis

[34] Mr. Tyler White comes before this Court asking that the Federal Court confirm that he can proceed pursuant to a clause found in the interlocutory injunction of January 14, 2021 applicable to him.

[35] For ease of reference, I reproduce again the clause in question:

> M) Enjoining and restraining the Defendant Tyler White, by himself or by any company, partnership, trust, entity, with which he is associated or affiliated, or person under his authority or control, from directly or indirectly:
>
> > i. selling, assigning, alienating, transferring, or otherwise disposing of his assets, including but not limited to the residence located at [**REDACTED**], in any way except for the payment of expenses in the normal course of his livelihood, during the course of the present proceedings and nothing in this Order shall prevent the provision, to date or in the future, of any retainer and payment of reasonable legal fees and disbursements incurred in defending and responding to all aspects of the claims advanced by the Plaintiffs during the course of the present proceedings until the final disposition thereof, including any appeals;
> >
> > [My emphasis.]

In the interim injunction of November 17, 2020, the only relief for Mr. White from the prohibition of disposing of assets was with respect to the payments of expenses in the normal course of his livelihood. The second element relative to the payment of reasonable legal fees was added in the Interlocutory Order, both parties consenting to the addition.

[36] As was quite obvious, the difficulty with clause M)i. is not with payments made towards living expenses and legal fees, but rather what constitutes the “normal course of livelihood” and “reasonable legal fees”.

[37] Both in his written case and at the hearing before the Court, Mr. White took the position that he did not have to make his motion to sell or otherwise dispose of assets in order to permit the payment of living and legal expenses. As he put it, it is out of an abundance of caution that he seeks the explicit permission from the Court to proceed to sell some of his assets. Evidently, the need for caution may well stem from the qualifiers found in the clause, as the living expenses are limited by the requirement that they be “in the normal course of his livelihood”, and the legal expenses must remain “reasonable”. Presumably, it was suggested, if the expenses paid do not fit within the parameters of “normal course” and “reasonable”, Mr. White might face further proceedings before this Court.

[38] As it became clearer during the hearing of the motion, Mr. White frames his case as leave to be granted in order to sell four assets:

- The residences at 6 and 8 Frances Ct.
- The residence at 13 Hartlen Ave.
- The vacant land at 27 Moody Park Drive
- The 2022 Dodge Ram truck

His counsel concluded at the hearing that Mr. White would have to abide by the decision the Court will make.

[39] Mr. White would have the injunctive order amended by requiring that the proceed of the sale of the assets, which he will conduct without even suggesting conditions as to the transfer, be disbursed on account of living expenses and legal fees by a trustee. The Court was not referred to anything tangible as to what the parameters under which a "trustee" would be operating. No evidence to that effect was offered. In fact, the only indication given by counsel was that informal inquiries were conducted with a firm (that was not retained); we are told by counsel that the trustee would know what to do.

[40] Mr. White disclosed very little of his financial situation for the purpose of this motion. The expectation on a motion of this nature is that the person subjected to such an injunction is transparent in the disclosure of the assets covered by the *Mareva* injunction. That has not yet happened.

[41] It is only through the diligence shown by the Plaintiffs that a picture of the Defendant's financial situation, although blurred, emerged. In effect, Mr. White had at least $744,000 in financial assets the day the injunctive order was served on him. It has been possible to identify that some of those resources have been ostensibly diverted by the Defendant (withdrawals of upward of $50,000, e-transfers of over $45,000, PayPal transactions of over $22,000). But their use has remained opaque. And, as importantly, there remains a large amount of money unaccounted for. Assuming that $400,000 have gone to counsel's retainers, that leaves many thousands of dollars available for living expenses before access to tangible assets may be considered. Indeed, there are no assurances that other financial resources are not available.

