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Case No: BL-2018-002148

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST

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Before:

MR. JUSTICE BIRSS

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Between:

ELENA VOROTYNTSEVA	**Claimant/ Applicant**
- and –	
(1) MONEY-4 LIMITED t/a NEBEUS.COM **(2) SERGEY ROMANOVSKIY** **(3) KONSTANTIN ZARIPOV**	**Defendants/ Respondents**

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MR. JAMES RAMSDEN QC (instructed by **Steptoe & Johnson UK LLP**) for the **Claimant/Applicant**
MR. JONATHAN BELLAMY (instructed by **Simons Muirhead & Burton**) for the **Defendants/Respondents**

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Approved Judgment

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MR. JUSTICE BIRSS:

1. This is an application brought ex parte on very short notice for a freezing order. The claimant, Elena Vorotyntseva, seeks a freezing order against the first respondent, Money-4 Limited trading as Nebeus.com ("Nebeus") and its directors Mr Romanovskiy and Mr Zaripov. Mr Romanovskiy is the sole shareholder and both gentlemen, as I understand Mrs Vorotyntseva's evidence, are the moving spirits behind Nebeus.

2. Mrs Vorotyntseva's case is that the relationship between herself and Nebeus is essentially like that of a client and a bank. In July 2018 Mrs Vorotyntseva gave to Nebeus a substantial quantity of Bitcoin and Ethereum cryptocurrency. This was 293.6583085 Bitcoin and 400.39984802 Ether, which together were worth (as at 24th August 2018) about £1.5 million in so called "fiat" currency. Fiat is the name those in the cryptocurrency world use for traditional money. The reason for giving the date for the valuation in sterling is that it is notorious that the value of cryptocurrency is highly volatile. The funds were to be dealt with on her behalf and the purpose of that transaction was to test Nebeus's trading platform. The concern by the claimant is that that money appears to have been dissipated.

3. This all arose because Mrs Vorotyntseva's husband Mr Mikhail Vorotyntseva wishes to attract investors in cryptocurrency using a company called Humanity Capital. Coinbase is a digital currency exchange and Mrs Vorotyntseva is the administrator of the Coinbase wallet for Humanity Capital. She transferred the funds to a new wallet operated by Nebeus.

4. After Mrs Vorotyntseva's concerns were first raised, correspondence ensued between the parties over the summer. Recently the solicitors acting for Mrs Vorotyntseva asked specifically for confirmation that the funds had not been dissipated and that they were still in the possession of Nebeus and would be held by them. (I think Mrs Vorotyntseva herself had first asked about this but then the solicitors asked specifically). Confirmation was not forthcoming and this application for a freezing order was brought.

5. It came before me this morning. It was *ex parte* on very short notice. The applicants gave notice at about half past six last evening to the solicitors, Simons Muirhead & Burton, acting for the company and the second and third respondents. They were told that the applicant's lawyers were coming to court the next day. At 10.30 this morning when the matter was called on, Mr. Bellamy of counsel appeared for the respondents. I should say that Mr. Ramsden of counsel appears for the claimants. At that stage I was told that the respondent company had offered an undertaking to maintain the cryptocurrency pending further order. That undertaking was offered.

6. The claimants explained to me that they wished to have confirmation by means of e-mail or copies of relevant electronic information that the relevant Bitcoin and Ethereum currency was still in the possession or control of Nebeus. That was provided during the morning in the form of e-mails with screenshots from a computer screen. I have been given copies of these two screenshots, printed out. One of them is the relevant screenshot concerning Bitcoin but I am told by Mr. Ramsden that it does not in fact confirm on its own that Mrs Vorotyntseva's Bitcoin is indeed still being held by Nebeus. The technical details of why that is so do not matter.

7. The other document is the Ethereum document. I have been provided with a paper copy and also with an iPad to show what appears on a computer screen. The resolution on the iPad is better than the paper copy. It can be seen that the relevant Ether address starts with the letters OX7B1B and continues on in the way that these sorts of cryptographic hash strings do. However then what appears to have happened is that the claimant's name, Elena Vorotyntseva, and a date, appears to have been superimposed on top in typescript (with a blurred border). It does appear to me, as Mr. Ramsden submits, that this document which has been produced by the first respondent is a composite of something that is on the relevant computer screen and then something else that has been overlayed on top of it, in order to make the composite look as though Mrs Vorotyntseva's name appears on the screenshot, when in fact it does not.

