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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
Neutral Citation Number [2023] EWHC 1024 (Ch)

No. BL-2022-001878

Rolls Building
Fetter Lane
London EC4A 1NL

Thursday, 2 March 2023

Before:

MR JUSTICE TROWER

B E T W E E N :

JAHANGIR PIROOZZADEH — Claimant

- and -

(1) PERSONS UNKNOWN CATEGORY A
(2) PERSONS UNKNOWN CATEGORY B
(3) OA CAPITAL HOLDINGS LIMITED
(4) JOANNE INDUSTRY INC
(5) TD BANK NA
(6) KREISSPARKASSE KOELN
(7) BROCKHAUS & KOLLEGEN RECHTSANWALTGESELLSCHAFT MBH
(8) BINANCE HOLDINGS LIMITED
(9) AUX CAYES FINTECH CO LTD — Defendants

J U D G M E N T

A P P E A R A N C E S

MR D ARMSTRONG KC and MISS R MULDOON (instructed by Giambrone & Partners LLP) appeared on behalf of the Claimant.

MR D QUEST KC (instructed by Herbert Smith Freehills LLP) appeared on behalf of the Eighth Defendant.

MS L DE BRUYN (instructed by Cooley (UK) LLP) appeared on behalf of the Ninth Defendant.

MR JUSTICE TROWER:

1 On 18 October 2022, Sir Anthony Mann made an order without notice against the first three defendants restraining them from dealing with the claimant's cryptocurrency in the form of 870,818 USD Tether ("USDT") transferred into the eighth and ninth defendant exchanges from what were described as "five last hop wallets". He also made an order requiring the eighth defendant to preserve the claimant's 479,904 Tether or its traceable proceeds received from three of the five last hop wallets and requiring the ninth defendant to preserve the claimant's 399,914 Tether or its traceable proceeds received from the other two of the identified last hop wallets. Orders were also made for service of the claim form, the order and other documents in the case on the first, second, third, eighth and ninth defendants out of the jurisdiction and by alternative means and for disclosure by the eighth and ninth defendants in exercise of the *Bankers Trust* jurisdiction.

2 On 18 November 2022, which was the return date given by Sir Anthony Mann, Michael Green J continued the injunction over a relisted return date hearing to be fixed by the court with a time estimate of one day. The order recorded that he did so because the eighth defendant had indicated to the claimant that it was proposing to contest the application and the claimant had notified the eighth defendant and the court that he intended to call live evidence from his expert intelligence and tracing firm MITMARK. This is the hearing ordered by Michael Green J.

3 The background can be shortly stated as it appears from the claimant's evidence. During the course of the second half of 2021 (between 29 June and 28 September) the claimant, a resident of Canada, was induced by a complete stranger with whom he had had unsolicited WhatsApp contact to transfer CAD$1,990,051 to two accounts. The first was an account held at the fifth defendant, a US bank, in the name of the fourth defendant also a US entity.

The second was an account held at the seventh defendant, a German bank, in the name of the sixth defendant which is a German partnership. The claimant's evidence is that he made transfers to enable foreign exchange trading on an account he was induced to open purportedly with the third defendant, an English company incorporated earlier the same year with a single resident of China as its director and no trading documentation filed. The claimant was then induced to increase his trading capital with the third defendant by transferring eight tranches of Tether to four separate cryptocurrency wallets utilised by the third defendant. These transfers were made over an eighteen-day period in the first half of November 2021 and the total amount transferred was some 870,818 Tether.

4 By early December 2021, the claimant had realised that he was a victim of a scam because his attempts to withdraw funds from his trading account with the third defendant which itself was a sham were unsuccessful. There is strong evidence that he has, indeed, been the subject of a fraud and that is not an issue in the present application.

5 It took the claimant some time to instruct solicitors and experts to identify what had occurred. Solicitors instructed first attempted to discover what had happened during the first part of 2022 and the investigation agents were eventually instructed on 28 June 2022. Around about the same time, and the precise dates do not matter, letters before action to the fraudsters and the banks in relation to the Canadian dollars transactions were sent.