[42] The case for the Plaintiffs is that, in spite of their efforts, it has not been possible to ascertain that Mr. White is without financial resources at this stage. That was the Defendant's burden to establish, and he failed. As I will explain, the Court agrees. Before reaching that part of the analysis, the jurisdiction of the Court is an issue that must be addressed.

A. *Court's jurisdiction to entertain motion*

[43] The notice of motion seeks an order from this Court pursuant to Rule 53(1) of the FCR, which reads:

Orders on terms	**Conditions des ordonnances**
53 (1) In making an order under these Rules, the Court may impose such conditions and give such directions as it considers just.	**53 (1)** La Cour peut assortir toute ordonnance qu'elle rend en vertu des présentes règles des conditions et des directives qu'elle juge équitables.

[44] It is unclear why Mr. White, through his counsel, insisted on numerous occasions on the view that he appeared out of an abundance of caution before the Court. That suggests that before any consideration can be given to the motion, the preliminary issue of this Court's jurisdiction to entertain the motion must be addressed. If jurisdiction exists, the merits of the motion can then be examined.

[45] Recently, the Federal Court of Appeal, in *Alberta (Attorney General) v British Columbia (Attorney General)*, 2021 FCA 84, [2021] 2 FCR 426, noted once more that jurisdiction does not flow from the parties' consent or, for that matter, their failure to object (at para 125). In support

of the proposition, the Court refers to paragraph 109 of *Saskatchewan (Attorney General) v Pasqua First Nation*, 2016 FCA 133, [2017] 3 FCR 3 at para 109:

> [109] Saskatchewan seeks to undo its attornment to the jurisdiction of the Federal Court by arguing that jurisdiction cannot be created by consent. It cites a number of cases in support of that proposition: *Hupacasath First Nation v. Canada (Minister of Foreign Affairs)*, 2015 FCA 4 at para. 38, [2015] F.C.J. No. 4; *Merck Frosst Canada Inc. v. Canada*, [1997] 2 F.C. 561, [1997] F.C.J. No. 149 at para. 10; *Armeco Construction Ltd. v. Canada*, 94 F.T.R. 314, [1995] F.C.J. No. 473 (T.D.)(Q.L.), at paragraph 25, affd103 F.T.R. 240, [1995] F.C.J. No. 1561 (C.A.)(QL); *Canadian National Railway Co. v. Canada (Canadian Transport Commission)*, [1988] 2 F.C. 437 at 449, 1987 CarswellNat 226. To the extent that these cases stand for the proposition that (a) an agreement among counsel as to a point of law does not bind the Court, or (b) subject matter jurisdiction cannot be created by consent, I have no quarrel with them. However, none of these cases stand for the proposition that jurisdiction over the person cannot arise by agreement.

A clear articulation of the rule is found in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 FCR 344, where one can read at paragraph 39:

> [39] In this Court, the Ministers did not object to this Court's jurisdiction to entertain these three appeals. However, this Court must always ensure that it has the subject-matter jurisdiction to determine matters placed before it: *Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 300 at para. 16; *Canadian National Railway Company v. BNSF Railway Company*, 2016 FCA 284 at paras. 22-23. This is the case even if the parties do not raise any jurisdictional concerns: *Re McKittrick Properties Ltd.*, [1926] 4 D.L.R. 44, 59 O.L.R. 199 (C.A.); *Manie v. Ford (Town)* (1918), 14 O.W.N. 83 (H.C.), aff'd (1918), 15 O.W.N. 27 (C.A.). If this Court does not have the subject-matter jurisdiction over an appeal, it cannot determine it.

[46] In my view, this Court has jurisdiction to consider its own order to determine further the issues raised by the motion.

[47] This Court has the jurisdiction it has been conferred by statute. No one can dispute that it has the jurisdiction to issue the injunctive orders sought in this case. But the Court is not in the business of providing legal, tactical or practical advice to a party (*Abi-Mansour v Canada (Aboriginal Affairs)*, 2014 FCA 272 at para 3; *Olumide v Canada*, 2016 FCA 287 at paras 14-17 citing *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 37-47). Either it can make an order concerning assets frozen through an order it has issued, or it cannot. However, the Federal Court has the plenary jurisdiction to manage its own process and proceedings.

