



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

JUDGE: JUSTICE CAVANAGH

COURT FILE

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TITLE OF
PROCEEDING

CAO ET AL -v- YANG ET AL

COUNSEL FOR: NAME OF PERSON APPEARING:

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 APPLICANT(S)
 PETITIONER(S)

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NEESONS TECH – S. Sophia Khalil (for YouTube streaming)

ENDORSEMENT:

This is a motion brought by BDO Canada Limited (the “Receiver”) in its capacity as court-appointed receiver. Pursuant to the Order of Justice Pattillo dated December 7, 2021, the Receiver was appointed over certain Contested Funds (as defined herein), which were paid into Court by the Applicants.

This motion is for approval of a proposed Claims Process and Bar Order, approval of the Receiver’s First Report and the Supplement to the Receiver’s First Report, and approval of the Receiver’s fees and disbursements, as well as the fees and disbursements of its counsel.

The Applicants, 13364097 Canada Inc. and Bao Ying Cao (“Ivy”) brought an *ex parte* application for an interpleader Order, seeking to pay certain funds (the “Contested Funds”) into Court, and seeking an Order appointing BDO as Receiver.

The Applicant was an unwitting participant in a fraudulent scheme devised and carried out by the Respondent, Xiaodong Yang (“Yang”), through his online platform, “Sunrise Technology”. Believing that she was working for a cryptocurrency trading platform, Ivy received e-transfers from Yang’s “customers” from approximately August 6, 2021 to October 26, 2021. She understood that she was to purchase cryptocurrency with their funds, and to

send the cryptocurrency to Yang's digital wallet. She was also tasked with sending the customers "refunds" on occasion.

Ivy became suspicious about Yang's operation in late September 2021, and she consulted various lawyers until she retained legal counsel in October 2021. After retaining legal counsel, Ivy learned that Yang's operation was a fraud, and reported the situation to the police.

Ivy had been receiving many e-transfers from Yang's "customers", who were the users of the Sunrise Technology online platform. At the time of Ivy's discovery of the fraud, she held approximately \$1.3 million of "customer funds" (the "Contested Funds") in her bank accounts, including in the bank accounts of her numbered company, the other Applicant. She understood that the funds did not belong to her, and she brought an application for an Interpleader Order and to have BDO appointed as Receiver over the Contested Funds, in order to ensure that the funds were returned to the people who were defrauded by Yang.

The Sunrise Technology online platform, operated by Yang, claimed to be a multibillion-dollar marketing company which allow users to earn "commissions" by placing false e-commerce orders.

The Sunrise Users, including those who e-transferred funds to the Applicant, submitted funds to the Sunrise Technology online platform. They believed that their funds were being uploaded to their own "accounts" on the site, and that they could use their funds to make transactions, which would allow them to earn commissions. The Sunrise Users believed that they could "withdraw" their earned commissions from the Sunrise platform and earn profits.

The Contested Funds were comprised of funds that were e-transferred to the Applicants from Sunrise Users who believed that they were loading funds onto the Sunrise platform.

Certain users of the Sunrise Technology platform transacted on the site with USDT, a form of cryptocurrency. The Sunrise site/app accepted and processed cryptocurrency transactions to and from three cryptocurrency wallets (the "Sunrise Wallets"). It was possible for users to "upload" cryptocurrency into the platform, rather than transacting via e-transfer. The users could also make withdrawals of cryptocurrency from the platform, rather than receiving customer "refunds" in cash. One of the cryptocurrency wallets was used by Ivy to deposit cryptocurrency for Yang when he asked her to do so.

Although the Sunrise Users could transact in cryptocurrency on the site, Ivy did not receive any cryptocurrency, from any Sunrise User, at any time. Rather, Ivy's involvement with cryptocurrency was limited to purchasing cryptocurrency with funds that had been e-transferred to her account and depositing it into Yang's digital wallet (one of the Sunrise Wallets).

There were also individuals, aside from Ivy, involved in the Sunrise platform, who received e-transfers of funds.

BDO was appointed Receiver over the Contested Funds in the Appointment Order of Justice Pattillo dated December 7, 2021. BDO was not appointed Receiver over the Sunrise Wallets, or any other funds or cryptocurrency that may have been submitted to the Sunrise Technology online platform or e-transferred to any other individual aside from the Applicants.

The Receiver is requesting an Order that it is not required to consider any claims from Sunrise Users who submitted cryptocurrency to the Sunrise platform, or from Sunrise Users who submitted e-transfers to accounts other than those of the Applicants. The Receiver request that the Court make an Order that the only Sunrise Users entitled to make claims to the Contested Funds are those Sunrise Users who submitted e-transfers the bank accounts of the Applicants.