6 The reports the investigation agents produced asserted that it was possible to trace the Tether which had originally been transferred by the claimant to the third defendant's cryptocurrency wallets onwards to the five wallets held with the eighth and the ninth defendants referred to in the order made by Sir Anthony Mann. So far as the eighth defendant is concerned, the evidence is that these were deposit wallets or addresses used by

the eighth defendant's own account holders identified only by number. The actual identity of the users of those five wallets was not publicly available information on the blockchain. The disclosure orders made by Sir Anthony Mann have revealed the identity of the users in whose names these five accounts were then held. It is not said that they are parties to the fraud and they have not been joined to the proceedings. Since the original credits were made to the three accounts held by the other users at the eighth defendant, the Tether balances on those accounts have been reduced to zero or almost zero. All of those transactions emptying the accounts occurred some time before the injunction was granted save for a very small balance on one of them attributable to another transaction.

7 The position is the same so far as the ninth defendant is concerned although it has not formally joined in this application. It has pleaded in its defence and asserted in a skeleton for the purposes of this hearing that the same has happened to the two user accounts held by it. I also understand, although this was not developed in argument before me, that this is claimed to be the position in evidence adduced by the ninth defendant for the purposes of a reverse summary judgment application issued by it some ten days ago but which is not before the court on this hearing.

8 It is convenient to describe at this stage what happens to crypto assets held at a deposit address with the eighth defendant as explained in its evidence. The uncontradicted evidence adduced by the eighth defendant is that the user does not retain any property in the Tether deposited with the exchange. As it is put in Mr Quest's skeleton argument, the user's account is credited with the amount of the deposit and they are then permitted to draw against any credit balance as in a conventional banking arrangement. The Tether, like other crypto assets, are then swept into a central unsegregated pool address known as a "hot wallet" where they are treated as part of the eighth defendant's general assets. They are not

specifically segregated to be held for the sole benefit of the user from whose account they have been transferred. This is what happened in the present case. All of the Tether deposited in the three user addresses held at the eighth defendant were swept into one of two hot wallets. Since that exercise was carried out, there have been hundreds of transactions an hour passing through each of the hot wallets which operate as a central pool. It is evident that, in those circumstances, any attempt to trace the Tether swept into the pool from the three user accounts at the eighth defendant would have been as at the time of the order made by Sir Anthony Mann over nine months later an essentially futile and close to impossible and possibly impossible exercise.

9 In their application of 30 January 2023 the eighth defendant seeks an order discharging the interim proprietary injunction made against it by Sir Anthony Mann on 21 October on the grounds that it should never have been made without notice and that the claimant's legal representatives failed in their duty of fair presentation. In support of this application which was for good and sufficient reasons heard before any application to extend the injunction or continue the injunction, the eighth defendant makes four headline points. The first is that the claimant did not properly explain the defences likely to be available to the eighth defendant in respect of its alleged liability as a constructive trustee. The second is that the claimant did not explain why there was a sufficient risk of a breach of trust by the eighth defendant to justify an injunction. The third is that the claimant did not explain why damages would not be an adequate remedy and the fourth is that the claimant did not explain how it was that the eighth defendant would in practice be able to comply with the order.

10 Before explaining my conclusions on the four headline points, I should deal with the initial complaint that the application should never have been made without notice. It is said by the

eighth defendant that what occurred demonstrated a serious breach by the claimant and his legal representatives of the principle expressed by Hoffmann J in *Re First Express Ltd* [1992] BCLC 824 at p.828E where Hoffmann J said:

> "It is a basic principle of justice that an order should not be made against a party without giving him an opportunity to be heard. The only exception is when two conditions are satisfied. First, that giving him such an opportunity appears likely to cause injustice to the applicant, by reason either of the delay involved or the action which it appears likely that the respondent or others would take before the order can be made."