[48] The Defendants on this motion did not dispute this Court's jurisdiction to dispose of the matter submitted to it by Mr. White, and the moving party anchors his motion in Rule 53 which specifically addresses the Court's power to impose conditions and give directions. In *Dugré v Canada (Attorney General)*, 2021 FCA 8, the Federal Court of Appeal recognized again the existence of a plenary jurisdiction in courts that derive their power from statute. The powers necessary for the effective functioning of such courts continue to exist. Referring to *Lee v Canada (Correctional Service)*, 2017 FCA 228, the Federal Court of Appeal states at paragraph 20 that, "(a)s the Court explains in *Lee*, the Federal Courts, as part of the judicial branch of the government, must have the powers necessary to manage their own proceedings (*Lee*, at para. 8)". Indeed, one can read this at paragraph 7 of *Lee*:

> [7] The Supreme Court has recognized that the Federal Courts have these plenary powers. It has described them as being analogous to the inherent powers of provincial superior courts to control their own processes and proceedings. See *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, 224 N.R. 241 at paras. 35-36, the most comprehensive Supreme Court case to date on the nature of the powers of the Federal Courts, a case that remains foundational and authoritative.

[49] Some time later in 2021, the Federal Court of Appeal continued to articulate the plenary power needed to operate as a court of law. In *Coote v Canada (Human Rights Commission)*, 2021 FCA 150, we read:

> [16] In addition to the authority conferred by rule 74, the Court has jurisdiction to manage and regulate particular proceedings before it and, where appropriate, summarily dismiss an appeal by using its broad plenary powers. These powers have frequently been used, for example, to reject proceedings that are, among other things, frivolous or an abuse of the process of the Court (*Fabrikant v. Canada*, 2018 FCA 171, at para. 3). Recently, in *Dugré v. Canada (Attorney General)*, 2021 FCA 8, the Court had this to say on the origin and underlying principles of its plenary powers:
>
> > [19] This Court has jurisdiction to summarily dismiss an appeal. Although the *Federal Courts Rules*, SOR/98-106 (the Rules) do not contain any specific provision allowing for the summary dismissal of an appeal, the Court has exercised this jurisdiction for decades (*David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 (C.A.), at page 600).
> >
> > [20] This power stems from the Court's plenary jurisdiction (*Canada (National Revenue) v. RBC Life Insurance Company*, 2013 FCA 50, 443 N.R. 378, at para. 36; *Lee v. Canada (Correctional Service)*, 2017 FCA 228 [*Lee*], at para. 6). This Court has not only the powers conferred by statute but also the powers necessary for its effective functioning (*Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, 224 N.R. 241; *Lee*, at paras. 2, 7-15; *Fabrikant v. Canada*, 2018 FCA 171, at para. 3 and the cases cited therein). As the Court explains in *Lee*, the Federal Courts, as part of the judicial branch of the government, must have the powers necessary to manage their own proceedings (*Lee*, at para. 8).
> >
> > [21] This power also manifests itself in the Rules through the combined effect of Rule 74 (removal of proceedings brought without jurisdiction), Rule 4 (the gap rule) and Rule 55 (power to vary a rule, in this case Rule 74, in "special circumstances").

That appears to be congruent with the Supreme Court of Canada's judgment in *Canadian Broadcasting Corp. v Manitoba*, 2021 SCC 33 where one can read:

> [62] It is best to note at the outset that appellate jurisdiction, such as that being exercised by the Court of Appeal in the proceeding below, must be grounded in legislation (*R. v. Smith*, 2004 SCC 14, [2004] 1 S.C.R. 385, at para. 21). In addition to any explicit grant, statutory and appellate courts should be understood to have the implicit power to control their own process and exercise other powers that are practically necessary to accomplish the role the law assigns them (*R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331, at para. 19; *Lochner v. Ontario Civilian Police Commission*, 2020 ONCA 720, at para. 27 (CanLII)). I agree with the Attorney General of British Columbia that it may be unhelpful to describe this implicit authority as "inherent jurisdiction" given that appellate powers are, ultimately, rooted in statute (transcript, at pp. 100-1).
>
> [My emphasis.]

