

Injunctions: “He who seeks equity, must do equity”

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Over the past decade, cryptocurrencies - commonly referred to as ‘cryptos’ - have become one of the most highly discussed topics, not only in the financial market sector, but also in the legal sector. Judges and lawyers often grapple with the complexities and sophistication of cryptocurrency transactions. A key issue is the surge in cryptocurrency-related litigation, which has increased alongside the massive growth in cryptocurrency transactions.

Admittedly, the courts have been swift in protecting innocent investors from cryptocurrency related fraud. Nevertheless, every coin has two sides. While the risk of fraud for investors is real, many investors, unwilling to accept the risks or consequences of poor investment decisions, are filing lawsuits against investment firms in order to recover their losses.

They hope that by doing so, the firm will “back down” and return even a small portion of the investment, believing that the investment firm, eager to avoid the hassle and reputational risks of litigation, will seek a compromise. The Cyprus Courts are increasingly dealing with such spurious claims and the recent interim decision, dd 24/9/24, of the Nicosia District Court in *JDH & others v. T Ltd & others* is yet another example.

The Facts

In this case, the Claimants (hereinafter the “investors” or the “claimants”), after suffering financial losses from a series of investments, initiated litigation against T Ltd (hereinafter the “respondent” or “T Ltd”) and others alleging, inter alia, fraud and conspiracy to defraud. Unable to accept the consequences of their investment activity and the risks they had assumed, they applied *ex parte* to the District Court of Nicosia and obtained (a) an injunction freezing T Ltd’s assets including bank accounts and (b) a disclosure order instructing T Ltd to disclose all its assets.

In a nutshell, the applicants falsely argued that they were defrauded by the respondents and that their accounts with T Ltd were converted overnight, without their consent, from USD into cryptocurrency (TFX), to their financial detriment. The Claimants submitted a large volume of documents in support of their *ex parte* application, aiming to portray T Ltd as nothing more but a “Ponzi” scheme. They also argued that without the court’s protection they would suffer irreparable losses.

Nevertheless, evidence produced by T Ltd in response demonstrated that not only had the investors traded in cryptocurrency (USDT) from the outset, but also that (a) the investors had voluntarily agreed to convert the cryptocurrency from USTD to TFX and (b) that, in fact, they continued trading on the platform for many months after the said conversion. Furthermore, the respondent provided evidence suggesting that the applicants/investors had misled the court on several counts, failed to disclose material information and documents, and only partially disclosed certain documents. The respondents also alleged that one specific document produced by the investors had been fabricated in order to invoke the court’s jurisdiction by implicating certain individuals residing in Cyprus in the alleged “conspiracy”.

Legal Requirements

According to Section 32 of the Courts of Justice Law 14 of 1960 and relevant case law, an *ex parte* injunction order may be granted if: a) there is a serious issue to be adjudicated, b) there is a likelihood that the applicant is entitled to a remedy and c) it would be difficult or impossible to administer full justice later if the order is not granted.

The Court, however, did not go into great detail or analysis of the aforementioned criteria given the great amount of non-disclosure by the applicants and the lack of urgency based on the facts presented. In particular, the Judge criticized the applicants' attempt to mislead the court on several important issues and for failing to disclose crucial documents. With respect to the applicant's duty to make full and frank disclosure the Court found that they had concealed material facts and documents, and in some cases, only partially disclosed certain documents to mislead the court. The Judge, citing inter alia the case of *Bloczek Limited v Vianova Holding Limited (2013) 1 A.A.Δ. 1460*, argued that failure to present material facts before the court in an *ex parte* application is considered an attempt to deceive the court, granting the latter the discretion to set aside the order without considering the merits of the application.

The Court stressed that the applicant's duty of full and frank disclosure of all material facts, along with their overall conduct, must always be fair and equitable. This is closely tied to the obligation of utmost good faith that the applicant must demonstrate when seeking any remedy rooted in equity. In this respect, the Judge made reference to the case of *Everet v. Williams Ex. 1725, 9 L.Q. 197* and the maxim "*He who seeks equity must do equity.*"

The judge further analysed the urgency requirement in such applications, citing *Elena Amvrosiadou v. Martin Coward (2013) 1 A.A.Δ. 78*, and emphasised the critical nature of 'urgency' when applying for an *ex parte* freezing order. The Court criticised the applicants for failing to explain (a) why they continued to trade for many months after the alleged unilateral conversion and (b) why there was a 7-month delay in pursuing legal action following the alleged unilateral conversion. It was stressed that such intrusive orders are justified only in exceptional circumstances, where the urgency is so great that notifying the opposing party would undermine the entire purpose of the application.

Conclusion

This case serves as a reminder that the equitable principles are not merely academic; rather they play a significant role and are highly regarded in *ex parte* applications for injunctive relief. The good faith required from applicants in such applications demands that all relevant facts be presented transparently and in a fair manner. This ensures that the court's equitable jurisdiction is properly invoked and that such intrusive remedies are granted only in the appropriate circumstances.

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