11 Thirty years on from Hoffmann J's well-established statement of principle, urgency is unlikely of itself to be sufficient in the absence of a well-founded fear that action to the detriment of the applicant might be taken by the respondent should notice be given. Ease of communication is now such that some sort of notice is nearly always possible.

12 The eighth defendant submitted that no possible grounds on which injustice could have been caused to the claimant have been shown. It is said that secrecy was not necessary as against it as it was not alleged to be guilty of wrongdoing. It is also submitted that, even as against the first to fourth defendants, the position was dubious as action had already been threatened by solicitors' correspondence some time earlier, as I have already mentioned.

13 The justification for a without notice application was given in para.8.2 of the witness statement produced in support of the original application. However, this evidence did not distinguish between the various defendants. I agree that this is a significant failing in circumstances in which there is no evidence that the eighth defendant would itself take any steps or permit any steps to be taken were it to be forewarned of the application and nothing to that effect was said at the hearing.

14 The position now taken by the claimant is that the eighth defendant was not told because there might have been an inadvertent tipping off. The way the point is put in para.6.17 of his skeleton argument is as follows:

> "6.17 Sir Anthony Mann was satisfied that the Order was properly obtained on an urgent without notice basis. In addition to the reasons addressed in submissions, the Claimant maintains that this was properly done as:
>
> 6.17.1 Had the Eighth Defendant of been put on notice of the urgent hearing, this could have resulted in the inadvertent tipping off of the First, Second, Third and/or Fourth Defendants. This risk is greater in cases of this kind owing to the ease of movement of cryptoassets at '...the click of a mouse', as termed by Mr Justice Bryan in *AA*.
>
> 6.17.2 Further, or in the alternative, the Eighth Defendant is an unregulated entity."

15 I am not persuaded that this was a good answer to the point made against the claimant for a number of reasons. The first is that tipping off was not an issue that was raised before Sir Anthony. The second and perhaps more substantive point is that there is no specific evidence that might have caused the court to conclude that tipping off was a material risk, although I will come back to the point that the eighth defendant was not a regulated entity (and the opacity of its corporate structures) shortly. I also agree with Mr Quest's submission that there was an obvious solution to any perceived problem which was to proceed against the fraudsters and serve any order on the eighth defendant as a non-respondent. If specific relief was later needed, it could have been sought later in response to any reaction from the eighth defendant.

16 Turning to the fact that it is also now said that the eighth defendant is not a regulated entity and that this was a material factor for consideration by the court when considering whether it was inappropriate for notice to be given, my attention was drawn to paras.5.2 to 5.10 of the claimant's evidence in support of the original application. These paragraphs describe

the claimant's case as to the status of Binance. It was said that taking all of those considerations together, it reasonable for the claimant to treat the eighth defendant in a manner that was different from a bank or a law firm, they being amongst the other respondents to the application. It was said by the claimant that Sir Anthony Mann was aware of concerns that the claimant reasonably had about the status and structure of the eighth defendant and that the following matters, in particular, were made clear by the claimant's evidence.

17 I do not need to read the entirety of para.5, but the two factor to which the claimant drew particular attention were the opaque structure of the group of which the eighth defendant forms part. This structure was described by HHJ Pelling QC in the case of *Fetch.AI Limited v Persons Unknown*. The second factor was the fact that the eighth defendant is outside the scope of regulatory oversight. It was said by Mr Armstrong on behalf of the claimant that, notwithstanding the fact that Sir Anthony Mann's attention had been drawn to the matters set out in para.5 of the witness statement, it remained his view in the light of the circumstances at the time the application was made that a without notice was appropriate.

18 I have reached the conclusion that, taken purely in isolation, this factor alone would not have justified the discharge of the injunction once granted, although in saying that it should not be read as the court's determination that it was right for substantive relief to be sought against the eighth defendant without notice in this case. In my view, Mr Quest's 'obvious solution' (as described above would have been a much more appropriate way forward.