[50] In the case at bar, Mr. Tyler White, who is the subject of an injunction preventing him specifically from disposing of his assets, is nevertheless allowed, as an exception to the general prohibition, to pay for expenses in the normal course of his livelihood and reasonable legal fees and disbursements. He seeks from this Court the clarification as to what is allowed in view of the qualifiers found in the Interlocutory Order. His counsel had, during the hearing of the motion, to concede that Mr. White would have to abide by the Court's ruling. He does not seek to ask the Court to reconsider its decision to issue the injunction, or even to add exceptions to the general prohibition to dispose of his assets. In my view, this constitutes an example of the exercise by the Court of the plenary power to accomplish the role the law assigned it: consider whether the order ought to allow for the sale of specific assets for the purpose of making available resources to pay for expenses in the normal course of livelihood and for the payment of reasonable legal fees and disbursements, the disbursements for reasonable expenses being supervised by a "trustee" who

would have the sole discretion to determine what constitutes “the normal course of livelihood” and “reasonable legal fees and disbursements”. What is more, the sale of the assets would be left to the Defendant without any supervision: the “trustee” would receive what the Defendant would transfer.

B. *Should the Court grant leave*

[51] As for the merits of the motion before the Court, I am not disposed, at this stage, to grant it. In my view, Warner Bros. Entertainment Inc. et al have put forward a cogent case to deny the relief sought by Mr. White.

[52] There are many reasons for denying to endorse the Defendant’s proposal. They can be summarized as being that the record put before the Court is wholly inadequate.

[53] As pointed out by the Court at the hearing of this motion, and as fairly agreed to by counsel for the Plaintiffs, the issue is not whether the Defendant is entitled to living expenses and to pay for legal fees needed to defend against the legal actions he faces. If a proper record, with adequate disclosures, is submitted, the remedy found in clause 2M) should readily be available. It is rather that this record, at this stage, does not satisfy minimum requirements. In a word, it is not possible to ascertain if the disposition of assets is needed in view of at least some $744,000 in liquid financial assets that were available in November 2020, right after the Interim Order was executed. Those resources were not disclosed by the Defendant and it has remained nebulous what use, if any, has been made of the resources. That constitutes a pre-requisite for this Court considering acquiescing.

[54] In my view, the Plaintiffs are right to submit that the test devised by Molloy J. of the Ontario Superior Court in *CIBC*, above, constitutes proper guidance in this case. As Justice Molloy noted some twenty years ago, "(t)here is surprisingly little Canadian case law on the test for determining whether to permit payments out of accounts or assets frozen by interlocutory *Mareva* or proprietary injunctions" (at para 14). Here, we have a typical *Mareva* injunction and the *CIBC* case has indeed been useful guidance.

[55] It is worth referring to some paragraphs from the *CIBC* case to better appreciate the genesis of the four-part test:

