

**ORDER PROHIBITING PUBLICATION OF THE JUDGMENT UNTIL ANY
SUBMISSIONS FROM COUNSEL HAVE BEEN DETERMINED.**

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2020-404-1256
[2020] NZHC 2883**

UNDER	Part 32 of the High Court Rules
IN THE MATTER	of an application to grant freezing and ancillary orders in aid of certain Singaporean proceedings
BETWEEN	MB TECHNOLOGY LIMITED Applicant
AND	ECOMI TECHNOLOGY PTE LIMITED First respondent
	DAVID SHU-HAN YU Second respondent
	DANIEL JOHN CROTHERS Third respondent

Hearing: 8 October 2020

Appearances: L C Sizer for the applicant
A J B Holmes for the respondents

Date of Judgment: 4 November 2020

JUDGMENT OF PALMER J

*This judgment was delivered by me on Wednesday, 4 November 2020 at 11.00am.
Pursuant to Rule 11.5 of the High Court Rules.*

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Registrar/Deputy Registrar

Counsel/Solicitors:
P Dale QC, Auckland
A J B Holmes, Barrister, Auckland
Sandi Anderson & Partners, Auckland
Buddle Findlay, Auckland

Context

[1] In the Duty List on 8 October 2020 I heard argument about whether current freezing and ancillary orders in these proceedings should be extended. The freezing orders were originally made by the Court of Appeal, on appeal, on 21 August 2020.¹ They were varied by consent by Powell on 1 September 2020 and extended by Gault J on 11 September 2020. I varied them further, by consent, on 8 October 2020.

[2] In essence, the orders freeze assets of the respondents, including properties of the second respondents in Auckland and cryptocurrency assets. They do so in aid of proceedings brought by the applicant in the High Court of Singapore, in which that Court has issued an interim injunction restraining the disposition of assets. In those proceedings, the applicant claims that the respondents failed to pay it for work on a digital finance management platform. The respondents apparently argue the contract between the parties was completed.

[3] The Court of Appeal accepted:²

... there is on the material before us a plain allegation of investment fraud that is arguable and has been found sufficient to sustain interim orders in the High Court of Singapore. The respondents are in the jurisdiction, and they have assets here. There is reason to think that assets may be dissipated or taken out of courts' reach once the proceedings are served.

Submissions

[4] Mr Sizer, for the applicant, submits the orders should be continued until further order of the Court because the requirements for freezing orders continue to be satisfied, there continues to be a risk of dissipation, the circumstances have not materially changed, the applicant continues to have a good arguable case, and the respondents have now had an opportunity to respond and have not sought to vary the orders in either jurisdiction. He rejects the respondents' claims of non-disclosure. He submits the issues are best dealt with in Singapore.

¹ *MB Technology Ltd v Ecomi Technology Pte Ltd* [2020] NZCA 363,

² At [16].

[5] Mr Holmes, for the respondents, has instructions that the substantive issues will be addressed in Singapore, if these orders are extended. But the respondents opposed continuation of the orders in New Zealand, albeit only the evening before the call of the proceedings in the List and without supporting evidence. Mr Holmes submits there were five material non-disclosures in the application for freezing orders. He submits the applicant used the orders to freeze the assets of non-parties without proper application. He submits there is no risk of dissipation of the assets which are actually held by the applicant.

Should the freezing orders be continued?

[6] To make a freezing order, I must be satisfied the applicant has a good arguable case for substantive relief, there are assets to which the order can apply and there is a real risk of their dissipation.³ I must weigh the overall interests of justice.

[7] A good arguable case requires that “the allegations in the proposed claim are capable of tenable argument and are supported by sufficient evidence, bearing in mind the early stage at which the application is likely to be brought”.⁴ I am satisfied there continues to be a good arguable case for substantive relief. As the Court of Appeal stated, the allegations in Singapore are arguable and are sufficient to sustain interim relief there. That still appears to be the case. It is also clear there are assets to which these orders can apply.

[8] Mr Sizer submits the risk of dissipation remains high. He points to the fourth affidavit of Mr Godenzi regarding transfer of substantial volumes of OMI tokens (a cryptocurrency created by Ecomi) shortly after the respondents were contacted by the applicant’s process server, alleged failures by the respondents to disclose the whereabouts of the cryptocurrencies as required by the Singapore orders and alleged liquidation of cryptocurrency assets.⁵ I do not understand the respondents to have filed evidence disputing this. Regarding Mr Holmes’ submission that the applicants hold assets, I consider that is one of the issues in dispute between the parties. So I consider there continues to be a sufficient risk of dissipation to justify the freezing orders.

³ *Shaw v Narain* [1992] 2 NZLR 544 (CA) at 548; High Court Rules 2016, r 32.5(4).

⁴ *Hannay v Mount* [2011] NZCA 530 at [22].

⁵ Fourth Affidavit of Benn Godenzi, 8 September 2020, at [7], BG-4/15, and at BG-4/171-172.

[9] The remaining factors to consider are the respondents' five allegations of non-disclosure and seeking of orders over third parties' assets. I do not consider any of these, separately or collectively, rise to a level sufficient to undermine the case for continuation of the orders:

- (a) Whether the applicant was aware third parties had been paid in crypto-assets is disputed.
- (b) Neither party appears to have been aware that some amounts were transferred by the applicant in USD rather than crypto-currency.
- (c) The value of the respondents' assets held by the applicant is contested.
- (d) An alleged agreement by the applicant to remit some crypto-currency is in the nature of a counter-claim and dispute between the parties.
- (e) Whether there was misrepresentation is disputed between the parties.
- (f) The applicants do not appear to have intended to have sought orders over the assets of non-parties. Where prejudice has been identified, variations have been sought and obtained by consent.

[10] Overall, I consider it is in the interests of justice for the current freezing and ancillary orders to continue until further order of the Court. I so order.

[11] The respondents have previously foreshadowed a potential application for restriction on publication of previous minutes. I invite counsel for the parties to make submissions, within two working days of the date of this judgment, regarding any such restrictions in relation to this judgment. The judgment will not be released until those submissions have been considered.

Palmer J