19 However, this failure to give notice to the eighth defendant cannot be considered in isolation. It was said to be more serious because the claimant failed in his duty to make a fair presentation of the case at the without notice hearing. The duty to do so when applying without notice is trite law in this area and is well recognised by numerous authorities. In

Siporex Trade SA v Comdel Commodities Ltd [1986] 2 Lloyd's Rep 428, Bingham J summarised the position as follows. He said that an applicant must show the utmost good faith and disclose his case fully and fairly. He must identify the crucial points for and against the application and not rely on general statements and the mere exhibiting of numerous documents. He must investigate the nature of the cause of action asserted and the facts relied on before applying for relief and he must identify any likely defences.

20 In the *Pugachev* case [2014] EWHC 4336 (Ch) at 171, Mann J said in a passage with which I agree:

> "The obligation to anticipate defences in pursuit of the obligation to make full and frank disclosure is very important. An Applicant for without notice relief has actively to consider what points of defence might be taken by the defendant and put them before the court. That is a fundamental requirement, and safeguard."

21 I also agree with the submission made by Mr Quest that it is not sufficient for the applicant in these circumstances to rely on the judge. One helpful illustration of the reason for this is given by Popplewell J in the case of *Fundo Soberano De Angola v Jose Filomeno Dos Santos* [2018] EWHC 2199 (Comm) at paras.51 to 53 where he said the following, a statement of general principle which will chime with any judge faced with granting injunctive relief on without notice applications:

> "The task of the judge on a without notice application in complex cases such as the present is not an easy one. He or she is often under time constraints which render it impossible to read all the documentary evidence on which the application is based, or to absorb all the nuances of what is read in advance, without the signposting which is contained in the main affidavit and skeleton argument. It is essential to the efficient administration of justice that the judge can rely on having been given a full and fair summary of the available evidence and competing considerations which are relevant to the decision."

22 Against that background of the principles, I turn to the four headline points that are made by the eighth defendant in support of its case that there was a failure by the claimant to make a fair presentation.

23 As to the constructive trust point, the judge expressed some concern about the position. I have had the benefit of a note, albeit not a verbatim transcript, of the hearing. He asked counsel during the course of the hearing why it was that the exchange defendants were constructive trustees if they were simply exchanges. He did so against the background of a statement in para.5.1(3) of counsel's skeleton for the hearing that there was an arguable claim based on the following cause of action against all defendants, "Equitable property claims against all the defendants as constructive trustees based on the proposition that when property is obtained as a result of wrongdoing, equity imposes a constructive trust on the recipient by operation of law."

24 Counsel's response to the judge's question was that the exchanges are constructive trustees, "Because they are in control of those cryptocurrency assets," and she then went on to say that it had been held in *D'Aloia* that exchanges are constructive trustees. There was then a later exchange which went along the following lines.

> "Judge: Let us refer back to the issue of constructive trustee. If a client pays money into a bank account, that bank is not then a constructive trustee.
>
> Counsel: Respectfully, I disagree. Purely by receiving the assets in question is enough.
>
> Judge: You are not fixed with constructive trustee unless you know of and are fully aware of a fraud.
>
> Counsel: No, I do not agree. The initial wrongdoing is enough.
>
> Judge: The exchanges only become constructive trustees once they have been told about your case against them. Have you written to the exchanges yet to put them on notice?
>
> Counsel: No, my Lord."

25 The problem with the way in which this was put was that the claimant did not make any reference during the course of those exchanges to what really mattered as a defence. If the recipient of the stolen Tether was a *bona fide* purchaser, it is almost certainly the case that the proprietary rights of the beneficiary will not survive. It is sufficient for these purposes to refer to what Lord Sumption said in *Akers v Samba Financial Group* [2017] AC 424 at para.83:

> "There are a number of reasons why the proprietary interest of the beneficiary may not be effective or enforceable. Obvious examples include cases where the property or its traceable proceeds have been transferred to a bona fide purchaser for value without notice; and cases where the property has been consumed or destroyed, or has ceased to be traceable."

