

SUPREME COURT OF SEYCHELLES

Not Reportable

MA406/2023

(Arising in CS125/2023)

In the ex-parte matter between:

**DR SAMSON LIU**

*(Of 26 Spring Ln, St. Louis,*

*MO 63124, USA)*

*(Represented by Ms Ephna Chang-Thiou)*

**Applicant**

And

**AUX CAYES FINTECH CO. LTD**

*(An IBC incorporated in Seychelles*

*Having its registered office at c/o*

*Appleby Global Services (Seychelles) Limited of Suite 202*

*2<sup>nd</sup> Floor, Eden Plaza, Eden Island, P.O. Box1352, Mahe, Seychelles)*

**Respondent**

**Neutral Citation:** *Liu v Aux Cayes Fintech Co. Ltd* (MA406/2023) (arising in CS125/2023)  
[2023] (22<sup>nd</sup> January 2024)

**Before:** A. Madeleine, J

**Summary:** Application for Provisional Seizure

**Heard:** 12<sup>th</sup> December 2023

**Delivered:** 22<sup>nd</sup> January 2024

**ORDER**

(a) I hereby direct a warrant to be issued to one of the process servers to seize provisionally the 660, 497.6 USDT currently found on the account on OKX exchange website platform, <https://www.okx.com>, of the Respondent - *Aux Cayes Fintech Co. Ltd* - as described below:-

- i. 97,435.4 USDT in wallet [REDACTED]
  - ii. 273,082.2 USDT in wallet [REDACTED]
  - iii. 189,980 USDT in wallet [REDACTED]
  - iv. 100,000 USDT in wallet [REDACTED]
- and

(b) I hereby direct a warrant to be issued to one of the process servers to seize provisionally the 14.6 BTC on the account on OKX exchange website platform, <https://www.okx.com>, of the Respondent - *Aux Cayes Fintech Co. Ltd* - as described below:-

- 14.96 BTC in wallet [REDACTED]

(c) That the above-described cryptocurrency assets referred to under paragraphs (a) and (b) above shall remain in the possession of the Respondent *Aux Cayes Fintech Co. Ltd* until further order of this court.

(d) A copy of this order is to be served on the Respondent.

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## RULING

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### A. MADELEINE, J

#### *Background*

[1] This is an ex-parte application for the provisional seizure of cryptocurrency assets found in the below described wallet addresses deposited on the OKX online exchange website platform <https://www.okx.com> of the Respondent company - *Aux Cayes Fintech Co. Ltd* namely:

(a) 660, 497.6 USDT of which -

i. 97,435.4 USDT is found in wallet [REDACTED]

ii. 273,082.2 USDT is found in wallet [REDACTED]

iii. 189,980 USDT is found in wallet [REDACTED]

iv. 100,000 USDT is found in wallet [REDACTED]; and

(b) 14.96 BTC found in wallet [REDACTED]

- [2] The Applicant also seeks an order that the Respondent keeps possession of the provisionally seized assets pending further order of the court.

#### *Main Suit*

- [3] The application arises from the main suit: *CS125/2023 Dr. Samson Liu v Aux Cayes Fintech Co. Ltd* (the “main suit”) wherein the Applicant alleges that his cryptocurrency assets have been fraudulently misappropriated following a scam. Upon investigation commissioned by the Applicant, it was found that the misappropriated cryptocurrency assets were ultimately transferred from scam addresses to the OKX online exchange platform [www.okx.com](http://www.okx.com) operated by the Respondent - an international business company incorporated in Seychelles with IBC No. 202706.
- [4] The main suit alleges that the Respondent committed a *faute* by reason of its failure to comply with its due diligence obligations and by improperly receiving and /or facilitating the unlawful transfer by scammers of the Applicant’s cryptocurrency assets to the exchange. The Respondent is thereby obliged to make good the loss and damages incurred by the Applicant.
- [5] The prayers of the main suit are for a declaratory order that the Applicant is sole proprietor of the cryptocurrency assets, an order that Respondent transfers the said cryptocurrency assets to the Applicant’s cryptocurrency addresses, an order that the Respondent pays the Applicant the sum of USD25,000/- being the expert report fees and for costs.

#### *Application*

- [6] The basis for the application is made out in the affidavit of the Applicant dated 4<sup>th</sup> November 2023 sworn before Notary Public Janessa West in [REDACTED] United States of America and duly apostilled pursuant to The Hague Convention of 5 October 1961.