> [16] A *Mareva* injunction does not require the plaintiff to show any ownership interest in the property subject to the injunction and does not require the plaintiff to establish a case of fraud or theft. It is a recognized exception to the rule established in *Lister v. Stubbs* (1890), 45 Ch. D. 1 that the court has no jurisdiction to attach the assets of a debtor for the protection of a creditor prior to the creditor obtaining judgment. Because of the exceptional nature of the relief, the test on the merits for obtaining a *Mareva* injunction is more onerous than for other injunctive relief and requires that the plaintiff establish a strong *prima facie* case: *Chitel v. Rothbart* (1983), 1982 CanLII 1956 (ON CA), 39 O.R. (2d) 513 at 522 and 532 (C.A.). In addition to the other requirements for an injunction, the plaintiff must show that the defendant is taking steps to put his assets out of the reach of creditors, either by removing them from the jurisdiction of the court or by dissipating or disposing of them other than in the normal course of business or living: *Chitel v.Rothbart* at p. 532-533.
>
> [17] The purpose of the *Mareva* injunction is a limited one. It is meant to restrain a defendant from taking unusual steps to put his assets beyond the reach of the plaintiff in order to thwart any judgment the plaintiff might eventually obtain. It is not meant to give the plaintiff any priority over other creditors of the defendant, nor to prevent the defendant from carrying on business in the usual course and paying other creditors. The nature of the *Mareva* is such that it is typically sought and granted, in the first instance, without notice to the defendant, but then is subject to a motion by the defendant to vary the injunction to permit payments in the usual course of business or living. As was noted by the English

Queen's Bench in *Iraqi Minister of Defence v. Arcepey Shipping Co. S.A.*, [1980] 2 W.L.R 480 at 485-486:

> … the point of the Mareva jurisdiction is to proceed by stealth, to pre-empt any action by the defendant to remove his assets from the jurisdiction. To achieve that result the injunction must be in a wide form because, for example, a transfer by the defendant to a collaborator in the jurisdiction could lead to a transfer of assets abroad by that collaborator. But it does not follow that, having established the injunction, the court should not thereafter permit a qualification to it to allow a transfer of assets by the defendant if the defendant satisfies the court that he requires the money for a purpose which does not conflict with the policy underlying the Mareva jurisdiction.
>
> … For my part, I do not believe that the Mareva jurisdiction was intended to rewrite the English law of insolvency in this way. Indeed it is clear from the authorities that the purpose of the Mareva was not to improve the position of the claimants in an insolvency but to prevent the injustice of a foreign defendant removing his assets from the jurisdiction which might otherwise have been available to satisfy a judgment.

[18] This principle has been endorsed by the Supreme Court of Canada (referring with approval to the *Iraqi Ministry of Defence* decision) in *Aetna Financial Services Ltd. v. Fegelman* (1985), 1985 CanLII 55 (SCC), 15 D.L.R. (4th) 161 at 177. Thus, even where the *Mareva* injunction may have been originally granted in a broad and sweeping form, this is in contemplation that it will likely later be modified to permit the defendant to maintain his normal standard of living and to meet legitimate debt payments accruing in the normal course. It is common for such exemptions to include the payment of ordinary living expenses and reasonable legal expenses to defend the lawsuit: *University of British Columbia v. Conomos*, [1989] B.C.J. No. 2269 (B.C.S.C.); *Kelly v. Brown*, [1990] O.J. No. 419 (Ont.Ct.Gen.Div.); *National Bank of Canada v. Melnitzer*, [1997] O.J. No. 2424(Ont.Ct.Gen.Div.); *Pharma-Investment Ltd. v. Clark*, [1997] O.J.No.1334 (Ont.Ct.Gen.Div.); *Halifax plc v. Chandler*, [2001] E.W.J. No. 5249 (R.C.J.C.A.).

[19] The English cases apply a preliminary test before granting relief from a *Mareva* injunction. Under those authorities, before an

> Order will be made permitting payment of expenses out of funds frozen by a *Mareva* injunction, the defendant must satisfy the court that he has no other assets from which to make the payments: *Halifax plc v. Chandler*, at para 17; *Ostrich Farming Corporation v. Ketchell*, December 10, 1997, English Court of Appeal (Civil Division), per Roch and Millett LJJ. Although I could find no Canadian authority explicitly adopting that test, I believe it is implicit in many of the decisions. It is really only logical that this should be the case. Suppose, for example, that a defendant has one account in the jurisdiction containing $100,000.00 and it is properly frozen by a *Mareva* injunction at the behest of a plaintiff who has a claim exceeding that amount and who has shown that the defendant is trying to put the funds beyond the reach of the court. If that was the defendant's only source of funds, one can easily see the rationale of permitting his ordinary living expenses to be paid out of the account. If, however, the defendant has millions of dollars in other accounts not covered by the *Mareva* injunction, it is not reasonable to first deplete the assets that are covered by the injunction before having recourse to the other funds. Accordingly, I find it is appropriate to apply that preliminary test in this case.
>
> [My emphasis.]