26 In the present case, once the Tether had been swept from the user accounts into the pool, the users were then granted credit in the amount of the value swept which would then constitute the eighth defendant a purchaser and no longer susceptible to any remedy at the suit of the claimant so long as it acted *bona fide*. Whilst Sir Anthony Mann was told that the cryptocurrency is transferred into a pool held by the exchange, and that "after the credit they are offering credit of those assets", the possible legal consequences were not mentioned to him. In my judgment, that should have been done if the reasoning of Popplewell J in *Dos Santos* was being properly observed and complied with. The same may be said arising out of what Mann J himself had said in *Pugachev*.

27 I also agree with the eighth defendant's submission that the lack of a fair presentation was made more acute because, although the pooling was mentioned, its true significance was rather distorted by the fact that the evidence from the claimant's legal representatives was to the effect that the applicant's Tether was currently "in the Exchange Defendants' control." In my judgment this was obviously incorrect in the light of what occurred when the Tether was pooled. In particular, it should have been apparent that the consequence of pooling was that the users' right to receive substitute assets from the exchange was at the very least

likely to constitute the exchange a purchaser for value of anything that was transferred into the account in the first place.

28 I also think that the position is made more rather than less acute by what occurred in *D'Aloia*, a case in which very similar allegations were made against the eighth defendant. In that case, I had given an *ex tempore* judgment on a without notice application made by the same legal representatives acting for another claimant in his claim against, amongst others, the eighth defendant. I made no mention in my judgment of a *bona fide* purchaser defence to a claim in constructive trust against the exchange, and there is no support in that judgment for the proposition that I had held without more that "exchanges are constructive trustees" which is what the note of the hearing before Sir Anthony Mann records as part of the submissions made on behalf of the claimant.

29 I should also add that there is no indication from my judgment in *D'Aloia* that the evidence in that case showed that the cryptocurrency had been pooled. But, more significantly, by the time the without notice application was made in the current proceedings, it had become known from the defence being run by the eighth defendant in *D'Aloia* that its *modus operandi* involved pooling and that where that had occurred it was likely to assert a *bona fide* purchaser defence. Not only was this not mentioned to Sir Anthony Mann, but the claimant sought to persuade him that mere receipt was sufficient, in part on the basis that the assets concerned (the Tether originally transferred) were still identifiable as within the control of the eighth defendant as at the date of application, a point that was confirmed on the evidence.

30 As to this last point, I do not agree with the submission made by the claimant that it would have been improper for his legal representatives to pre-empt defences in these proceedings in reliance on those raised in unconnected proceedings. The point which is established in all

of the cases such as *Siporex*, *Pugachev* and *Dos Santos*, is that the duty is on the legal representatives as well as the claimant to identify and anticipate likely defences. If as a result of their involvement in other litigation the legal representatives are aware both of the way in which the eighth defendant asserted that its pooling operations functioned and the nature of the legal consequences which were said by it to flow from that, there can in my judgment be no basis for them to say that it did not occur to them that such defences were not likely to be run.

31 As to damages being an adequate remedy, I agree with Mr Quest that this should have been presented in a more comprehensive manner. I accept that what was said about the inadequacy of damages in relation to the first, second and third defendants would have justified an injunction, but there was no explanation or evidence as to why the eighth defendant should be tarred with the same brush. Indeed, I think it is fair to say that the claimant's skeleton did not address the adequacy of damages against the eighth defendant at all.

32 Of course, this is something which it might be said that the judge could have asked himself but, in my judgment, this is a classic instance of the situation referred to by Popplewell J and does not of itself give a sufficient excuse to release the claimant from its own duty to explain the position to him. I should add, as I will deal with shortly, I remain unclear why it is said that damages are not an adequate remedy and, indeed, I think it is fair to say that Mr Armstrong for the purposes of the submissions today did not for various reasons advance that as an argument with any force.

