

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT (KBD)**  
[2024] EWHC 2532 (Comm)

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Tuesday, 16 July 2024

BEFORE:

**HIS HONOUR JUDGE PELLING KC**  
(Sitting as a Deputy Judge of the High Court)

BETWEEN:

-----  
**TAI MO SHAN LIMITED**

Claimant

- and -

**OAZO APPS LIMITED**

Defendant  
-----

**MR N YEO and MR A TAYLOR** appeared on behalf of the Claimant  
The defendant did not appear and was not represented

-----  
**JUDGMENT**  
(Approved)  
**(Remote Hearing)**  
-----

Digital Transcription by Epiq Europe Ltd,  
Lower Ground, 46 Chancery Lane, London WC2A 1JE  
Web: [www.epiqglobal.com/en-gb/](http://www.epiqglobal.com/en-gb/) Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)  
(Official Shorthand Writers to the Court)

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.*



1. JUDGE PELLING: This is an application made by the claimants for judgment in default in respect of proceedings to enforce a judgment obtained from the New York Supreme Court by which the claimant was given a declaration that in effect he was entitled proprietarily to claim various assets which were either cryptocurrency stolen from him or the traceable proceeds of it.
2. The principles which apply in relation to an application of this sort are not in doubt. The court is not required to undertake any sort of assessment as to the legal or factual merits of the claim. Rather, all that the court is concerned with on an application for judgment in default of either a defence or acknowledgment of service is to ensure that the relief that is granted is appropriate to the relevant causes of action.
3. In these proceedings, the only part of the New York judgment that the claimant seeks to enforce is the declaration of the Supreme Court of the State of New York concerning the proprietary interests that the claimants have in the assets that are the subject of that declaration. This is important for two reasons: first of all, as a matter of English law, judgments against persons unknown for personal causes of action generally speaking are not permitted; and secondly, the only judgments which generally speaking are permitted against persons unknown in this jurisdiction are in respect of proprietary claims in relation to assets which can be shown to be in the control of the persons unknown concerned. That is what this case is carefully tailored to deal with. The first question therefore becomes whether or not these proceedings have been satisfactorily served on the persons unknown.
4. In the history of these proceedings, directions were given which permitted service by an alternative means, as is inevitable where the claim is against defendants whose identity and location is unknown. The principal method by which service by alternative means has been permitted is by service on the blockchain using NFT created by the claimant or his solicitors.
5. The second witness statement of Mr Andrew Bruce Stafford KC included within the bundle satisfies me that the relevant service provisions made in previous orders have been complied with and that therefore service took place on 10 July, which is three days prior to the hearing of this application. No response has been received from

the defendants; indeed, the defendants have not participated at all at any stage in these proceedings.

6. In those circumstances, and having regard to the nature of the relief sought, in principle I am satisfied that judgment in default should be entered. Entirely properly, my attention has been drawn to the fact that the principal relief sought on the enforcement is for a declaration, and so far as that is concerned, no particular problem arises - see *Goldcrest Distribution Limited v McCole* [2016] EWHC 1571 (Ch) where it was recognised that in principle declaratory relief can be granted by default judgment, "*So long as a declaration can be given without injustice to those affected by it ...*"
7. It is difficult to see how any injustice could arise in the circumstances of this case, since the defendant has been served throughout by a method which I recognise as being likely to draw the existence of these proceedings, and particularly this application, to the attention of the relevant defendants. In those circumstances, I conclude that the defendants have chosen not to participate in the proceedings. In those circumstances it is difficult to see what injustice could arise. Furthermore, it is of course open to a defendant to apply to vary or set aside a judgment obtained in default subject to the rules which apply to such applications.
8. In those circumstances, I am satisfied that it is appropriate to make the orders sought. The only slightly unusual aspect of the order is that the costs are to be reserved, but in the circumstances of this case it is hardly surprising that that is what is being done, and I am prepared to sanction an order in those terms.

