

**IN THE SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2022] SCSC ...

MC 14/2022

Exparte:

**ILHAN BOZDENIZ**

*(rep. by Audric Govinden)*

**Applicant**

**And**

In Re:

**ILHAN BOZDENIZ**

v/s

**Applicant**

**AUX CAYES FINTECH COMPANY LIMITED**

*(unrepresented)*

**Respondent**

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**Neutral Citation:** *Ex-parte Ilhan Bozdeniz* [2022] SCSC ..... MC14./2022

**Before:** Dodin J

**Summary:** Norwich Pharmacal Order – disclosure – cryptocurrency assets.

**Heard:** 23 March 2022

**Delivered:** 7 April 2022

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**ORDER**

- i. The Respondent is ordered to disclose and produce all records and information in the form of an affidavit and attachments relating to the receipt by the Respondent of cryptocurrency assets from the cryptocurrency wallets contained in the attached ANNEX. (a. to x.)
- ii. The Respondent is further ordered to disclose which cryptocurrency assets still being held by the Respondent on the OKEX exchange, their wallet addresses and all information associated with them.
- iii. The Respondent is further ordered to disclose which of the cryptocurrency assets have left the OKEX exchange and in respect of those that have left the OKEX exchange, to provide all details of all subsequent transactions as far as is available to trace their departure route.
- iv. The Respondent is further ordered not to inform any third party to these proceedings of this order.
- v. The Respondent is ordered to disclose the documents and information sought to the Applicant or his attorney in Seychelles within 7 days of this Order.
- vi. A copy of this Order shall be served on the Respondent at its registered office Suite 202, 2nd Floor, Eden Plaza, Eden Island, P O Box 1352, Mahe, Seychelles.

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## ORDER

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### DODIN J.

- [1] This is an application for a Norwich Pharmacal Order to be issued against the Respondent requiring the Respondent to disclose and produce records and information in the form of an affidavit and attachments relating to the receipt by the Respondent of cryptocurrency assets from the cryptocurrency wallets contained in the attached ANNEX. The Applicant also moved the Court for further orders requiring the Respondent to disclose which cryptocurrency assets is still being held by the Respondent on the OKEX exchange, their wallet addresses and all information associated with them, and which of them have left the OKEX exchange. In respect of those that have left the OKEX exchange, to provide all details of all subsequent transactions as far as is available to trace their departure route.
- [2] The Applicant further moved the Court to order the Respondent not to inform any third party to these proceedings of the order made. The Applicant moves that the Respondent is ordered to disclose the documents and information sought to the Applicant or his attorney in Seychelles within 7 days of this Order.
- [3] The application is supported by an affidavit of Ilhan Bozdeniz, a holder of a Turkish passport which affidavit has been duly translated into English and Appostille attached. Aux Cayes FinTech Co. Ltd is a company, Incorporation number 202706, registered in Seychelles on the 7<sup>th</sup> March, 2018, under the International Business Companies Act with its address and registered office at Suite 202, 2<sup>nd</sup> Floor, Eden Plaza, Eden Island, P O Box 1352, Mahe, Seychelles.
- [4] The order sought by the Applicant, Norwich Pharmacal Order, originates from the English case of *Norwich Pharmacal v Commissioners of Customs and Excise (1974) AC 133* which this Court under its equitable jurisdiction provided by sections 5, 6 and 17 of the Courts Act vesting in this Court all the powers, privileges, authority and jurisdiction

capable of being exercised by the High Court of Justice of England, can also issue if such is necessary subject to the requirements set out below. Lord Reid stated in the Norwich Pharmacal case:

*...that if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers.*

[5] The House of Lords set the threshold requirements for obtaining a Norwich Pharmacal Order, which are that *“the applicants must have a bona fide claim against the alleged wrongdoers; it may not be issued against a mere witness or disinterested bystander to the alleged misconduct and the person from whom discovery is sought must be the only practical source of information available.”*

[6] In the case of Alberta Treasury Branches v. Leahy, 2000 ABQB 575 [Can LII] the application of the order was further elaborated as follows:

*“[106] The foregoing review demonstrates that:*

- a. Norwich-type relief has been granted in varied situations:*
  - (i) where the information sought is necessary to identify wrongdoers;*
  - (ii) to find and preserve evidence that may substantiate or support an action against either known or unknown wrongdoers, or even determine whether an action exists; and*
  - (iii) to trace and preserve assets.*
- b. The court will consider the following factors on an application for Norwich relief:*
  - (i) Whether the applicant has provided evidence sufficient to raise a valid, bona fide or reasonable claim;*
  - (ii) Whether the applicant has established a relationship with the third party from whom the information is sought such that it establishes that the third party is somehow involved in the acts complained of;*

- (iii) *Whether the third party is the only practicable source of the information available;*
- (iv) *Whether the third party can be indemnified for costs to which the third party may be exposed because of the disclosure, some refer to the associated expenses of complying with the orders, while others speak of damages; and*
- (v) *Whether the interests of justice favour the obtaining of the disclosure.*

These were more or less adopted by the Supreme Court of Seychelles in the cases of Brickhill Capital (NZ) Limited v Vistra (Seychelles) Limited (MA40/2017) [2017] SCSC (27 July 2017) and Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd (MA119/2020) [2020] SCSC 573 (10 August 2020).

[7] In Collier v Bennett [2020] EWHC 1884 (QB) the Court set out the hurdles that must be overcome by an applicant if the application for a Norwich Pharmacal Order is to succeed as follows:

- (i) *The applicant has to demonstrate a good arguable case that a form of legally recognised wrong has been committed against them by a person;*
- (ii) *The respondent to the application must be mixed up in so as to have facilitated the wrongdoing;*
- (iii) *The respondent to the application must be able, or likely to be able, to provide the information or documents necessary to enable the ultimate wrongdoer to be pursued; and*
- (iv) *Requiring disclosure from the respondent is an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction.*

The first three hurdles must be met before the court will consider the (iv) condition. The Court will also not allow the equitable doctrine to be used as a “fishing expedition”, nor will the Court allow the information sought to be used for an improper purpose.

[8] Having considered the application and affidavit in support as well as the supporting documents attached to the application, I am satisfied that there is sufficient ground placed before this Court to grant the order as prayed for by the Applicant.

[9] I therefore issue the following Orders against the Respondent:

- i. The Respondent is ordered to disclose and produce all records and information in the form of an affidavit and attachments relating to the receipt by the Respondent of cryptocurrency assets from the cryptocurrency wallets contained in the attached ANNEX. (a. to x.)
- ii. The Respondent is further ordered to disclose which cryptocurrency assets still being held by the Respondent on the OKEX exchange, their wallet addresses and all information associated with them.
- iii. The Respondent is further ordered to disclose which of the cryptocurrency assets have left the OKEX exchange and in respect of those that have left the OKEX exchange, to provide all details of all subsequent transactions as far as is available to trace their departure route.
- iv. The Respondent is further ordered not to inform any third party to these proceedings of this order.
- v. The Respondent is ordered to disclose the documents and information sought to the Applicant or his attorney in Seychelles within 7 days of this Order.

[10] A copy of this Order shall be served on the Respondent at its registered office Suite 202, 2<sup>nd</sup> Floor, Eden Plaza, Eden Island, P O Box 1352, Mahe, Seychelles.

[11] I make no order for cost.

Signed, dated and delivered at Ile du Port, Victoria on 7<sup>th</sup> day of April 2022

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C G Dodin

Judge