The Receiver also requests an Order that it not be required to undertake a full analysis of all of the cryptocurrency transactions to and from the Sunrise Wallets for the purposes of its role in distributing the Contested Funds back to the Sunrise Users given the inherent difficulties in tracing cryptocurrency transactions, the costs associated with retrieving and analyzing the transactions, and the reality that the Applicants did not receive any cryptocurrency.

At the hearing of this motion, Jonathan Wasiatycz appeared in person. Mr. Wasiatycz opposes the portion of the Order requested by the Receiver “authorizing the Receiver to take no further actions in relation to Sunrise Wallets or any cryptocurrency transactions that may have been made to or from the Sunrise Technology online platform”.

Mr. Wasiatycz submits that it is possible that persons who made e-transfers to one or more of the Applicant’s accounts made withdrawals from these accounts by transfers of cryptocurrency with the result that if there is not a full analysis and accounting of the Sunrise Users’ cryptocurrency transactions, it is possible that some claimants may be unfairly overcompensated. Mr. Wasiatycz submits that the Receiver has access to sufficient information, including information submitted by victims such as him, to undertake an investigation and analysis of cryptocurrency transactions. He submits that information is available from cryptocurrency exchanges, including from Binance, which conducted the majority of the cryptocurrency transactions for the Sunrise platform, and the exchanges can confirm the personal information of each person who transacted on the exchange. Mr. Wasiatycz submits that the Receiver is able to obtain information from the exchanges directly by contacting those exchanges which claimants made reference to.

Mr. Wasiatycz submits that the funds held by the Receiver were intermingled between various deposit and withdrawal methods because many users used both e-transfer and cryptocurrency for both deposits and withdrawals. He relies on this submission to support the assertion that it would be unfair for the Receiver not to complete an investigation and analysis of the cryptocurrency transactions, given that many persons were defrauded by Yang by making cryptocurrency deposits through the Sunrise app.

The evidence is unchallenged that the only funds held by the Receiver are funds received by Ivy through e-transfers that were deposited to one of her accounts. Ivy did not receive cryptocurrency transfers. I do not accept Mr. Wasiatycz’ submission that the Receiver is holding intermingled funds derived from cryptocurrency transactions with Sunrise “clients”.

I accept the Receiver’s submission that if Sunrise Users who submitted funds to the Sunrise platform by means other than e-transfer to the accounts of the Applicants have claims, those claims are against Yang and/or the Sunrise Platform. The Sunrise Users do not have claims against the Applicants or against the Contested Funds.

I accept the Receiver’s submission that the Contested Funds are not the property of Yang or Sunrise. By virtue of the Applicants’ conduct in alerting the police to the fraud, and by paying the Contested Funds into Court and having a Receiver appointed over the Contested Funds, the Contested Funds never made it into the hands of the Respondents. Thus, the Contested Funds never became the property of the Yang or of Sunrise, and they are not, therefore, available to satisfy claims that Sunrise Users may have as against Yang or against Sunrise.

The Receiver reports that in order to perform an analysis of all of the cryptocurrency transactions, as well as banking transactions, in order to ensure that a user who provided any transferred funds to the Applicants did not subsequently make a withdrawal of cryptocurrency, the Receiver would be required to analyze approximately 1,800 made transactions to and from the Sunrise Wallets. The details of every transaction would need to be obtained from each exchange that was utilized. The Receiver has reported that there will be disbursements required of approximately USD\$15,000 for forensic analysis of the transactions and it would be

necessary to obtain Orders to compel each exchange to provide information about each transaction. There would be additional costs associated with this investigation.

The Receiver's view, based on its investigations, is that it will be difficult, and potentially impossible, to identify the individuals that deposited and withdrew funds from the Sunrise Wallets and the cost of all of these efforts will be borne by the victims who contributed to the pool of Contested Funds. The Receiver reports that since there are no records from the Sunrise platform itself which will reveal the "account balance" of a particular Sunrise User, even if the Receiver were able to successfully identify all of the counterparties to currency transactions listed in the Sunrise Wallets, it would not be possible to link, with any certainty, a withdrawal from the Sunrise Wallets to a previous e-transfer to the Applicants. This is because users could have uploaded cryptocurrency themselves, or e-transferred funds to another party involved in the scheme, which could have affected their "account balance" and provided funds available for withdrawal from the platform which cannot be directly linked to funds that were e-transferred to the Applicants.

I accept the Receiver's recommendations, including that the Receiver be authorized to exclude from the administration of the Claims Process, and from any ultimate distribution of the Contested Funds, any Sunrise Users with a Net Claim Position at or below \$100.

I am satisfied that the requested Orders should be made.

Orders to issue in forms of Orders signed by me today.