

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

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-A-TARA ROHE**

**CIV 2023-485- 411**

Under the Part 19 of the High Court Rules and the Trusts Act 2019

In the matter of an application concerning **CRYPTOPIA LIMITED (IN LIQUIDATION)**, a company having its registered office at Level 15, Grant Thornton House, 215 Lambton Quay, Wellington, 6143 and carrying on business as a cryptocurrency exchange

And

In the matter of an application by **DAVID IAN RUSCOE** and **MALCOLM RUSSELL MOORE** of **GRANT THORNTON NEW ZEALAND LIMITED**, insolvency practitioners of Wellington and Auckland respectively, liquidators of **CRYPTOPIA LIMITED (IN LIQUIDATION)**

Applicants

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**INTERLOCUTORY APPLICATION WITHOUT NOTICE FOR ORDERS AS TO (1)  
APPOINTMENT OF A REPRESENTATIVE COUNSEL (2) APPOINTMENT OF  
AN AMICUS CURIAE AND (3) SERVICE**

Dated: 31 July 2023

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Judicial officer assigned: Justice Palmer

**BUDDLE FINDLAY**

Barristers and Solicitors  
Wellington

Solicitor Acting: **Scott Barker / Bridie McKinnon**  
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**To:** the Registrar of the High Court at Wellington

**And to:** Peter Watts KC

**And to:** Jenny Cooper KC

**This document notifies you that –**

1. The applicants, David Ian Ruscoe and Malcolm Russell Moore, liquidators of Cryptopia Limited (in liquidation) (**Cryptopia** or the **Company**), file this interlocutory application without notice to accompany their originating application on notice for directions in respect of distribution of cryptocurrency held on trust (**Cryptocurrency**) filed on 31 July 2023 (**Application for Distribution**).
2. The applicants hereby apply to the Court for orders:
  - (a) Appointing Jenny Cooper KC as representative counsel for all known and potential creditors of the Company including trade creditors and any party who might have claims against the Company, this group being potentially adversely affected by the Court's decision relating to the cryptocurrency held on trust.
  - (b) Appointing Peter Watts KC as amicus curiae to assist the Court in providing arguments for and against the liquidators' preferred approach as to distribution sought in the Application for Distribution and any other issues arising from the Application for Distribution that are not dealt with by counsel appointed to represent the creditors of the Company.
  - (c) Directing that the reasonable fees and disbursements of Jenny Cooper KC and Peter Watts KC (at appropriate commercial rates) relating to the application shall be met from Company and trust assets respectively, on the basis that their fees and expenses are necessary and reasonable expenses of exercising the duties of trustee, of and incidental to the protection, preservation, management and distribution of cryptocurrency held on trust, with the Court's decision as to the ultimate incidence of counsel's costs to be reserved until the Application for Distribution has been determined.
  - (d) Reserving leave for any party to file an application for joinder to the Application for Distribution if they wish to appear by separate counsel.

- (e) Reserving leave for the liquidators to apply to the Court to extend the representation order beyond the determination of the Application for Distribution.
  - (f) Directing that service be effected on account holders of Cryptopia by making downloadable copies of the proceedings available on the Cryptopia website, Cryptopia Twitter account (subject to the liquidators regaining access) and account holder email addresses (if provided).
  - (g) That any interested party to the Application for Distribution is granted leave to apply to the Court within 10 working days of such service referred to in (f) to modify or discharge these orders on appropriate notice being given to the liquidators.
  - (h) Reserving leave for the liquidators to apply further in respect of any ancillary orders.
3. The grounds on which each order is sought are as follows:

**Appointment of a representative counsel for creditors**

- (a) It is appropriate that the Court appoint Jenny Cooper KC as counsel to represent creditors of the Company for the following reasons:
  - (i) The Application for Distribution seeks directions on how the liquidators are to deal with trust assets including distribution and allocation of trust administration costs based on the individual trust per coin type held by Gendall J to have been operated by Cryptopia.<sup>1</sup> Creditors may be impacted by any decision of the Court as any such decision may reduce the realisable value of Company assets available to satisfy their claims.
  - (ii) There is a significant number of known and potential creditors of the Company who may have an interest in the outcome of the Application for Distribution. Individual representation for each creditor would cause significant delay in resolution of the matter and would result in unnecessary duplication of cost for affected parties who share a common interest. The interests of justice can be met through appointment of an experienced counsel to represent their interests. This achieves the objective of the High

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<sup>1</sup> *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809.