8. I should say that these inferences can only ever be preliminary based on the material produced. Mr. Bellamy, understandably perhaps, is not able to and does not take any position on the nature of this material.

9. But Mr. Ramsden submits that this bears out his client's concern about the risk of dissipation. That is because what has happened is that when the respondents were given the opportunity to demonstrate precisely that they did still have the relevant cryptocurrency, they have actually produced at least one document which appears to have been altered in some way and another document which simply does not prove the proposition that is put forward to achieve.

10. I accept Mr. Ramsden's submission. That is very significant because it means that on the evidence that I have now, I am satisfied that there is a real risk of dissipation in this case. Mr. Bellamy does not accept that. His primary submission is that I need to be careful and bear in mind whether there really was any basis for bringing this application on an ex parte basis in the first place. He makes the point, rightly, that when such short notice is given to a respondent, the respondents are really put in a bind either to play no part – which is always something that could be taken against it – or to come to court and do the best it can to assist the court. Mr. Bellamy's submission is that I should characterise the behaviour of the respondents in this case in that way and that therefore allowances should be made for the difficulty the timing has put on the respondents in being able to deal with it.

11. There is some force in Mr. Bellamy's submission. However in assessing the evidence that I now have, I have made all allowances I can think of for the respondents bearing in mind the very speedy way in which this matter has proceeded. I should now say it is four o'clock in the afternoon. Nevertheless, I cannot but note that very serious questions arise from the material which has been produced. These two documents do seem to me to bear out the claimant's case that there is a risk of dissipation. That means that this is a proper case in which I should make a freezing order.

12. Mr. Bellamy submits that the freezing order should be limited to the company and not to the two individuals. In many cases that may well be an appropriate course to take but since, as far as I can tell, the two individuals are closely involved in the running of the company and they must have been involved, it seems to me, in the production of the documents today, in my judgment I should not limit this freezing order to the company but should include the individuals as well. That is what I will do.

13. Another point taken on the freezing order relates to the terms of the proprietary order. The point is that the Bitcoin and the Ethereum currency is ultimately said to belong to the claimant and not to the respondents. I should say no suggestion has been made by the respondents that the cryptocurrency that was given to them does not belong to the claimant. Nor is there any suggestion that cryptocurrency cannot be a form of property or that a party amenable to the court's jurisdiction cannot be enjoined from dealing in or disposing of it. I am satisfied that the court can make such an order, if it is otherwise appropriate.

14. In terms of drafting the order, I must say I do think Mr. Bellamy is right that the correct way to draft the relevant paragraph of the proprietary injunction is it should prohibit the disposal of the relevant quantities of Bitcoin or Ethereum but should not seek to prevent disposal of "the combined sterling equivalent as at 24th August 2018 in the sum of £1,596,344.41" in the alternative. That seems to me to be inconsistent with this being a proprietary injunction. That is a different point from the terms of a non-proprietary freezing order. In relation to the proprietary injunction I take Mr. Bellamy's point.

15. Another issue I need to resolve is the question of cross-undertaking in damages and its fortification. The claimant is a Russian national, not domiciled in the jurisdiction and does not have assets here. She has made clear that she accepts that some fortification of a cross-undertaking should be given. It seems to me that the right way of dealing with that is that a sum be put into an escrow account to be held by her solicitors. Or, if the claimant would rather make a payment into court because it is cheaper, that is fine. But that or an escrow account is the way that I think it should go. I will discuss with the parties the sum that needs to be put forward in that respect.

16. I should emphasise, as of course it is obvious, that this is a very preliminary order and there will be a return date. It needs to be in short order. I will hear Mr. Bellamy for how long he thinks his clients will need for it to come to court and be able to make their submissions to the court on proper notice.

17. I think I have resolved all the issues that I need to resolve, at least at this stage. That is my decision.

(Discussion followed)

This transcript has been approved by the judge.