[56] Thus, the *Mareva* injunction requires, before is allowed the expenditure of resources for living expenses and legal fees, that be established that there are no other assets. The test to be applied is found at paragraph 26 of the *CIBC* decision:

> (i) Has the defendant established on the evidence that he has no other assets available to pay his expenses other than those frozen by the injunction?
>
> (ii) If so, has the defendant shown on the evidence that there are assets caught by the injunction that are from a source other than the plaintiff, i.e. assets that are subject to a *Mareva* injunction, but not a proprietary claim?
>
> (iii) The defendant is entitled to the use of non-proprietary assets frozen by the *Mareva* injunction to pay his reasonable living expenses, debts and legal costs. Those assets must be exhausted before the defendant is entitled to look to the assets subject to the proprietary claim.

> (iv) If the defendant has met the previous three tests and still requires funds for legitimate living expenses and to fund his defence, the court must balance the competing interests of the plaintiff in not permitting the defendant to use the plaintiff's money for his own purposes and of the defendant in ensuring that he has a proper opportunity to present his defence before assets in his name are removed from him without a trial. In weighing the interests of the parties, it is relevant for the court to consider the strength of the plaintiff's case, as well as the extent to which the defendant has put forward an arguable case to rebut the plaintiff's claim.

[57] As can be seen, the first hurdle is for a defendant to establish the absence of assets available; the initial burden is on the person seeking access to resources. If the first prong of the test has not been satisfied, there is no need to consider the other prongs. To put it bluntly, we do not know whether there are assets other than the properties identified in the motion. On the contrary, the Plaintiffs have established the existence of significant financial resources. That initial burden has not been discharged in this case. Before resorting to disposing of income-generating properties, the Defendant had, at a minimum, to explain what happened to $744,000 and, possibly, to disclose the existence of other assets, financial or otherwise. Leave could be granted to use financial assets for living and legal expenses once they have been identified and disclosed by the Defendant. He has neglected to do so. The level of financial assets which, by definition, can easily be moved around, has not been established. Indeed, from the work done by counsel for the Plaintiffs there is a significant amount of money (out of the $744,000 discovered) which remains unaccounted for. A court must have the full picture before it can be granting leave to dispose of assets like real property which generate income.

[58] The *CIBC* test has received the imprimatur of the Ontario Court of Appeal in *Waxman v Waxman*, 2007 ONCA 326, 42 CPC (6^{th}) 37 [*Waxman*]. After referring to the four-part test, the

Court of Appeal made it clear that the test applies to *Mareva* injunctions and that this onus is on the person seeking access, not the other way around:

> [38] It is therefore apparent that regardless of whether the injunction is proprietary or a Mareva injunction, the first inquiry is always the same – has the defendant established that he has no other assets from which to pay the expenses? In my view, the present appeal turns on this question. Therefore, it is not necessary to determine whether the source of the funds in the present case was subject to a proprietary injunction (as found by the motion judge) or a Mareva injunction (as urged by counsel for Chester).
>
> [39] It is clear from *Credit Valley* that the defendant has the onus of proving that he has no assets, other than those frozen, from which to pay his legal fees. As noted above, the defendant must establish "on the evidence" that he has no other assets: *Credit Valley* at para. 26. In the present case, Chester attempted to meet this burden through the affidavit of his son, Robert Waxman. In that affidavit, Robert stated that "Chester's resources for satisfying legal fees are very limited" (para. 28) and that "since January [2006], my father and I have worked very hard to find an arrangement to fund the outstanding legal fees … and the fees likely to be incurred during the remainder of the Reference" (para. 29). Robert further deposed that due to Chester's recent diagnosis of late-stage cancer, "all of our family's resources are being conserved to fund Chester's medical treatment" (para. 30). Robert stated that there was an "absence of any third party sources of funds with which to pay Chester's legal and professional expenses in connection with the Reference" (para. 32).