[7] The supporting affidavit show that the Applicant is a citizen of the United States of America and the Respondent is an international business company incorporated in Seychelles. The Respondent operates the OKX Exchange under website <https://www.okx.com> . Through the influence of one Ying Chen, whom the Applicant only met virtually on LinkedIn and Facebook in mid-February 2023, the Applicant set up accounts on Coinbase, Crypto.com and Kraken, and made several transfers of BTC and USDT to scam website *Pawnfi*. As it appeared that the Applicant was making profits from the investments, he made several attempts to withdraw funds. His requests were denied subject to him depositing more funds in order to facilitate the withdrawals. The Applicant commissioned Cipher-Blade, a blockchain investigation agency services, to investigate and recover the misappropriated assets.

[8] The investigation report of Cipher-Blade, produced in the supporting Affidavit, reveal that the Applicant's transfers to the scam website – *Pawnfi* - were further transferred directly or indirectly through intermediary addresses to Huobi, OKX and Binance. Unauthorized transfers made from Applicants accounts on Coinbase, Crypto.com and Kraken between 24 February 2023 and 3 July 2023 were traced to 4 scam addresses assessed to belong to OKX. A total of approximately 660,497 USDT were transferred as follows –

No.	Addresses (assessed to belong to OKX)	USDT received	Path
1	[REDACTED]	97,435.4	Direct
2	[REDACTED]	273,082.2	Direct
3	[REDACTED]	189,980	Via 0xb93ec9bd93118e92d4 eb4cd337e3ab6b7d25e86
4	[REDACTED]	100,000	Direct

[9] In addition, a total of 14.96 BTC were transferred from the Applicant's Coinbase account to a scam address and ultimately to OKX deposit address [REDACTED]. The Respondent continues to be in possession and storage of the USDT amount and BTC amount.



- [10] According to the supporting affidavit, based on the above wrongful and fraudulent acts, the Applicant intends to bring a plaint against the Respondent to seek the prayers referred to in paragraph 5 above.
- [11] The Applicant now seeks an order of provisional seizure as a matter of urgency in view that cryptocurrency, the subject matter of the intended plaint, can be easily and immediately transferred and dealt with in a matter of seconds online and the Applicant has no means to restrict any dealings with the misappropriated cryptocurrency assets pending the determination of the main suit. There is no alternative legal remedy available to restrict dealings in the interim. The main suit is meritorious and has good prospect of succeeding and it would be fair and equitable to grant an interim seizure to restrict further dealings of the misappropriated assets. The balance of convenience lies in favour of granting the order of provisional seizure as the Applicant has no alternative remedy and will suffer irreparable harm which cannot be atoned by damages if the order is not granted. The Applicant is likely to lose the fruits of a judgment in his favour in the main suit if no order of provisional seizure is made.

#### *Submissions*

- [12] Applicant's Counsel relied on sections 280 and 281 of the Seychelles Code of Civil Procedure and referred to the Court to the cases of *Didier Rabl v. Fortunate Icon Limited (MA343/2023) (8 November 2023)*, *Sun Excavations (Pty) Ltd v Associated Construction & Investment Co. L.L.C (CC05/2017)(18 December 2020)*, *Eastern European Engineering Limited v Vijay Construction (Pty) Limited Civil Appeal SCA13/2018* and *Alexander v Farisco Construction & Maintenance Pty Ltd (MA186/2022)(Arising in CS89/2022)(20 September 2022)* in support of the application. Applicant's counsel relied entirely on the Applicant's affidavit to submit that the court should grant the application as the Applicant has a bone fide claim in the mains suit, he acted in good faith and under honest intention and only become aware of the unauthorized transfers from his cryptocurrency accounts after he received the investigation report.

