

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE**

HC/OC /2024
HC/SUM /2024

Between

NOTIONAL PTE LTD
(Singapore UEN No. 202226456W)

...Claimant

And

PERSONS UNKNOWN
(ID No. Unknown)

... Defendant(s)

CLAIMANT'S SKELETAL SUBMISSIONS

Solicitors for the Claimant

Mr Adrian Aw / Mr Anand Tiwari / Ms Tessa Lim

Resource Law LLC

Ref: AA/AT/407595.00001

7 May 2024

I. INTRODUCTION

1. These are the Claimant's skeletal submissions in support of the Claimant's *ex parte* application ("**Application**") for the various relief as set out at paragraphs 4 and 5 of the 1st Affidavit of Jacob Anthony Gadikian dated 7 May 2024 ("**Jacob's 1st Affidavit**"). In support of this Application, the Claimant has filed Jacob's 1st Affidavit and the 1st Affidavit of Mika Dahiya dated 6 May 2024.
2. Unless otherwise expressly defined, the abbreviations and definitions used in these skeletal submissions shall have the same meaning as in Jacob's 1st Affidavit.

II. THE COURT HAS JURISDICTION AGAINST THE DEFENDANT(S)

3. The High Court has held that it has jurisdiction against persons unknown, provided that the description of these persons unknown was sufficiently certain to identify the persons falling within and outside of that description: *CLM v CLN and others* [2022] 5 SLR 273 ("**CLM**") at [32]; *Janesh s/o Rajkumar v Unknown Person* ("**CHEFPIERRE**") [2023] 3 SLR 1191 ("**Janesh**") at [39].
4. To date, the Claimant has not been able to identify the Defendant(s). Therefore, the Defendant(s) in the present case have been described as: "any and all person(s) and/or entity(ies) who carried out, participated in or assisted in the theft of the Claimant's cryptocurrency assets and Non-Fungible Tokens ("**NFT**")

(collectively, the “**Stolen Assets**”), between 31 October 2023 and 6 February 2024, with the exception of those providing cryptocurrency hosting or trading facilities.”

5. The Claimant submits that this description of the Defendant(s) has described, with sufficient certainty, persons falling within and outside that description. Therefore, the Court has the jurisdiction to grant the orders sought against the Defendant(s).

III. THE CLAIMANT IS ENTITLED TO A PROPRIETARY INJUNCTION

6. The Claimant submits that the test for the grant of a proprietary injunction, as set out in *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 (“**Bouvier**”) at [143]-[164] is satisfied in this Application:
 - (a) there is a serious question to be tried; and
 - (b) the balance of convenience lies in favour of granting the injunction.
7. The first requirement of showing that there is a serious question to be tried will be satisfied as long as “*the plaintiffs have a seriously arguable case that they [have] a proprietary interest*”: *Bouvier* at [39]. At the interlocutory stage, the Court does not engage in complex questions of law or fact: *CLM* at [39].

8. The Stolen Assets, which comprise cryptocurrencies and NFTs, are capable of giving rise to proprietary rights which ought to be protected by a proprietary injunction: *CLM* at [46]; *Janesh* at [69].
9. The Claimant submits that it has a seriously arguable case that it has a proprietary interest in the Stolen Assets as the Stolen Assets belong to the Claimant, the Stolen Assets were transferred from wallets within the ownership and/or control of the Claimant to wallets which are not within the ownership and/or control of the Claimant without any consideration, and without the authority, consent and/or knowledge of the Claimant (see paragraph 73 of Jacob's 1st Affidavit).
10. The balance of convenience is assessed by weighing the potential prejudice that the applicant may suffer if the injunction is not granted, against the prejudice to the respondent in the event that the injunction is granted, and the applicant's hypothesis is refuted at trial: *Bouvier* at [38]. The Claimant submits that there will be no prejudice caused to the Defendant(s) as a result of the grant of the proprietary injunction, but even if there is any potential prejudice, that would be greatly outweighed by the prejudice which would be caused to the Claimant if the proprietary injunction is not granted and the Defendant(s) are permitted to wrongfully retain the Stolen Assets and/or deprive the Claimant from the use and/or benefit of the same for the following reasons:

- (a) The Defendant(s) have committed theft of the Claimant's Stolen Assets and there is no defensible basis for the Defendant(s)' unlawful and unauthorised transfer of the Stolen Assets. The Defendant(s) cannot be permitted to benefit from their wrongdoing.
- (b) The Claimant has been deprived of the use of the Stolen Assets. Apart from being a store of value, the Stolen Assets are also used as part of the Claimant's validator operations within the Cosmos network. With a reduced pool of cryptocurrencies available for the Claimant's use in validator operations within the Cosmos network, the rewards paid to the Claimant for its participation in blockchain consensus and governance functions is correspondingly lower. This is a financial loss for the Claimant.
- (c) If the proprietary injunction is not granted and the Defendant(s) are permitted to retain and deal with the Stolen Assets, there is a high likelihood that the Stolen Assets will be dissipated by the Defendant(s) by the time the Claimant ascertains the identities of the Defendants or obtains judgment against the Defendant(s). The Defendant(s) have acted dishonestly in misappropriating the Stolen Assets: *Bouvier* at [94]; *CLM* at [54]. As detailed at paragraphs 52 to 67 of Jacob's 1st Affidavit, the Defendant(s) have already demonstrated a high level of sophistication in covering their tracks through multiple transfers, swaps and cryptocurrency exchanges, utilizing layering techniques and methodologies typically found in money laundering schemes. For example, the Defendants have

been shown to use eXch.cx to off-ramp the Stolen Assets; eXch.cx is well-known in the crypto industry as an exchange frequented by malicious threat actors seeking to launder the proceeds of crime (see paragraph 77 of Jacob’s 1st Affidavit). Moreover, the nature of cryptocurrencies and NFTs is such that they are “*susceptible to being transferred by the click of a button, through digital wallets that may be completely anonymous and untraceable to the owner, and can be easily dissipated and hidden in cyberspace*”: CLM at [54]. The Defendant(s)’ conduct thus far suggests that the Defendant(s) are not averse to dissipating assets further and if so, it would take the Claimant weeks or even months, if at all, to trace the further whereabouts of the Stolen Assets. This would prevent the Claimant from recovering the Stolen Assets from the Defendant(s).

- (d) The Defendant(s) would suffer no loss as the Stolen Assets belong to the Claimant and not the Defendant(s), who have no rights in the same. In any event, the Defendant(s) would only suffer losses arising from their inability to deal with the Stolen Assets, which could be compensated by damages.

IV. THE CLAIMANT IS ENTITLED TO A WORLDWIDE FREEZING INJUNCTION

- 11. The Claimant submits that the test for the grant of a worldwide freezing injunction, as set out in *Bouvier* at [36]-[37], is satisfied in this Application:
 - (a) there must be a good arguable case on the merits of the claim(s);

- (b) there must be a real risk that the defendant will dissipate his assets to frustrate the enforcement of an anticipated judgment of the Court; and
- (c) the circumstances that will have to be established in order to cross the threshold of necessity will likely be more exacting where a worldwide freezing injunction is concerned.

12. A good arguable case is one which is “*more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent chance of success*”: *Bouvier* at [53]. The Claimant submits that it has a good arguable case on the merits of its claims against the Defendant(s) in constructive trust, unjust enrichment and conversion as the Stolen Assets belong to the Claimant, the Stolen Assets were transferred from wallets within the ownership and/or control of the Claimant to wallets which are not within the ownership and/or control of the Claimant without any consideration, and without the authority, consent and/or knowledge of the Claimant (see paragraph 73 of Jacob’s 1st Affidavit).

13. The Claimant submits that there is a real risk that the Defendant(s) will dissipate their assets to frustrate the enforcement of an anticipated judgment of the Court for the reasons set out at paragraph 11(c) above.

14. The Claimant also submits that the Defendant(s) likely would not have sufficient assets in Singapore to satisfy an award for damages: *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [29]. In particular, to the best of the Claimant's knowledge, none of the Stolen Assets are known to have been transferred to digital wallets owned or operated by entities with operations in Singapore.

V. THE CLAIMANT IS ENTITLED TO ANCILLARY DISCLOSURE ORDERS

15. The cryptocurrency exchanges, cryptocurrency wallet software operators as well as the operators and maintainers of the blockchains in question are non-parties to the present dispute. The Claimant submits that the test for orders compelling non-parties to provide documents to assist with the Claimant's tracing claim, as set out in *Bankers Trust Co v Shapira* [1980] 1 WLR 1274 and *Success Elegant Trading Ltd v La Dolce Vita Fine Dining Co Ltd and others and another appeal* [2016] 4 SLR 1392 at [26], are satisfied:

- (a) there is a *prima facie* case of fraud; and
- (b) there are good grounds for thinking that the assets in the account belong to the Claimant.

16. For the reasons set out in Jacob's 1st Affidavit, the Claimant submits that there is a *prima facie* case of fraud in the present dispute insofar as the Defendant(s) have

fraudulently and dishonestly misappropriated the Stolen Assets from the Claimant without any consideration, and without the authority, consent and/or knowledge of the Claimant. The Claimant's investigations have also revealed that the assets at the addresses set out at Tables B and C of paragraphs 9(a) and (b) respectively of Jacob's 1st Affidavit belong to the Claimant. Therefore, there are good grounds for thinking that the assets at those addresses belong to the Claimant.

17. Further, the Claimant has reason to believe that the cryptocurrency exchanges (see paragraphs 80 to 91 of Jacob's 1st Affidavit), the cryptocurrency wallet software operators (see paragraphs 92 to 99 of Jacob's 1st Affidavit) and the operators and maintainers of the blockchains (see paragraphs 100 to 103 of Jacob's 1st Affidavit) have the information necessary to identify the Defendant(s) and trace the Stolen Assets and/or its proceeds, within their possession and/or control.

VI. PERMISSION FOR SERVICE OUT OF JURISDICTION AND SUBSTITUTED SERVICE

18. The Claimant submits that the test for permission to serve out of jurisdiction, as set out in O 8 r 1(1) of the Rules of Court 2021 read together with paragraph 63(2) of the Supreme Court Practice Directions 2021 ("**SCPD 2021**"), is satisfied in this Application:

- (a) there is a good arguable case that there is sufficient nexus to Singapore; sufficient nexus may be shown by reference to any of the non-exhaustive list of factors set out in paragraph 63(3) of the SCPD 2021;
- (b) Singapore is the *forum conveniens*; and
- (c) there is a serious question to be tried on the merits of the claim.

19. The Claimant submits that all three requirements for service out of jurisdiction are satisfied in this Application:

- (a) There is a good arguable case that the present claims are made to assert proprietary rights in or over movable property situated in Singapore, as required under paragraph 63(3)(i) of the SCPD 2021. The Stolen Assets are situated in Singapore because they are within the ownership and/or control of the Claimant, which is a Singapore-incorporated entity: *Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21 (“**Three Arrows**”) at [65].
- (b) Alternatively, there is a good arguable case that the present claims are founded on a cause of action arising in Singapore, as required under paragraph 63(3)(p) of the SCPD 2021 because the Stolen Assets belong to the Claimant, which is incorporated in Singapore, and the damage and/or loss suffered by the Claimant has been suffered in Singapore.
- (c) Singapore is *forum conveniens*. The primary connecting factor is that the Claimant is a Singapore-incorporated entity: *Janesh* at [30].

(d) For the reasons set out above, there is a serious question to be tried on the merits of the Claimant's claims.

20. The Claimant further submits that the requirements for leave to be given for substituted service out of jurisdiction on the Non-Parties (Foreign) are satisfied in this Application given the impracticality of effecting personal service on the Non-Parties (Foreign) and the chosen mode of substituted service would be effective in notifying the Non-Parties (Foreign) of the orders made: *Janesh* at [91]; *CLM* at [78].

VII. CONCLUSION

21. In the circumstances, the Claimant humbly prays for an order in terms of this Application.



Resource Law LLC

7 May 2024