[59] The Court of Appeal noted that "Robert was cross-examined on this affidavit. He refused virtually all questions regarding what resources were available to him and his father." (at para 40), thus justifying an adverse inference. I have read the cross-examination of the Defendant on his affidavit for this motion and, to say the least, he was reluctant to answer questions about his assets. As in *Waxman*, the only conclusion that can be reached from the facts on this record is that the Defendant did not discharge the burden in order to dispose of income generating assets. That is fatal.

[60] I am of course mindful that the financial resources may well be subject to the *Mareva* injunction. The lack of transparency on the part of Mr. White suggests that the whole amount may not be out of his reach. However, before disposition of real estate properties generating $8,000/month of rental income may be authorized, it is incumbent on the Defendant to show transparency. What happened to the $744,000 known to be available on November 24, 2020? Are there more financial assets stashed away? What is the protocol that must have been established for the payment of legal fees?

[61] I add for good measure that the Defendant's proposal to dispose of his assets, without any stated constraint as to how he would proceed, to then transfer to an unidentified trustee the power to pay for living and legal expenses, without any parameters for what are to be "expenses in the normal course of his livelihood" and "reasonable legal fees and disbursements", is wholly inadequate. In effect, the Defendant, whose intercepted conversations tend to show that he will dissipate his assets, is seeking from the Court a blank check. That is not, in my view, a proper exercise of plenary jurisdiction.

[62] That would suffice to dispose of the motion. I would however add two observations. The Defendant had as exhibit B to his affidavit on this motion what is presented as his monthly expenses and income. First, it is striking that there is no employment income recorded. The affidavit states that the Defendant had employment for six weeks in the summer of 2022, before he was "let go" (affidavit of July 21, 2022, para 5). There is no diligence shown in securing employment before that period (between November 2020 and June 2022). On the other hand, a supplementary affidavit dated October 12, 2022 states that Mr. White became employed in

September 2022 at a salary that is not accounted for in the material supplied to the Court. That salary would significantly reduce the shortfall he identified in the exhibit B once the rental income is accounted for.

[63] As already alluded to, that exhibit states that $13,000/month are needed. It is difficult to understand how such figure is arrived at. I agree with the comment made by Molloy J. in *CIBC* that a court should not scrutinize too closely the expenses of a defendant. However, Molloy J. was careful to say that a court should not "interfere with the legitimate payment of expenses by the defendant" and that, "(p)rovided the expenses are truly legitimate, it is not, in my view, proper to scrutinize their appropriateness too closely" (at para 39). I share also that view.

[64] It is difficult not to question the legitimacy of bills for heat, electricity, cellphones and internet amounting to $1,100/month, effectively $13,000/year. Similarly, the table sets aside $36,000/year for what is presented as "miscellaneous debt payments", without details. I repeat: Mr. White had control of $744,000 in November 2020. Groceries are said to amount to $18,000/year. These, in my view, are amounts, and others, that should be revised and justified before rental income real estate properties are sold. I share the comment made by Mr. Justice McEwen of the Superior Court of Justice of Ontario in *Canadian National Railway Company v Holmes et al.*, 2015 ONSC 1475, who, not only applied the *CIBC* test, but also commented that "(a)t that time I found it was reasonable to do so but that any further motion for other relief would require particulars of expenditures, employment, earnings, economic expectations, amongst other things" (at para 14).