**(After further submissions)**

9. This is an application for an order that in effect permits the transfer of assets held in what is described in these proceedings as the K&K wallet to the control of the applicant. The assets contained in the wallet are either the assets that belong to the applicant which have been taken from him as a result of an underlying fraudulent scheme, or the traceable proceeds of such assets, the subject of the allied proceedings in which I gave judgment a moment ago and which led to proceedings in New York in

which a declaration was given concerning the proprietary interests of the claimant in the assets concerned.

10. As I explained when giving judgment a moment ago in the other proceedings, the application for judgment in default had been served on the persons unknown defendants three days prior to the hearing of the application, so that in those circumstances they have had but three days in which to respond, and as I have explained, they have not responded.
11. The only question in my own mind therefore in relation to these proceedings is whether, as the parties are agreed, the assets in the K&K wallet should be transferred into the possession and control of the applicant and the applicant given the right to use or dispose of such assets upon such transfer without restriction effectively forthwith, which is what has been agreed as between the claimant and Oazo Apps Limited, who are in effect in control of the wallet as an exchange.
12. The points really are these: on the one hand, if the assets are transferred in effect forthwith and the applicant is then permitted to deal with them without any restriction, then if an application to vary or set aside or stay the judgment in default that I granted a moment ago is made, and of course the defendants are entitled to apply albeit promptly for such an order, then the result could be that the assets which notionally the defendants might have a claim for will have gone.
13. Therefore, and it was in those circumstances I suggested to Mr Yeo that a possible more appropriate approach is, rather than directing transfer forthwith, to direct that transfer take place a short period after the date of any order I make in order to give the defendants, should they be minded to do so, a little extra time to apply to vary, set aside or stay the judgment in default I granted a moment ago.
14. In response, Mr Yeo fairly firmly submits that I should not make such an order. Amongst the points which he makes are these: first of all, there is some evidence that those who stand behind the fraud are state actors, or enjoy state protection; secondly, that the process for attempting to recover the very substantial assets which the claimant was deprived of have been on foot in various forms for some 17 months; third, there is

a declaration in default obtained from the New York Supreme Court, which declares that the assets in the K&K wallet are the property of the claimant. That judgment was served on the defendants using the blockchain methodology I referred to earlier, and as with all other stages in these proceedings, no response whatsoever came there from any of the defendants.

15. The application for judgment was served and three days' notice given. Again, no response whatsoever has been received, and in the result, the claimant has been put to very substantial cost in dealing with the fraud, has been deprived of its assets for some 17 months, and furthermore, the assets are by their nature volatile, with the market value having slipped from circa 300 million to circa 150-odd million, and then currently around about 450 million to 500 million. One cannot be more precise because of the volatile nature of the assets concerned.
16. In the circumstances, Mr Yeo submits that I should not be at all generous to the defendants, that the claimant is entitled to transfer, possession and control of its assets, and is entitled to them forthwith. If the order is delayed, there is a risk that loss will be suffered as a result, and there is absolutely no evidence that the defendants have ever participated in these proceedings at every stage.
17. With some hesitation, I have to admit, I conclude that the appropriate course is to direct, as was suggested by Mr Yeo as his fallback position, that the transfer should take effect not earlier than 19 July. That would give a very modest additional period for the defendants to apply to vary, discharge or stay the judgment I entered a moment ago, but once that period has expired, there is no reason why the assets should not be transferred to the claimant and free of any control. There has to be an end to this process, and my only reason ultimately for directing the short delay that I have is because only three days' notice of the application for judgment was given. Whilst that is regular notice, it is a short time in which to respond, although my sympathy is limited given the 17 months-odd that has elapsed since these proceedings were started.
18. In the result, I am prepared to grant the order, which is sought as in effect by consent, subject to the qualification concerning the earliest date by which transfer is to take place, but otherwise I am satisfied that the relief sought is appropriate. In particular, I

am satisfied that the transfer of the fortification sum should take place, but again I do not see at the moment why that should not take place at the same time as the transfer of the assets for similar reasons, since the delay that I am building into this order is to preserve the status quo for a relatively short time.

19. I agree that upon fulfilment of these various steps, the action can be dismissed, since it would serve no further utility, and otherwise I am satisfied with the terms of the order.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)

**(This judgment has been approved by the judge)**