Court Rules to secure the just, speedy and inexpensive determination of the matter.

- (iii) Representation proposed in paragraphs 2(a) and above and the method of service set out in paragraph 2(f) above, will ensure that the Company creditors' interests in the outcome of the Application for Distribution are represented and those affected parties who seek to have input into the determination of the Application for Distribution are afforded an opportunity to do so.
- (iv) This Court previously granted similar orders on 18 October 2019 appointing counsel to represent different classes of parties that would or would not benefit from a finding that the Cryptocurrency is property that is held on trust for account holders. Those orders appointed Jenny Cooper KC to represent the interests of Company creditors (CIV2019-409-544).
- (v) The intended counsel appointee has consented to be appointed.

#### **Appointment of an amicus curiae**

- (b) It is appropriate that the Court appoint Peter Watts KC as counsel to represent creditors of the Company for the following reasons:
  - (i) The Application for Distribution seeks directions on how the liquidators are to deal with trust assets including distribution and allocation of trust administration costs based on the individual trust per coin type held by Gendall J to have been operated by Cryptopia.<sup>2</sup>
  - (ii) There is a significant number of account holders that have an interest in the outcome of the Applicant for Distribution. There are over 960,000 account holders whose accounts had a positive balance at the date of liquidation; each a beneficiary of at least one of the many trusts operated by Cryptopia. Their interests in the various orders sought in the Application for Distribution are not homogenous. That is, there are many different overlapping groups of account holders who, due to their particular Cryptocurrency holdings, may or may not benefit from a particular order sought.

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<sup>2</sup> *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809.

- (iii) It is not practicable nor even possible to split the body of account holders into various classes with common interests and appoint representative counsel for each class. This would cause delay in resolution of the matter and would result in unnecessary cost. The interests of justice can be met through appointment of an experienced amicus curiae to make arguments for and against the liquidators' preferred approach as to distribution sought in the Application for Distribution, for the Court's benefit. This achieves the objective of the High Court Rules 2016, to secure the just, speedy and inexpensive determination of the matter. This also achieves the principles at section 4 of the Trusts Act 2019 to administer a trust "in a way that avoids unnecessary cost and complexity".
- (iv) A resolution of this issue will assist the liquidators in the discharge of their duties under the Trusts Act 2019 to distribute trust assets.
- (v) This Court previously granted similar orders on 18 October 2019 appointing counsel to represent different classes of parties that would or would not benefit from a finding that the Cryptocurrency is property that is held on trust for account holders. Those orders appointed Peter Watts KC to represent the interests of account holders who would benefit from a finding of trust (CIV 2019-409-544).
- (vi) The intended amicus curiae appointee has consented to be appointed.

### **Costs of appointed counsel**

- (c) It is appropriate that the reasonable costs and disbursements of the Court-appointed representative counsel and amicus curiae be met from the proceeds of trust assets, for the following reasons:
  - (i) Determination of the Application for Distribution is a necessary condition precedent to the distribution of the trust assets held by Cryptopia to account holders. The liquidators are unable to discharge their duties as trustees, nor distribute the assets of Cryptopia to beneficiaries, until the issues raised in the Application for Distribution are determined.

- (ii) Appointment of representative counsel and amicus curiae is necessary in order to protect the interests of affected parties, and to assist the Court. The orders sought provide the most just, speedy and inexpensive method for determining the Application for Distribution.
- (iii) The costs and disbursements of representative counsel and amicus appointed by the Court is a necessary and reasonable expense of trust administration, being of and incidental to the protection, preservation, recovery, administration and distribution of the Cryptocurrency.
- (iv) This Court previously granted similar Orders on 18 October 2019 regarding how to meet the costs of appointing counsel to represent different classes of parties (CIV 2019-409-544).

