

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 732
MC 35/2021

In the matter between:

THE GOVERNMENT OF SEYCHELLES
(rep. by Steven Powles)

Applicant

and

HUOBI GLOBAL LIMITED
(rep. by John Renaud)

1st Respondent

CHN GROUP LIMITED (CHANGE NOW)
(rep. by Rene Durup)

2nd Respondent

HVP LIMITED (SWAPLAB)
(rep. by John Renaud)

3rd Respondent

OKEX
(rep. by John Renaud)

4th Respondent

Neutral Citation: *GOS v Huobi Global Limited & Ors* (MC 35/2021) [2021] SCSC 732.
(09 November 2021).

Before: Burhan J

Summary: Application for an Interlocutory Order under section 4 of the POCA as amended granted. Application for appointment of Receiver granted.

Delivered 09 November 2021

ORDER

I proceed to grant the reliefs as prayed for and issue:

- a. Interlocutory Orders pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the aforementioned four Respondents or such other person or any other person having notice of this order from disposing of or otherwise dealing with whole or any part of the property set out in the

Table to the Notice of Motion dated 27th April 2021 namely cryptocurrency to the total value of SCR 43,581,730.36 as at 18th April 2021.

- b. An Order pursuant to Section 8 of the POCA appointing Mr. Hein Prinsloo to be receiver of the said property to manage, to keep possession or dispose of or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's discretion and also an order providing that notice of such orders made by Court be given to the Respondents.
- c. An Order that a copy of this Order be served on each of the Respondents at their registered Offices in the Seychelles.
- d. A further Order that the aforementioned Orders do not apply to wallets CWA3 and CWA5 described in paragraph 7 of the affidavit of Katarina Jurčišinová- Kukl'ová as these wallets have been transferred and are not in the possession of the Second Respondent. Accordingly the value of the cryptocurrency in these two wallets should be reduced from the total value set out in the Table to the Notice of Motion dated 27th April 2021.

ORDER

BURHAN J

- [1] This is an application by the aforementioned Applicant seeking Interlocutory Orders pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the aforementioned four Respondents or such other person or any other person having notice of this order from disposing of or otherwise dealing with whole

or any part of the property set out in the table to the motion namely cryptocurrency to the total value in SCR 43,581,730.36 as at 18th April 2021.

- [2] The application further seeks an Order pursuant to Section 8 of the POCA appointing Mr. Hein Prinsloo to be receiver of the said property to manage, to keep possession or dispose of or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's discretion and also an Order providing that notice of such orders made by Court be given to the Respondents.
- [3] In support of this application the Applicant relies on the belief affidavit filed by Mr. Hein Prinsloo dated 27th April 2021. It is apparent when one peruses his affidavit that on or about the 24th of March 2020, Mr. Brendan Scott the owner of Everlasting Investment Consulting (Everlasting) and other employees were targets of a "spear phishing" campaign which is an electronic communication scam targeted towards a specific individual and is intended to steal data from the individual for malicious purposes.
- [4] The offender/hacker sent two emails to Mr. Scott on the 3rd and 28th of November 2020 purporting to be from David Wills the CEO of Kinetic Trading Ltd (KTL). Mr. Scott who is also on the Board of Directors of KTL considered these emails as from a trusted source and accepted them. The emails contained malware and the hacker gained unauthorised access to Mr. Scott's computer. On gaining access to Mr. Scott's computer the hacker was able to steal the Secure Shell (SSH) Key (private key) that was saved on Mr. Scott's computer. Thereafter the hacker was able to steal approximately 53,000,000 AUD (fifty three million) worth of cryptocurrency from the wallets controlled by Mr. Scott. The "wallet" is an application that allows cryptocurrency users to store and retrieve their cryptocurrencies.
- [5] Further investigation conducted by Cipherblade an American based digital forensic company, traced the stolen cryptocurrency and identified wallets in possession or under control of four cryptocurrency exchanges in the Seychelles. The four cryptocurrency exchanges registered in the Seychelles were identified as Huobi, ChangeNow, Swaplab and Okex the Respondents in this application.