[65] It is also puzzling to see that Mr. White appears to have purchased a vehicle, during a period he remained unemployed, and had his assets frozen. He declares he would be willing to dispose of the Dodge Ram 2022 (affidavit of July 21, 2022, para 21) through a sale that could generate $50,000 (minus the price of a less expensive vehicle). In the circumstances of this case, the purchase of the vehicle is certainly puzzling, but disposing of it for its fair market value would be appropriate.

VI. Conclusion

[66] The motion for leave of this Court to sell or otherwise dispose of the following assets is dismissed:

- vacant land located at 27 Moody Park Dr., Williamswood, Nova Scotia, B3V 1B8;
- residences at 6 and 8 Frances Ct., Halifax, Nova Scotia, B3R 2A3;
- residence at 13 Hartlen Ave., Halifax, Nova Scotia, B3R 1R5.

[67] The sale of the 2022 Dodge Ram motor vehicle is on the other hand authorized. The net product of the sale (value of the 2022 Dodge Ram – cost of a modest replacement vehicle) is to be applied to the payment of expenses in the normal course of livelihood.

[68] The record made available to this Court was wholly deficient. The Defendant had to establish on the evidence that he has no other assets such that he must now resort to selling rental income generating real estate assets. He failed to do so. Furthermore, his suggestion to use the services of a “trustee” to assist in the disbursements of money lacked an air of reality without any details whatsoever about the terms of reference of such trustee.

[69] The moving party on this motion failed to show the transparency required to satisfy the Court that the financial resources known to have been available to the Defendant have been accounted for. The same kind of transparency is needed to ascertain the existence, if any, of other financial resources. Finally, there was no protocol for the payment of legal fees, nor was there adequate evidence to satisfy the Court that the monthly expenses or account of expenses in the normal course of livelihood are truly legitimate.

[70] As conceded by the Plaintiffs, the issue is not so much that the Defendant cannot gain access to appropriate sums of money from which leave could be granted to pay for reasonable living expenses and reasonable legal fees. It is rather that on the record presented to this Court, it was inadequate to satisfy basic requirements. A different and much revamped record may generate a different outcome, as the Plaintiffs readily, and properly, recognize.

[71] The parties were canvassed and they are in agreement that whoever prevails on this motion should be awarded costs in a lump sum of $7,500, inclusive of taxes and disbursements. Since the Plaintiffs were largely successful in getting the motion dismissed, costs are awarded in their favour in any event of the cause.

[72] The Defendant sought a confidentiality order in terms that were submitted to the Court. The Plaintiffs did not oppose the issuance of such order. The Order is reasonable. I note that the Court has sought to minimize in its reasons for judgment reference to financial and personal information relating to Mr. White and his family. However, in accordance with clause 5 of the

Confidentiality Order, some information was required to be disclosed for the understanding of the reasons for judgment.

JUDGMENT in T-1176-20

THIS COURT'S JUDGMENT is:

1. The motion for leave to sell or otherwise dispose of the following assets is dismissed:
    - vacant land located at 27 Moody Park Dr., Williamswood, Nova Scotia, B3V 1B8;
    - residences at 6 and 8 Frances Ct., Halifax, Nova Scotia, B3R 2A3;
    - residence at 13 Hartlen Ave., Halifax, Nova Scotia, B3R 1R5.
2. The sale of the 2022 Dodge Ram motor vehicle, at its fair market value, is authorized. The product of the sale, minus the cost of a modest replacement for that vehicle, is to be applied to the payment of expenses in the normal course of livelihood.
3. Costs in the amount of $7,500, inclusive of taxes and disbursements, are to be paid to the successful party on this motion, the Plaintiffs, in any event of the cause.
4. A Confidentiality Order is appended to the Judgment and Reasons.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	WARNER BROS. ENTERTAINMENT INC. ET AL v TYLER WHITE ET AL
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