33 The final breach is said to be a failure to explain how it was as a practical matter that the eighth defendant was able to freeze the traceable proceeds of the relevant Tether in light of the pooling structure of which the claimant's expert and legal representatives were aware.

The judge was given no explanation as to how the eighth defendant was able to freeze the Tether as a matter of practical reality or, indeed, to identify it for the purposes of justifying the injunctive relief sought. This too seems to me to be a very important non-disclosure (and failure to explain), thrown into quite sharp relief by the fact that the judge had indicated at the outset of the hearing that he was concerned that the application was, in any event, an exercise in futility because of the lapse of time.

34 Mr Armstrong submitted that it could be seen that the judge had the difficulty of tracing in mind because of the way in which he expressed the opening words of the order which refer to an injunction preserving both the Tether itself and its traceable proceeds. It does not seem to me that it is possible to draw the conclusion that Mr Armstrong invites me to draw from the way in which the order was drafted. The point which matters is the difficulty in tracing that which is said to represent the Tether, not the fact that some form of tracing might in some circumstances have been possible or in some circumstances it might have been appropriate for an injunction to be granted to ensure the preservation of the traceable proceeds. Even now, it remains unclear how it is said that the eighth defendant is able to identify the traceable proceeds of the claimant's Tether. Indeed Mr Armstrong accepted that he was not able to assist on the point either, although he made strong submissions to the effect that, at this stage of the proceedings, it could not be expected that the claimants would be able to have an answer.

35 In my judgment, taken together, the consequences of what occurred are that I agree that the matter was not objectively speaking fairly presented to the judge. This means that the order made by Sir Anthony Mann as extended without further argument by Michael Green J should in the normal course be discharged. The court does, however, retain a discretion to continue or regrant the order even where there has been such a failure. But before it does so, there are a number of factors it must take into account which include the importance of

the non-disclosure to the issues before the judge, the need to encourage compliance, the extent of any culpability and the injustice to the claimant which may occur if an order is discharged. Those principles were set out in para.7(xii) of the judgment of Carr J in *Tugushev v Orlov* [2019] EWHC 2031 (Comm), a judgment which in the remainder of para.7 provided a helpful distillation of the relevant authorities on the issue of fair presentation.

36 I have formed the view that, having regard to these considerations, there is no basis on which it would be right to remake the order in the present case. As to the importance of the non-disclosure, I agree with what Mann J said in the *Pugachev* case about the obligation to anticipate defences. The eighth defendant's submission that the *quid pro quo* for proceeding in the absence of a respondent is that the court must be told what arguments might have been raised if the respondent were present is one with which I agree. The judge seems to have been persuaded that it was arguable that purely receiving the assets in question is enough to give rise to a constructive trust but that was only a proper presentation if combined with a full explanation of the likely defences. I also agree that the presentation made more generally, particularly in relation to the without notice aspect of the application and the question of whether damages were an adequate remedy, did not make sufficient distinction between the position of the first defendant and the fourth defendant on the one hand and the exchanges on the other. It is very easy for a court on an application of this sort to allow all of the defendants to be lumped into the same box. That makes it particularly important for a claimant to make sure that the court is fully apprised of the clear distinction between the separate positions of the various defendants. It was an important and significant deficiency that this was not done.

37 I also agree that the need to ensure proper compliance with the duty is acute in the context of a case such as the present one. As the eighth defendant explains in its submissions, exchanges can often find themselves joined as respondents for the purposes of the grant of *Bankers Trust* relief and/or injunctive relief. It is particularly important that the nature of the claims against them and whether there is a substantive claim or merely a claim seeking *Norwich Pharmacal* or *Bankers Trust* relief is properly differentiated. In my judgment, this is a case in which the claimant and his legal representatives may have lost sight of the importance of that distinction.