### **Service**

- (d) The directions as to service set out in paragraphs 2(f) to 2(g) above are appropriate on the following grounds:
  - (i) The Liquidators are not otherwise able to effect personal service on the vast majority of account holders, because the only contact information held by the liquidators in respect of [90%?] of Account Holders is an email address.
  - (ii) The proposed orders would reduce or avoid costs and delay in arranging for a process server personally to serve affected parties for whom the liquidators hold personal contact details. Reducing the costs to the liquidators is in the interest of all account holders.
  - (iii) This Court previously granted similar orders on 18 October 2019 (CIV 2019-409-544) allowing service to be effected by the same method proposed in this application. That is, by emailing those account holders for whom the Liquidators had an email address, and making available downloadable copies of the proceedings on the Cryptopia website and the Cryptopia Twitter account. It is also consistent with the various sale applications determined by the Court (CIV 2019-409-286 on 29 May 2019; CIV 2021-409-33 on 19 February 2021; CIV 2022-485-47 on 16 February 2022)

- (iv) The proposed method of service is consistent with the usual method by which Cryptopia gave notice to account holders, under the terms and conditions (per clause 17).<sup>3</sup>
  - (v) It is reasonable to expect that the account holders who intend to dispute the distribution of trust assets are already aware of the liquidation, and are monitoring the company website and social media platforms, such as Twitter.
4. This application is made in reliance upon:
- (a) the affidavit of David Ian Ruscoe dated 31 July 2023 filed in support of this application, and the affidavit of David Ian Ruscoe dated 1 October 2019 (CIV 2019-409-544).
  - (b) section 133 of the Trusts Act 2019;
  - (c) Subpart 2 of Part 7, and the associated commentary in *McGechan on Procedure*;
  - (d) the Senior Courts (Access to Court Documents) Rules 2017; and
  - (e) The decisions in *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809; *Macnamara v Macnamara* [2021] NZHC 2361; *Covic v Barbarich* [2021] NZHC 2159; *Re McMillan* [2021] NZHC 1497 at [7]; *Re Honoris Trust* [2017] NZHC 2957; *Holland v Jonkers* [2021] NZHC 3469; *Wellington 1990 Trust v Wellington Show Association Inc* HC Wellington CP 250-90, 16 July 1990; *Re Hugh Green Trust* [2021] NZHC 2184; *Re estate of Vasey* [2015] NZHC 1491; *Sayes v Tamatekapua & Ors* HC Auckland CIV-2007-404-516, 21 November 2008; *Shanks v Shanks* HC Dunedin CIV-2010-412-310, 2 July 2010; *Re Landbase Nominee Co Ltd* (1989) 4 NZCLC 65,093; *Re Registered Securities Ltd* (1990) 5 NZCLC 66,248; *Re Trans Capital Ltd (in liquidation)* HC Wellington M84/99 26 May 2000; *Beneficial Owners of Whangaruru Whakaturia No 4 v Warin* [2009] NZCA 60, [2009] NZAR 523; *AR v Immigration and Protection Tribunal* [2017] NZHC 1401; *Solicitor-General v Moodie* HC Wellington CIV-2005-485-126, 25 July 2006; *Registered Securities Ltd (in liq) v C* (1999) 13 PRNZ 699; and *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd and another* [1972] 1 WLR 1213.

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<sup>3</sup> Affidavit of David Ian Ruscoe dated 31 July 2023 at [20].

5. The application is made without notice to any other party than proposed counsel on the following grounds:
- (a) That requiring the applicants proceed on notice would cause undue delay or prejudice to the applicants;
  - (b) The application relates to a routine matter;
  - (c) The interests of justice require the application to be determined without service notice of the application;
  - (d) The proposed orders would be brought to the attention of beneficiaries; and
  - (e) Beneficiaries known to the applicants who may wish to be heard on this application will be notified on a *Pickwick* basis.
6. I certify that:
- (a) The grounds set out in paragraph 5 on which the application relies are made out; and
  - (b) All reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

Dated at Wellington this 31<sup>st</sup> day of July 2023



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**Scott Barker / Bridie McKinnon**  
Solicitor for the applicants

This document is filed by **Scott Barker**, solicitor for the applicants whose address for service is at the offices of Buddle Findlay, Level 17, Aon Centre, 1 Willis Street, Wellington, 6011. Documents for service on the above named may be left at that address or may be:

1. posted to the solicitor at PO Box 2694, Wellington 6140; or



2. left for the solicitor at a document exchange for direction DX SP20201, Wellington;
3. transmitted to the solicitor by facsimile to 64 4 499 4141; or
4. sent to the solicitor by email at [scott.barker@buddlefindlay.com](mailto:scott.barker@buddlefindlay.com) and [bridie.mckinnon@buddlefindlay.com](mailto:bridie.mckinnon@buddlefindlay.com).