

SUPREME COURT OF SEYCHELLES

Reportable
MA320/2023
(Arising in CS92/2023)

In the matter between:

MR MICHEAL FILIPPO
(rep. by Ms. Chang-Thiou)

Applicant

and

HUOBI GLOBAL LIMITED
(Unrepresented)

Respondent

Neutral Citation: *Filippo v Huobi Global Limited* (MA320/2023) 26 October 2023
Before: D. Esparon
Summary: Application for Interim Writ of Injunction
Heard: 28th September 2023
Delivered: 26th October 2023

ORDER

Application seeking for an order of interim writ of injunction pursuant to section 304 of the Seychelles Code of Civil Procedure read with section 5 and 6 of the Courts Act – Order granted – Interim Writ of injunction issued against the Respondent.

RULING

D ESPARON

Introduction

[1] This is an Ex- Parte Application whereby the Applicant is seeking an Order of this Court to issue an Interim writ of injunction, pendent lite to restrain the Respondent/Defendant from disposing, moving and transferring the 24.61 bitcoins in the following cryptocurrency wallet;

‘1L15W6b9vkxV81xW5HDtmMBycrdiettHEL’ held on the Respondent’s /Defendant’s online Cryptocurrency platform.

The Pleadings

[2] The Application is supported by an Affidavit sworn by Vanessa Camille who avers in her Affidavit inter-alia the following;

[9]that on or about the spring of 2022, the Applicant stumbled upon an advertisement for investing into cryptocurrency that was being marketed to him on his phone while he was using a sports application. The advertisement promoted cryptocurrency trading using Artificial intelligence software that was capable of day trading various ‘cryptocurrencies’ to earn a profit.

[11]After clicking on the advertisement the Applicant entered his contact information on the ‘Prime Coin Website’ to receive more information about the investment product. He subsequently received a number of voice messages and emails following up about his interest in cryptocurrency trading including from an individual purportedly called Mila Green (Mila) who represented herself as a purported senior financial advisor at the purportedly Prime Coin.

[14]Mila convinced the Applicant to open an account for investing in ‘cryptocurrency’ which he understood was to be traded through the Artificial intelligence programme, Mila advised him that all the money should go through her because she was the broker at Prime Coin and she would be completing the transaction on his behalf.

[17]During the second half of 2022 the Applicant funded his online NDAX Exchange account in Canada with \$ 1,100,700.00 Canadian dollars from his personal bank accounts at the Canadian Imperial Bank of Commerce (CIBC) and at the Bank of Montreal (BMO) by way of Swift wire transactions and interact e – transfer.

[18]Having obtained the Confidence of Mila on Prime Coin, she had absolute control to utilize Applicant’s NDAX account to purchase the cryptocurrencies on his behalf-and thereafter found out that she was a fraudster and along with other fraudsters unlawfully deceived and misappropriated his funds and his cryptocurrency assets.

[19]I have sought the assistance of forensic experts in detecting fraudulent online cryptocurrency scams and pursuant to their investigations (see document marked as Annex D- expert report) they have concluded that out of 39.77 bitcoins obtained from his \$1,100,700 Canadian Dollars 24.61 bitcoins from his NDAX online account were following numerous deceiving and unnecessary transactions, eventually placed into the following cryptocurrency wallet (referred to as ‘wallet’) on the Respondents cryptocurrency online Huobi exchange Platform:

Cryptocurrency wallets	cryptocurrency Assets
‘1L15W6b9vkxV81xW5HDtmMBycrdiettHEL’	24.61 bitcoins

There are three transactions identities (referred to as 'transactions IDs') leading to fraudulent deposit of the 24.61 bitcoins belonging to the Applicant onto the Respondent's online Exchange. The 3 transactions are:

1.689a6de82d2771d3dde0937577a72225347e0bea9211702522b3677b5e19efbd

2.65822d21054c5326bd52640395749c94724c803cdea40b3dfab2b19795a1a9f6

2.Bec294c83fd2611d234e50c27d321b871c0d8a98174fcffc091515cf656e1219

[23] I believe that there is no legal remedy available to restrict any further dealings with the Respondent's property pending the determination of the main suit.

[24] That the Applicant's claim is meritorious and has a good prospect of success and will be fair, equitable and necessary for an order of interim injunction against any further dealings with the Respondent's properties pending the hearing and determination of this honourable Court to the main suit.

[25] That the balance of convenience lies in the Applicant's favor when assessing the Competing rights of the Applicant and the Respondent, as if the interim injunction is not granted, the Applicant will not have any alternative remedy to protect further dealings with the Respondent's properties and the Applicant's claimed may be rendered null and nugatory.

[26] The Applicant is aware that the assets referred to above at paragraph 10 are within Jurisdiction which the Respondent has control off and they have the power to dispose them at will by using sophisticated means if alerted.

[28] The risk is demonstrated by the following;

- a) The expert report demonstrates the ease at which the Respondent could, if they wish, Syphoned the money sitting in the wallets at the click of a button;
- b) The assets are in the form of crypto which makes it easier to shift hands within the block chain.

[29]I believe if the interim injunction is not granted, the Applicant will have no protection against further dealings with the Respondent's property which may cause irreparable harm towards the Applicant's right to property and of which cannot be atoned by damages'.

The Law

- [3] Section 304 of the Seychelles Code of Civil procedure provides that ' it shall be lawful for the plaintiff, after the commencement of his action and before or after judgment, to apply to the Court for a writ of injunction to issue to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right, and such writ may be granted or denied by the said Court upon such terms as to duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just'.
- [4] Section 5 of the Courts Act provides that ' the supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be brought or may be pending before it, whatever may be the nature of such suits, actions, causes or matters, and , in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers,

privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the high Court of Justice in England’.

- [5] Section 6 of the Courts Act provides that ‘the Supreme Court shall continue to be a court of equity and hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the laws of Seychelles.

- [6] The effects of these provisions of the law namely section 5 and section 6 of the Courts Act is that the Supreme Court being invested with all powers which is vested or capable of being exercise by the High Court of justices in England and by virtue of that is a Court of equity and as such has the power to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided for by the laws of Seychelles including writ of injunctions. Section 304 of the Seychelles Code of Civil procedure reinforces the powers of the Court in cases where there is the repetition or continuance of a wrongful act or a breach of contract or injury of the like kind.

- [7] The case of Ex-Parte Rodionov (CS 121 of 2021), E. Carolus Judge stated that ‘in determining whether to grant an injunction or not, this court is guided by the case of Cyanamid American Co V Ethicon AC 396, 1975 that requires

- i) A serious question to be determined in the main suit,
- ii) Inadequacy of damages to compensate the Applicant
- iii) The balance of convenience.

- [8] The Court in ex parte Rodionov also relied on the case of Nathalie Lefevre V Beau Vallon properties and Ors (MA/154/2018), where Twomey then CJ stated the following regarding the factors to be considered in deciding whether or not to grant an injunction;

‘Injunctions are equitable remedies in nature and in such applications the Court is guided by three considerations;

- i) Where there is a serious issue to be tried,
- ii) Whether damages would be inadequate to redress the harm caused by the grant of injunction,
- iii) And on a balance of convenience it would be best to grant rather than deny the injunction. (see techno International VS Georges unreported CS 147 of 2002)

[9] Further in the case of Danjee V/S Electoral Commission (2010 SLR 141), the Court interpreted the balance of convenience test to include the consideration of the following factors;

- i) Whether more harm would be done by granting or refusing the injunction,
- ii) Where the risk of injustice would be greater if the injunction was granted, than the risk of injustice if it was refused
- iii) Where the breach of the party’s rights would outweigh the rights of others in society.

Determination

[10] This Court notes that there is a Plaintiff filed before the supreme Court in C.S no 92/2023 alleging that the use of the defendant’s platform has facilitated the fraudsters/scammers unlawful transfer of the plaintiff’s assets into the wallets and that furthermore the defendant is at fault for allowing its platform to participate, store and keep possession of the stolen assets.

[11] Ex-facie the Affidavit and in the light of the above authorities cited, this Court finds that there is a serious issue to be tried and that the Applicant appears to have a bona fide claim against the Respondent in the main action or Plaintiff.

[12] I am also satisfied that unless the Court grants an interim injunction in the matter, the Applicant will have no protection against further dealings by Respondent with the Applicant's property which may cause irreparable harm towards the Applicant's right to property and of which cannot be atoned by damages.

[13] This Court is further of the view that the balance of convenience lies in favour of the Applicant as if the interim injunction is not granted, the Applicant will not have any alternative remedy to protect further dealing with the Applicant's property by the Respondent since the Respondent has control off and they have the power to dispose of the assets at will by using sophisticated means if alerted and as such the Applicant's claim may be rendered null and nugatory in the event that judgment is given in favour of the Applicant.

[14] As a result of the above, this Court shall make the following orders;

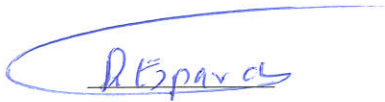
i) I hereby issue an interim writ of injunction against the Respondent Huobi Global Limited until further Order of this Court namely;

a) Restraining the Respondent Huobi Global Limited from disposing or moving and transferring the said cryptocurrency assets allegedly belonging to the Applicant namely 24.61 bitcoins as particularised at paragraph 2 of this ruling referring to the contents of paragraph 19 of the Affidavit in support of the Application.

ii) I order the Registrar of the Supreme Court to serve a copy of this Order and a copy of the Application in MA 320/2023 on the Respondent Huobi Global limited, a Seychelles International Business Company represented by its director at the

company's Registered agent Appleby Global Services (Seychelles) Ltd, at suite
202, 2nd Floor, Eden plaza, Eden Island.

Signed, dated and delivered at Ile du Port on 27th October 2023.



D. Esparon

