

QUEEN'S BENCH DIVISION

(reporting restrictions lifted,  
and released for publication, 20 January 2022)

Case No: QB-2022-000037

The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday, 5<sup>th</sup> January 2022

Before:

THE HONOURABLE MR JUSTICE LANE

B E T W E E N:

SALLY JAYNE DANISZ

and

PERSONS UNKNOWN AND HUOBI GLOBAL LTD (T/A HUOBI)

MISS R L MULDOON appeared on behalf of the Applicant NO  
APPEARANCE by or on behalf of the Defendants

JUDGMENT  
(Approved)

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MR JUSTICE LANE:

1. This is an application made *ex parte* for an interim proprietary injunction against both of the defendants cited in the claim form, a worldwide freezing order against persons unknown and a banker's trust disclosure order against the second defendant; and various ancillary orders.
2. I have dealt already with the issue of the mode of today's hearing which I ordered to be in private for reasons which I gave earlier.
3. The applicant seeks a prohibitory interim injunction, in terms of the draft order in front of me, that restrains the defendants, comprising in part, persons unknown, (although they have been identified as much as possible), and the second defendant, Huobi Global Limited, from dealing in the applicant's property either directly or indirectly.
4. This case is concerned with the cryptocurrency known as Bitcoin. The property which is the subject of the interim injunction is that known as 0.109998 Bitcoin.
5. This is said to have been misappropriated by the persons unknown but has been traced by an expert instructed by the claimant and whose report I have fully considered.
6. The Bitcoin is said to have been transferred to a so-called cryptocurrency end-wallet, ending 4932, at the exchange of the second defendant.
7. The applicant also seeks a worldwide freezing order, which would prohibit the persons unknown from unjustifiably disposing of or otherwise dealing with the 4932 Bitcoin in the wallet I have just mentioned.
8. The subject matter of the case can be dealt with relatively shortly. The claimant discovered a website known as Matic Markets Ltd and was encouraged by what she saw there to make investments in the form of Bitcoin, which she duly did, releasing £4,999.09 to it on 31 October, £4,979.13 on 2 November and £17,010.66 on 19 November, all in order to acquire certain Bitcoins described at paragraph 2.5 of Miss Muldoon's skeleton argument.
9. The claimant was encouraged to think that these Bitcoin investments had accrued in value, following her investment. However, when, in December 2021, she sought to withdraw the Bitcoin and any profit, her request was refused by the apparent representative of Matic, even though she had earlier been told that she could do both on demand.
10. Eventually, her suspicions became aroused and as I have said, she commissioned an expert report, authored by Robert Moore. The report makes grim reading. It is quite apparent that there is a good arguable case that the Matic operation, if I call it that, is wholly fraudulent and, it seems, run by organised criminals. Not only does it appear that the entity is engineered to misappropriate funds invested in it by investors such as the claimant, but it also appears to have the capacity to interfere with banking and other online transactions.
11. I am entirely satisfied, in accordance with Practice Direction 7A, that the High Court is the appropriate forum for these proceedings. I am also satisfied, for the reasons given by Miss Muldoon both in writing and orally in her extensive submissions today, that this is a case of exceptional urgency. It appears that a significant amount of the Bitcoin of the claimant may well have already been dissipated and that only a relatively small element of it may be presently under the control of the second defendant. This is a form of transaction whereby, at the click of a mouse, an asset can be dissipated.

12. The applicant has agreed to give undertakings, such as one would require to see in an application of this kind. I have probed the issue with Miss Muldoon, and I am satisfied that the undertakings have been properly given and that the claimant understands their significance.
13. In *AA v Persons Unknown, Re Bitcoin* [2019] EWHC 3556, Bryan J held that:

“... for the purpose of granting an interim injunction, cryptocurrency such as Bitcoin is a form of property capable of being the subject of a proprietary injunction”.

I respectfully agree and follow that finding.

14. The relevant test is the well-known one of *American Cyanamid Co (No 1) v Ethicon Ltd* [1975] UKHL 1; namely, is there a serious issue to be tried and does the balance of convenience lie in favour of the injunction? I find there plainly is a serious issue to be tried. I am fully satisfied from the evidence that the Matic operation is, to put it at its mildest, highly problematic and is more likely or not to be thoroughly fraudulent.
15. The balance of convenience clearly favours the granting of interim relief. As I have already said, dissipation appears already to have occurred to a substantial degree and it is, therefore, plainly necessary for any further dissipation to be ended and for the seeking of relief from the defendants to begin in earnest as soon as possible.
16. I am entirely satisfied, for the reasons given by Miss Muldoon, that damages would not be an adequate remedy in this case and agree with her that there is, on the face of it, a very strong case, both substantively and for the injunctions sought.
17. As far as the worldwide freezing order is concerned, there is a strong underlying cause of action. I am satisfied that the High Court in England and Wales has jurisdiction to hear the substantive claim; essentially, for the reasons given by Butcher J in the case of *Ion Science Ltd v Persons Unknown* (unreported, 21 December 2020). There, Butcher J held that:

“The *lex situs* of a crypto asset is determined by the place where the person who owns it is domiciled in the present case”.
18. Applying that case, which seems to me to be entirely appropriate, there is no question but that the claimant is domiciled in England and Wales. Furthermore, she provided the funds to Matic from a bank account located in England and Wales.
19. I accept that the position of the second defendant, as an exchange for the end-wallet having control over the 11.2 element of the Bitcoin, does not defeat the application. This is because the definition of “assets” includes all the assets that are held or controlled by a third party. The authority for that is *JSC BTA Bank v Ablyazov* [2015] UKSC 64.
20. There is, for the reasons I have given, a risk of dissipation. An undertaking in damages, for the reasons I have given, would not be appropriate and there has been, I am satisfied, no delay. The claimant has acted very swiftly over the Christmas and the New Year period, not least in commissioning the expert report; and the balance of convenience favours the granting of the injunction.
21. I shall also make what is described as a bankers trust disclosure order. This would compel the second defendant to disclose certain payment-related information about account holders of the end-wallet. Such an order appears to me to be entirely appropriate and necessary. There is a real prospect, in all the circumstances, that the supply of the information by the second defendant will lead to the location or preservation of the Bitcoin. It also is plain that the report discloses an arguable case that fraud has taken place.

22. The applicant has given an undertaking only to use the information for the purposes specified, that is to say, the recovery of the Bitcoin; and there is the relevant undertaking given by the applicant to the second defendant.
23. It is also necessary to make a freezing order in the terms sought by the claimant. Besides what I have already said in that regard, I am entirely satisfied that only by means of a freezing order is the claimant likely to receive some element of the Bitcoin over and above that which appears, at the moment, to be held by the second defendant.
24. Therefore, the injunction, freezing order and disclosure order are appropriately sought and I propose to make them in the terms sought by Miss Muldoon, subject to minor changes to reflect the time at which this judgment is being given and the fact that it may, in the event, not be possible to serve until 6 January, which is tomorrow.
25. I agree that service should be made outside the jurisdiction pursuant to CPR 63.6. I am satisfied that the relevant gateways in Practice Direction 6B 3.1 are met. Interim relief is sought and the cause of action amounts to a claim in tort, where the damage was sustained within the jurisdiction. There is also a good arguable case.
26. Finally, I follow the judgment of Butcher J, in that the requirement for there to be exceptional circumstances is met in this case by the need for, as he put it, "hot pursuit", which is essential if the claimant's assets are to be secured. Given that there is a reasonable prospect of success, CPR 6.37(1)(b) is satisfied.
27. I also give permission for alternative service. The whole nature of the Matic organisation is so problematic that there can be no certainty that the names of the persons with whom the claimant corresponded and spoke in that organisation were real ones. Nevertheless, we have their emails, and it seems, in all the circumstances, that it is appropriate for those addresses to be used by way of alternative service on those persons.
28. Since no other information about where Matic might be served has come to light, despite the claimant's researches and those of the expert, it is plain that alternative service, so far as they are concerned, is necessary. I also consider, in the circumstances, that alternative service on the second defendant is appropriate, given the nature of the urgency of this matter.
29. Accordingly, I give permission for alternative service pursuant to CPR 6.1(5) and 6.2(7). I reiterate the fact that, since we are dealing with cryptocurrency, time is manifestly of the essence.

**End of Judgment**

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