

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

**I TE KŌTI MATUA O AOTEAROA  
ŌTAUTAHI ROHE**

**CIV 2019-409-544**

Under Part 19 of the High Court Rules and Part 16 of the  
Companies Act 1993

In the matter of an application concerning **CRYPTOPIA LIMITED (IN  
LIQUIDATION)**

And

In the matter of an application by **DAVID IAN RUSCOE** and **MALCOLM  
RUSSELL MOORE** of **GRANT THORNTON NEW  
ZEALAND LIMITED**

Applicants

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**SUBMISSIONS FOR LIQUIDATORS ON *QUOINE PTE LTD V B2C2 LTD* [2020]  
SGCA(I) 02  
Dated: 10 March 2020**

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Judicial Officer: Gendall J

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## **MAY IT PLEASE THE COURT:**

1. As set out in the previous submissions filed for the liquidators:
  - (a) The issues not in contest between appointed Counsel that the liquidators previously provided submissions on are:
    - (i) In respect of issue 1(a) of the Application, the counter argument to the position that the Digital Assets constitute “*property*” as defined in the Companies Act 1993.
    - (ii) In respect of issue (1)(d)(iii) of the Application that support of a finding of individual trusts, as opposed to a grouped trust or trusts arising, if the Court finds that any trust does arise over the Digital Assets.
2. The counter argument in respect of issue 1(a) of the Application has now been adopted by Counsel for the Creditors, and the liquidators apprehend that they are not required to provide further submissions on this point. In any event the Court of Appeal in *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02 (***Quoine***) expressly declined to make a finding on this issue.
3. The decision does not impact the liquidators’ submissions made in respect of issued (1)(d)(iii) of the Application. The Court of Appeal did not address the issue of whether, if any trust arose on the facts before it, it would be by way of individual trusts for account holders or a grouped trust or trusts with account holders having a co-beneficial interest. It does not appear that the factual background regarding non-uniform acceptance of an amended set of terms and conditions applied on the facts in *Quoine*.
4. The liquidators consider that the submissions of Counsel have fully and comprehensively apprised the Court of the impact of the *Quoine* decision on the issues for determination in the Application. Nevertheless, they do wish to clarify the available evidence for the benefit of the Court, insofar as it appears to be in contest between Counsel, set out at paragraphs [17.1] to [17.3] of the Account Holders’ Submissions, and the corresponding paragraphs of the Creditors’ Submissions referred to therein:
  - (a) In relation to the evidence discussed at [17.1] of the Account Holders’ Submissions, Cryptopia held accounts on the exchange, which had positive coin balances at the time of liquidation. Those accounts are listed at paragraph [41] of the affidavit of David Ian Ruscoe sworn 8

November 2019. To that extent, Cryptopia did have its own cryptocurrency on the exchange.

- (b) In relation to the evidence discussed at [17.2] of the Account Holders' Submissions, the liquidators are not able to ascertain whether Cryptopia's actual cryptocurrency holdings, in the digital wallets operated by it, equalled the verified account balances recorded in the SQL database at any given point in time, prior to the hack, until they have carried out the reconciliation process.<sup>1</sup> The reconciliation process is timely because it requires the liquidators to reconstruct each wallet held by Cryptopia, in a manner that protects against any remaining malware that might exist.<sup>2</sup>
- (c) In relation to the evidence discussed at [17.3] of the Account Holders' Submissions, it is correct that the paragraph relied on "*is simply referring to the fact that Cryptopia had hot and cold wallets of the same currency, and may have needed from time to time to move currency from a cold wallet to a hot wallet*". For the reasons set out above, the liquidators have not been able to ascertain whether Cryptopia's actual cryptocurrency holdings, in the hot and cold digital wallets held by it, corresponded with the verified coin balances of account holders, as recorded in the SQL database, at any given time.

5. It is open to the Court to reserve its decision pending completion of the reconciliation process, and production of this evidence. Nevertheless, the liquidators are opposed to the Court adopting that approach, for the following reasons:

- (a) Waiting for the reconciliation process to be completed before determining the trust issue may significantly prolong the resolution of the issues set out in the Application, and the ultimate distribution to creditors/beneficiaries. There is no certainty as to when the reconciliation process might be complete. The liquidators are concerned that this approach might not accord with the well-established principle that "*insolvency law requires relevant principles to be applied in a pragmatic way*",<sup>3</sup> and the liquidator's principal duty under s 253 of

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<sup>1</sup> Affidavit of David Ian Ruscoe sworn 8 November 2019 at [11].

<sup>2</sup> Affidavit of David Ian Ruscoe sworn 8 November 2019 at [12]-[13].

<sup>3</sup> *Re Roslea Path Ltd (in liq)* [2013] 1 NZLR 207 (HC) at [112].

the Companies Act 1993 to realise assets for distribution among creditors “*in a reasonable and efficient manner*”.

- (b) There is sufficient evidence available to the Court for the Court to make a finding on the trust/no trust issue. The liquidators note that the complexity of the reconciliation process, and the lack of any other company documentation, such any records of the company monitoring whether customer account balances in the SQL database equated to Cryptopia’s actual cryptocurrency holdings at any given time, ought to be relevant to the Court.
- (c) Even if that evidence was available, it would not necessarily be determinative of a finding of trust. For example, if actual cryptocurrency holdings were less than the total amount of verified coin balances recorded on the SQL database, this might simply show a breach of any trust(s) that existed, rather than determinative evidence of whether a trust existed. Likewise, if the holdings equalled or exceeded the total amount of coin balances recorded on the SQL database, this is not determinative of a trust or trusts, in the Liquidators' submission.



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Scott Barker/Annie Cao/Maddie Harris

Counsel for the applicant liquidators