- [13] The law relating to provisional seizure of movable property is contained in sections 280 and 281 of the Seychelles Code of Civil Procedure (the “SCCP”). Sections 280 and 281 stipulate that –

*“280. At any time after a suit has been commenced, the plaintiff may apply to the Court to seize provisionally any movable property in the possession of the defendant in the suit or to attach provisionally any money or moveable property due to or belonging to the defendant in the suit, which is in the hands of any third person.*

*The application shall be by petition supported by an affidavit of the fact and shall be signed by the plaintiff or his attorney, if any, and shall state the title and number of the suit.*

*281. If the court is satisfied that the plaintiff has a bone fide claim, the court shall direct a warrant to be issued to one of the ushers to seize provisionally such property, or shall make an order prohibiting the third person in whose hands such money or other movable property is from paying such money or delivering such property to any person pending the further order of the court. The order shall be served on the third party by the usher.”*

- [14] In *Union Estate Management (Pty) Ltd v Herbert Mittermayer* 1979 SLR 140 the court considered sections 280 and 281 of the Seychelles Code of Civil Procedure and held inter alia that-

“  
(i) *the application for provisional seizure of movable property must be by petition supported by an affidavit of the facts; the basic facts to be stated are that a suit has been commenced, the title, the number and the gist of the suit;*

- (ii) *the seizure is to be effected on the movable property in the possession of the defendant and as such it is not necessary to described that the property or to alleged that it belongs to the defendant;*
- (iii) *it may be useful to attach a copy of the plaint to the application but that is not fatal as the court may refer to the plaint;*
- (iv) *the plaint should disclose a prima facie case against the defendant it is not necessary to show that the claim is likely to succeed or that it rests on documentary proof;*
- (v) *if the court finds that it should test the bona fides of the applicant or that the seizure is likely to cause damages it may require the applicant to furnish security;*
- (vi) *an affidavit based on information and belief must disclose the source of the information and the grounds of belief and distinguish what part is based on knowledge and what part is based on information and belief;*
- (vii) *where an affidavit contains the basic facts required for an application for seizure the court can always look at the plaint to make up its minds as to the bona fides of the claim;*  
*.....”*

[15] In *Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd* (2018) SLR 199 the court of appeal held that –

*“[8] The provisions of ss 280 and 281 of the Seychelles Code of Civil Procedure explicitly set out only two requirements for an order of provisional seizure and/or attachment, namely (1) that a suit has been commenced and (2) that the applicant has a “bona fide claim”. Where these two requirements are met, the Court “shall direct a warrant to be issued” [Emphasis added], i.e. the court is not granted any discretion to consider other factors in its assessment, but is rather bound by law to grant such an order (see in this context *Union Estate v Herbert Mittermayer* (1979) SLR 140. The only safeguard against abuse*

*provided in the provisions is the possibility for the court to require the applicant to provide security."*

[16] I have carefully considered the evidence deponed in the supporting affidavit to the application, the plaint in the main suit, Applicant's submissions and the above cited authorities. Although, the Affidavit of the Applicant refers to a case to be filed against the Respondent, I am satisfied that at the time of making the application, the main suit had been filed against the Respondent, and that the cause of action and reliefs sought in the main suit are the same as referred to in the Affidavit in support of the Application.

[17] In terms of *Union Estate Management (Pty) Ltd* (supra), I have referred to the plaint filed in the main suit as it was not produced in the Applicant's affidavit. I am satisfied that the Applicant has a bona fide claim, and that the plaint in the main suit discloses a prima facie case against the Respondent herein and Defendant in the main suit. I am further satisfied that cryptocurrencies can be easily alienated online, and given the nature of cryptocurrency transactions, there are real risks of loss of the Applicant's cryptocurrency investments through further transfers unless the described assets are provisionally seized and kept in the possession of the Respondent pending the determination of the main suit.

#### *Order*

[18] I therefore grant the application and make the following orders:

(a) I hereby direct a warrant to be issued to one of the process servers to seize provisionally the 660,497.6 USDT currently found on the account on OKX exchange website platform, <https://www.okx.com>, of the Respondent - *Aux Cayes Fintech Co. Ltd* - as described below:-

- i. 97,435.4 USDT in wallet account [REDACTED]
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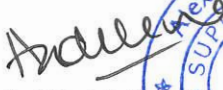
- (b) I hereby direct a warrant to be issued to one of the process servers to seize provisionally the 14.96 BTC on the account on OKX exchange website platform, <https://www.okx.com>, of the Respondent - *Aux Cayes Fintech Co. Ltd* - as described below-

14.96 BTC in wallet [REDACTED]

- (c) That the above-described cryptocurrency assets under paragraphs (a) and (b) above shall remain in the possession of the Respondent *Aux Cayes Fintech Co. Ltd* until further order of this Court.

- (d) A copy of this order is to be served on the Respondent.

Signed, dated and delivered at Ile du Port this 22<sup>nd</sup> day of January, 2024.

  
A. Madeleine  
Judge