- [6] On the 27th of April 2021, this Court issued an Interim Order under Section 3 of the POCA against all four cryptocurrency exchanges who were Respondents in the said application prohibiting the four Respondents from disposing, dealing with, diminishing in value the specified property (cryptocurrency), mentioned in the Table to the Notice of Motion which contains the details of the stolen cryptocurrency. Thereafter this application seeking an Interlocutory Order under Section 4 of the POCA was filed by the Applicant.
- [7] Accordingly notice of this application was served on the four Respondents and an entry of appearance was filed on behalf of the Second Respondent CHN group Ltd (ChangeNow) by Attorney at Law Mr. R. Durup on the 14th of May 2021 and Mr. John Renaud Attorney at law appeared for the First, Third and Fourth Respondent. Mr. Malcolm Moller filed an affidavit dated the 21st of June 2021 attested by Notary Public Mr. John Renaud in which is stated the First Respondent (Huobi Global Ltd) and third Respondent HVP Ltd (Swaplab) are both International Business Companies incorporated in the Seychelles under company number 194154 and 212170 respectively. The affidavit further states that the Respondents have taken cognisance of the notice of motion dated 27th April 2021 and have no objection to the application made therein by the Applicant.
- [8] Mr. Jie Hao also filed an affidavit dated 11th June 2021 on behalf of the Respondent Aux Cayes Fintech Co Ltd (Okex) stating that the Respondent is an International Business Company incorporated in the Seychelles under company number 202706. The affidavit further states that the Respondent has taken cognisance of the notice of motion dated 27th April 2021 and has no objections to the application made therein. It was clarified by learned Counsel for the Applicant Mr. Powles that this affidavit relates to Okex the Fourth Respondent as the Affidavit of Mr. Prinsloo indicates both Aux Cayes Fintech Co Ltd and Okex have the same IBC number as shown in Exhibit HP7 (Proceedings of 28th July 2021, 10.00 am).
- [9] Katarina Jurčišinová- Kukl'ová filed an affidavit on behalf of the Second Respondent CHN Group Ltd (Change Now) dated 1st of July 2021 stating that the Second Respondent is an IBC bearing company number 219011 and ChangeNow is an instant cryptocurrency exchange service. The affidavit acknowledges receipt of the notice of motion dated 27th of

April 2021 in which reference is made to 7 cryptocurrency addresses which are set out in paragraph 7 of the affidavit. At paragraph 9 of the affidavit, it is stated that funds mentioned in the cryptocurrency wallet address CWA3 and CWA5 have not been frozen as by the time the freezing order was received, the cryptocurrency in these wallets had already been transferred to other cryptocurrency wallets and such transfers cannot be reversed. The affidavit further states that the Second Respondent is willing to co-operate and assist the authorities in their investigations. Learned Counsel who appeared for the Applicant on the 1st of September 2021 Ms Nisha Thompson, stated that the Interlocutory Order could be given to whatever sum of cryptocurrency is in the possession of CHN (proceedings of 1st September 2021, 10.00 a.m).

[10] The law as contained in Section 4 of the POCA requires proof that:

a) A person is in possession or control of –

- (i) Specified property and that the property constitutes, directly or indirectly benefit from criminal conduct; or
- (ii) Specified property that was acquired , in whole or in part , with or in connection with the property that directly or indirectly constitutes benefit from criminal conduct and

(b) The value of the property or the total value of the property referred to in sub paragraphs (i) and (ii) of paragraph (a) is not less than R 50,000.

[11] There is no challenge from the Respondents regarding the application made by the Applicant in this case as borne out by the affidavits and proceedings. In the case of **Financial Intelligence Unit v Contact Lenses Ltd & Ors [2018] SCSC 564 at [15]** it was held that “ *once the applicant establishes his belief that the property is the proceeds of crime, the burden of proof shifts to the Respondent to show that it is not*”

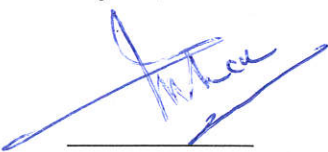
[12] In this case there are no challenges from the Respondents in respect of the application or the facts contained in the affidavit of Mr. Prinsloo dated 27th April 2021. For the aforementioned reasons, I am satisfied that the belief evidence by way of affidavit of Mr. Hein Prinsloo can be accepted and I am satisfied that the Applicant has established on a

balance of probability that the property constitutes benefit from criminal conduct and its value is over SCR 50,000.00.

[13] I therefore proceed to grant the reliefs as prayed for and issue:

- a Interlocutory Orders pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the aforementioned four Respondents or such other person or any other person having notice of this Order from disposing of or otherwise dealing with whole or any part of the property set out in the Table to the Notice of Motion dated 27th April 2021 namely cryptocurrency to the total value of SCR 43,581,730.36 as at 18th April 2021.
- b An Order pursuant to Section 8 of the POCA appointing Mr. Hein Prinsloo to be receiver of the said property to manage, to keep possession or dispose of or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's discretion and also an order providing that notice of such orders made by Court be given to the Respondents.
- c An Order that a copy of this Order be served on each of the Respondents at their registered Offices in the Seychelles.
- d A further Order that the aforementioned Orders do not apply to wallets CWA3 and CWA5 described in paragraph 7 of the affidavit of Katarina Jurčišínová- Kukl'ová as these wallets have been transferred and are not in the possession of the Second Respondent. Accordingly the value of the cryptocurrency in these two wallets should be reduced from the total value set out in the Table to the Notice of Motion dated 27th April 2021.

Signed, dated and delivered at Ile du Port on 09 November 2021.



M Burhan J