38 As to culpability, while I am inclined to think that this was a case of the legal representatives adopting an overenthusiastic approach to the merits of their client's case as against the exchanges, there is some level of culpability. The reality is that a deliberate decision was made not to disclose a possible defence. I think that this can be seen from paras.6.19 to 6.21 of the claimant's current skeleton where they made the following submission which showed both that they knew of the defence and decided that they did not need to disclose it:

> "Further, and in any event, we note that the witness statement of Mr Bushell dated 15 November 2022 relied upon by the Eighth Defendant makes reference to proceedings in *D'Aloia* entirely unrelated to the present proceedings. We take the view that it would not have been appropriate for us to refer to those unconnected proceedings for various reasons, including:
>
> 6.19.1 for reasons of privilege; and
>
> 6.19.2 as it would have been improper for the Claimant to pre-empt the Eighth Defendant's defences in these proceedings in reliance on those raised in unconnected proceedings."

Then in 6.21 it was said:

> "We do not accept that a claimant must bring to a court's attention the defences any given defendant is likely to raise, as claimed by Mr Bushell, in order to comply with its duty of full and frank disclosure. This instead requires an admission on the part of a claimant that a defendant may be innocently caught up such that undertakings are given. This is precisely what was done."

39 In my judgment, these statements demonstrate a misapprehension of the nature of the duty to make full disclosure to the judge on a without notice application. The duty extends not just to a fair presentation of the underlying facts (to the extent they are known or might properly be anticipated), but also the way in which those facts might reasonably be expected to support a defence. All of this needs to be properly explained in order to ensure that the presentation is fair. This remains an important consideration even though it is not suggested by Mr Quest (and nor do I find) that what seems to me to have been a deliberate decision was motivated by anything other than a misapprehension as to the nature and extent of the duty. It is not suggested that there was any dishonesty or anything of the like involved.

40 As I have already emphasised, the duty of fair presentation is very important. Careful attention is required to ensure that every avenue is fully explored before relief of this sort is sought, more particularly where the delay from the time of the fraud and, indeed, from the time at which the investigation had started, meant that the excuse of having insufficient time to give mature consideration to the way in which the case should be put (or might be defended) would not, even if material, be available to the claimant or his legal representatives.

41 I also agree, and this is the fourth factor, that there is no risk of any significant injustice to the claimant if the injunction is now discharged. There is still no explanation as to why damages would not be an adequate remedy to him should a claim against the eighth defendant succeed at trial. This last point is also one of the principal three reasons why I would not in any event have continued the injunction against the eighth defendant even if I had been satisfied that the application was fairly presented to Sir Anthony Mann in the first place. I should say that the second of those principal three reasons is that in the exercise of my discretion I consider that the injunction can serve no useful purpose because it is wholly

impracticable for the eighth defendant to preserve the deposited Tether in circumstances where there has been no explanation as to how as a practical matter it might be possible for the claimant to trace into his Tether or their traceable proceeds in the hand of the eighth defendant as at the time it was first on notice of the claim. The evidence is overwhelming that they had long since been mixed and dissipated in the pooled addresses.

42 The third principal reason relates to whether or not there is a serious issue to be tried. It is said by the eighth defendant that there can be no serious issue that the eight defendant acquired title to the deposited Tether when it was received at the deposit addresses. I have given careful consideration to the question as to whether or not it is necessary for me to determine that issue here and now. I have reached the conclusion that it is not, and I decline to do so, although, in saying that, the claimant can garner no support for thinking that his claim against the eighth defendant has any real substance. I think it is perfectly possible that an application to strike out or dismiss by way of reverse summary judgment may succeed. But, in the light of the conclusion that I have reached on the application to discharge the injunction for failure to make a fair presentation and not regrant it, and also in light of the fact that there is extant an application by the ninth defendant for reverse summary judgment, I have decided that it would not be right for me to express at this hearing any concluded views on the question of serious issue to be tried.

43 So far as the result is concerned, the consequence of my conclusion is that the injunction as against the eighth defendant will be discharged. Because of the grounds on which I have discharged it, it will be discharged as from the date on which it was granted.

CERTIFICATE

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital