

In the High Court of New Zealand
Wellington Registry
I Te Kōti Matua o Aotearoa
Te Rohe o Te Whanganui-ā-Tara

CIV-2025-485-487

under: Part 19 of the High Court Rules, Part 16 of the
Companies Act 1993 and Part 7 of the Trusts Act 2019

in the matter of: an application concerning an application concerning
Cryptopia Limited (in liquidation) and Cryptopia
NZDT Limited (in liquidation)

and

in the matter of: an application by **David Ian Ruscoe** and **Malcolm
Russell Moore** as liquidators of Cryptopia Limited (in
liquidation) and Cryptopia NZDT Limited (in liquidation)
Applicants

Notice of opposition by GNY.io Limited to originating application
for directions as to treatment of unclaimed trust assets

Dated: 15 August 2025

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NOTICE OF OPPOSITION BY GNY.IO LIMITED TO ORIGINATING APPLICATION FOR DIRECTIONS AS TO TREATMENT OF UNCLAIMED TRUST ASSETS

To: The Registrar of the High Court at Wellington

And to: The Applicants

This document notifies you that—

- 1 GNY.io Limited (**GNY**) intends to oppose part of the originating application by the Applicants dated 31 July 2025.
- 2 GNY's position:
 - 2.1 in respect of each of the directions sought is particularised in the **Schedule** to this notice of opposition;
 - 2.2 is that the following alternative directions should be made in place of the directions which GNY opposes:

Determination of Cryptopia's claims

- (a) that:
 - (i) Cryptopia Limited (in liquidation) (**Cryptopia**) breached fiduciary duties it owed to GNY, for which GNY is entitled to equitable compensation, to be quantified in further evidence to be filed by GNY;
 - (ii) Cryptopia breached duties in contract and tort that it owed to GNY, for which GNY is entitled to damages, to be quantified in further evidence to be filed by GNY;
 - (iii) Cryptopia caused GNY loss, to be quantified by further evidence to be filed by GNY, by making false and misleading representations about the safety and security of the Platform and services in breach of:
 - (A) s 13 of the Fair Trading Act 1986; and

- (B) s 28 of the Consumer Guarantees Act 1993;
- (iv) the purported exclusions and limitations in Cryptopia's terms and conditions (**T&Cs**):
 - (A) did not form part of the contract between Cryptopia and GNY, and do not bind GNY; and
 - (B) alternatively, are unenforceable (either in whole or part), such that, as specified below, they do not extend to GNY's claims;

The Trusts

- (b) that the Trusts with surplus assets are resettled by order of the Court, such that all account holders—or, alternatively, direct victims of the 14 January 2019 hack of Cryptopia's Platform (the **Hack**)—are beneficiaries of each Trust;
- (c) alternatively, that the Trusts with surplus assets are varied by order of the Court, such that all account holders—or, alternatively, Hack victims—are added as beneficiaries of each Trust;
- (d) alternatively, a declaration that the Trusts have expired and all surplus assets of the Trusts vest in Cryptopia for the purpose of paying outstanding claims of account holders, or, alternatively, for the purpose of paying Hack victims; or
- (e) alternatively, and in the event that the Court makes directions that the liquidators transfer surplus Trust assets to the Crown under s 149 of the Trusts Act 2019, the Court makes a further order under s 151(2)(a) of the Act requiring the Crown to make immediate payment of assets towards outstanding

claims of account holders (or alternatively, Hack victims).

- 3 The grounds on which GNY opposes the making of particular directions by the Applicants and supports the making of the alternative directions above are as follows (and are in part also summarised in the **Schedule** to this notice of opposition):

Determination of Cryptopia's claims

- *GNY has valid breach of fiduciary duty claim against Cryptopia*

- 3.1 GNY has suffered loss, as set out in detail in the **attached** amended statement of claim, caused by Cryptopia breaching fiduciary duties it owed to GNY;
- 3.2 Cryptopia owed fiduciary duties to GNY to, among other things:
 - (a) act honestly, in good faith and in accordance with GNY's best interests;
 - (b) hold, safeguard and deal with the GNY's List Machine Learning tokens (**LML tokens**) as directed by GNY;
 - (c) maintain appropriate safeguards and security arrangements to ensure the safety and security of the LML tokens on Cryptopia's website and associated applications (the **Platform**); and
 - (d) act proactively in circumstances where it knew that GNY's interests were at risk of serious harm, including by taking appropriate steps to respond to the Hack and to recover GNY's stolen LML tokens;
- 3.3 Cryptopia breached the fiduciary duties owed to GNY by failing to, among other things:
 - (a) ensure, as a fiduciary, the appropriate safety and security of the Platform and services, in circumstances where the defendant was aware that the Platform did

not have adequate safeguards in place, and which resulted in the Hack;

- (b) adequately respond to the Hack, both as it occurred and in the immediate aftermath;
- (c) adequately communicate with the plaintiff and third parties, such as Bitbay, with respect to the Hack;
- (d) act proactively in the best interests of the plaintiff as its trust beneficiary, including by taking appropriate mitigation measures following the Hack, including to block stolen tokens from reaching Bitbay;

3.4 In failing to take those steps:

- (a) Cryptopia was more than merely negligent in the sense of falling below the objective standard of care to be expected from a trustee in the circumstances;
- (b) Cryptopia's conduct was disloyal and reflected a conscious disregard of the interests of GNY as a beneficiary;

3.5 GNY has lost a total of 15,409,316.7196351 LML tokens as a result of GNY's breach of fiduciary duties;

3.6 a presumption exists that Cryptopia's breach of its core fiduciary duty of loyalty caused that loss;

3.7 Cryptopia, as fiduciary, bears the burden of proving that GNY would have suffered the full loss in spite of the breach, and cannot do so; and

3.8 GNY is entitled to equitable compensation putting it in the position that it would have been in had there been no breach, to be quantified in further evidence to be filed by GNY.

- ***GNY has alternative valid claims against Cryptopia***

3.9 Alternatively, GNY has suffered loss, as also set out in detail in the **attached** amended statement of claim, and to be

quantified in further evidence to be filed by GNY, caused by Cryptopia:

- (a) failing, as a matter of contract and tort, to manage the platform and provide services with reasonable care by failing to:
 - (i) safely store tokens on the Platform;
 - (ii) have adequate safeguards to prevent the Hack; and
 - (iii) respond with reasonable care to the Hack; and
- (b) making false and misleading representations about the safety and security of the Platform and services in breach of:
 - (i) s 13 of the Fair Trading Act 1986; and
 - (ii) s 28 of the Consumer Guarantees Act 1993.

- ***Exclusions and limitations of liability in Cryptopia T&Cs do not apply***

3.10 The purported exclusions and limitations of liability in the T&Cs did not form part of the contract between Cryptopia and GNY, and do not bind GNY;

3.11 Alternatively, even if the exclusions and limitations in principle form part of the contract between Cryptopia and GNY, the purported exclusions in clause 12.1(a) of the T&Cs are specifically unenforceable (whether in whole or in part) as:

- (a) they are unusual and onerous, in purporting to exclude Cryptopia from being:

...under any circumstances, liable in any way for any loss or damage, whether direct, indirect, consequential or incidental, whether in tort, contract or otherwise arising out of use of our Platform or Services.

- (b) Cryptopia failed to give proper notice of such unusual and onerous exclusions, in circumstances where:
 - (i) the T&Cs were entered into by the creation of an account on the Platform;
 - (ii) the T&Cs were not signed, and users could only access them via in-text references and hyperlinks in correspondence;
 - (iii) Cryptopia did not bring to GNY's attention sufficiently purported updates of limitation of liability in the T&Cs in August 2018; and
 - (iv) Cryptopia did not alert GNY to limitation of liability when Cryptopia and GNY corresponded about GNY listing its LML token on the Platform in October 2018 onwards; and
- (c) the exclusions defeat the purpose of the contract by rendering its performance optional;

3.12 It follows that clause 12.1(a) does not exclude Cryptopia's claims for breach of fiduciary duty, breach of contract, or negligence by Cryptopia;

3.13 The purported liability cap in clause 12.1(d) of the T&Cs:

- (a) does not on its proper construction apply, and/or is not otherwise effective with respect to, any breach of:
 - (i) the Fair Trading Act 1986 or Consumer Guarantees Act 1993; or
 - (ii) fiduciary duty; and
- (b) is not, in any event, enforceable, as the NZD 5,000 cap on liability is so disproportionate to the loss that GNY suffered that it renders Cryptopia's performance of the contract meaningless.

- ***GNY's accounts being in the name of Messrs [REDACTED] and [REDACTED] does not impact GNY's claim***

3.14 GNY is a Cryptopia account holder in its own name on the basis that:

- (a) Cryptopia was at all times aware that the relevant accounts were GNY accounts and that it was dealing with GNY;
- (b) Cryptopia required GNY to ensure it had at least one trading account opened on its behalf in the name of a [REDACTED] as a requirement for listing its LML tokens on the exchange; and
- (c) GNY operated accounts opened on its behalf in the names of [REDACTED] with the full knowledge of Cryptopia, in order to comply with Cryptopia's own requirements; and

3.15 If GNY's claims are not admitted in its name, they must be admitted in the names of [REDACTED] on GNY's behalf.

- ***GNY's claims to be determined by the Court***

3.16 GNY's claim for losses arising from the Hack and its unsecured creditor claim is to be treated as having complied with the liquidators' proposed process, and is to be determined by the Court, not the liquidators.

The Trusts

3.17 The interests of account holders who have not completed the liquidators' account holders' claims process (**non-claiming account holders**) do not preclude any of the orders at [2.2(b)-(e)] above being made:

- (a) non-claiming account holders have renounced the benefit of the relevant Trust in respect of surplus Trust assets by failing to claim through the liquidators' account-holders claims process;

- (b) the liquidators are entitled to treat such account holders as if they are *"not in existence, even when that account holder is shown in Cryptopia's records as having a beneficial entitlement, provided no fewer than 90 days before the Cut-Off Date the liquidators [take certain steps to contact such account holders]"*, pursuant to existing orders of this Court (*Re Cryptopia* [2024] NZHC 419);
- (c) in any event, any beneficiary claim to recover personal property held by Cryptopia on trust was out of time as of May 2025 (being six years after appointment of liquidators to Cryptopia), under s 31(1)(b) of the Limitation Act 2020; and
- (d) it is consistent with the objectives of the trusts that once beneficiaries have exhausted their opportunity to claim their coin balances, unclaimed coins would vest in Cryptopia as trustee.

- *Appropriate to make orders resettling or varying Trusts*

3.18 It is appropriate that the Court order that the Trusts holding surplus assets are resettled and/or varied by order of the Court, such that all account holders (or, alternatively, unsatisfied Hack victims) are beneficiaries of each such Trust, as:

- (a) such an order would have no effect on any person's interests in trust assets, nor result in any benefit or detriment to any person;
- (b) the Trust settlor(s) did not intend for any Trust to continue to operate in circumstances where the Cryptopia Platform is defunct and the non-claiming account holders have not availed themselves of the opportunity to claim their coins from the Platform; and

- (c) the continuation of Trust(s) holding surplus Trust assets in present circumstances incurs costs, serves no purpose and protects no person's interests.

- ***Alternatively, appropriate to declare the Trusts have expired***

3.19 Alternatively, it is appropriate that the Court make a declaration that the Trusts holding surplus assets have expired and all surplus assets of such Trusts vest in Cryptopia for the purpose of paying outstanding claims, or, alternatively, for the purpose of paying Hack victims, including because under cls 4.3(vii), 4.4(a) and 4.4(c) of the T&Cs, the Trusts expired in or about July 2019, being 90 days after Cryptopia could no longer "*reasonably provide the Account or any Services*" nor recommence doing so within a reasonable time.

- ***Alternatively, if assets transferred to Crown, appropriate to make immediate payment orders***

3.20 Alternatively, and in the event that the Court makes directions that the liquidators transfer surplus Trust assets to the Crown under s 149 of the Trusts Act 2019, GNY respectfully seeks that the Court make a further order under s 151(2)(a) requiring the Crown to make immediate payment of assets towards outstanding claims of account holders (or, alternatively, Hack victims); and

3.21 such orders are appropriate in the context set out above, where non-claiming account holders have renounced the benefit of each Trust;

- ***Surplus assets not to be converted to NZD***

3.22 Surplus assets from the Trusts should not be converted to NZD in any circumstances as doing so would create unnecessary conversion costs;

3.23 surplus assets should remain as, or be converted to, Bitcoin (**BTC**) as it is the most logical and consistent reference point for compensation. Cryptopia's own records and

pre-liquidation systems valued user holdings in BTC, and BTC was the principal trading and funding currency of the exchange; and

- 3.24 only the liquidators' reasonable and necessary costs of converting surplus assets to BTC should be met from surplus Trust assets, along with creditor claims.

4 GNY relies on:

- 4.1 sections 16, 19, 125, 133 and 151 of the Trusts Act 2019 and the Court's inherent jurisdiction;
- 4.2 s 13 of the Fair Trading Act 1986; and
- 4.3 s 28 of the Consumer Guarantees Act 1993;
- 4.4 s 31(1)(b) of the Limitation Act 2020;
- 4.5 Part 19 of the High Court Rules 2016;
- 4.6 *Brennan International Transport Hong Kong v Blue Q Corporation* [2009] NZCCLR 21 at 28; *Dorchester Finance Limited v Deloitte* [2012] NZCA 226; *In re MF Global UK Ltd (No 3)* [2013] EWHC 1655 (Ch); *Re Pritchard Stockbrokers* [2019] EWHC 137 (Ch); *In re Instant Cash Loans Limited* [2021] EWHC 1164 (Ch); *In re Setter & Ors as Trustees of the Central Hawkes Bay Consumers Power Trust* [2021] NZNC 1603; and *Credit Suisse Trust Limited v Ivanishvili* [2024] SGCA(I) 5;
- 4.7 the affidavits of [REDACTED] each dated 28 March 2025 filed in CIV-2023-485-411; and

4.8 further affidavits to be filed by or on behalf of GNY in support of this notice of opposition.

Date: 15 August 2025



D Kalderimis KC / L L Fraser / J Marcetic

This document is filed by Laura Louise Fraser, solicitor for GNY, of the firm Chapman Tripp. The address for service of GNY is at the offices of Chapman Tripp, Level 34, PwC Tower, 15 Customs Street West, Auckland 1010.

Service on GNY should be effected by emailing the documents to laura.fraser@chapmantripp.com, janko.marcetic@chapmantripp.com and nuku.tau@chapmantripp.com.

Provided that documents are served by email, documents may also be:

- (a) posted to the solicitors listed on the front page of this document at PO Box 2206, Auckland 1140; or
- (b) hand delivered to level 34, PwC Tower, 15 Customs Street West, Auckland 1010.

SCHEDULE

Liquidators' order sought	GNY position
Account holders' unsecured creditor claims	
Exclusion and limitation of liability	
1.1	Opposes, for the reasons given at [3.10]–[3.13] of this notice.
1.2	Does not oppose.
1.3	Opposes, for the reasons given at [3.10]–[3.13] of this notice.
Cryptopia's liability for Hack losses	
2.1	Takes no position, but seeks confirmation that GNY's claim for losses arising from the Hack and its unsecured creditor claim will be treated as having complied with this proposed process, and is to be determined by the Court, not the liquidators (as per [3.16] of this notice).
2.2	Opposes on the basis (as per [3.22]–[3.24] of this notice) that: • GNY's claim for losses arising from the hack is not restricted to "Hack Losses" as defined in the liquidators' application, and it should be ascertained accordingly. • While s 306 of the Companies Act 1993 requires creditor claims to be ascertained in New Zealand dollars, it does not require creditor claims to be paid in New Zealand dollars. GNY's claim (and claims of other Hack victims) are more appropriately, efficiently and economically met by payment in Bitcoin.
2.3	Agrees this question should be answered in connection with Hack Losses as defined in the application, and in connection with other losses GNY suffered as a result of the Hack. GNY considers the answer to be "yes" (as per [3.1]–[3.8] of this notice).
2.4(a)	Takes no position, on the basis that GNY is not an eligible account holder in a trust where Cryptopia has an entitlement to distribution of Cryptocurrency, and so this order is not relevant to GNY.
2.4(b)	Agrees this question should be answered. GNY considers the answer to be "yes" (as per [3.16] of this notice).

Liquidators' order sought	GNY position
2.5	Agrees this question should be answered. GNY considers the answer is "yes".
2.6	Agrees this question should be answered. GNY considers the answer is "yes".
2.7	Takes no position, on the basis GNY is not an eligible account holder in a trust where Cryptopia has an entitlement to distribution of Cryptocurrency, and so this order is not relevant to GNY.
2.8	Agrees this question should be answered, in particular in connection with GNY's claim for misleading and deceptive conduct under the Fair Trading Act 1986 (as per [2.2](a)(iii), [3.9(b)(i)] and [3.13(a)] of this notice).
2.9	Opposes, at least insofar as this order concerns GNY, as GNY's claim falls for determination by the Court (as per [3.16 of this notice]).
2.10(a)	Agrees this question should be answered. GNY considers (as per [3.14] and [3.15] of this notice) that: • Cryptopia required GNY to ensure it had at least one trading account opened on its behalf in the name of a [REDACTED] as a requirement for listing its LML tokens on the exchange; • GNY operated accounts opened on its behalf in the names of [REDACTED] with the full knowledge of Cryptopia, in order to comply with Cryptopia's own requirements; • GNY is a Cryptopia account holder in its own name accordingly; • GNY's claim is not limited to "Hack Losses" as defined in the liquidators' application. If GNY's claim are not admitted in its name, they must be admitted in the names of [REDACTED] on GNY's behalf.
2.10(b)	Agrees this question should be answered. GNY considers the answer is "yes" (as per [3.9(a)] of this notice).
2.10(c)	Agrees this question should be answered (with the answer a matter of evidence not pleading).

Liquidators' order sought	GNY position
2.10(d)	Agrees this question should be answered, save that the applicable account holder is GNY. GNY considers the answer is "yes" (as per [3.1]–[3.4] of this notice).
2.10(e)	Agrees this question should be answered, save that the loss enquiry should not be limited to "Hack Losses" as defined in the liquidators' application (with the answer a matter of evidence not pleading).
2.10(f)	Agrees this question should be answered, save that the applicable account holder is GNY (with the answer a matter of evidence not pleading).
Cryptopia's beneficial interest in bitcoin	
3.1–3.2	Takes no position, on the basis that GNY is not an account holder in the Bitcoin trust, and it apprehends based on facts known to it that these questions are of no application to it.
Assignment of account holders' claims	
4	Opposes, on the basis that while GNY has not purported to assign its claim, Cryptopia's terms and conditions do not prohibit the assignment of the proceeds of a civil claim against Cryptopia, nor prohibit the assignment of a creditor claim in Cryptopia's liquidation.
Top-up for hack losses	
5.1–5.3	Takes no position, on the basis that GNY is not an account holder in a trust with any Unclaimed Holdings, and it apprehends based on facts known to it that these questions do not apply to it.
NZDT	
6.1–6.7	Take no position, on the basis that GNY is not an account holder in the NZDT trust, and it apprehends based on facts known to it that these questions do not apply to it.
Trusts with surpluses	
7.1	Agrees this question should be answered. GNY considers, for the reasons in [3.17] of this notice, that account holders should receive distributions calculated on the basis of their admitted claim, and not windfall distributions of surplus trust assets:

Liquidators' order sought	GNY position
	• To which they have no beneficial entitlement; and which • Are in excess of their admitted claim.
Winding up the trusts	
8.1	Agrees this question should be answered. GNY considers that the answer should be "no", and that alternative orders should be made, as set out in paragraphs [3.17]–[3.21] above, that: • That the Trusts holding surplus assets are resettled by order of the Court, such that all account holders are beneficiaries of each Trust; • Alternatively, that such Trusts are varied by order of the Court, such that all account holders are beneficiaries of each Trust; • Alternatively, that such Trusts have expired and all surplus assets of the Trusts vest in Cryptopia; • Alternatively, in the event that the Court makes directions that the liquidators transfer surplus Trust assets to the Crown under s 149 of the Trusts Act 2019, the Court makes a further order under s 151(2)(a) of the Act requiring the Crown to make immediate payment of assets towards outstanding claims of account holders (or alternatively, Hack victims).
8.2(a)–(b)	Agrees this question should be answered. GNY considers (as per [3.22]–[3.24] of this notice) that: • Surplus assets of all Trusts should remain as, or be converted to, Bitcoin (BTC); • Unnecessary conversion costs should be avoided. Only the liquidators' reasonable and necessary costs of converting surplus assets to BTC should be met from surplus assets, along with claims of any creditors.
8.2(c)	Agrees this question should be answered. GNY considers the answer should be "yes".
8.3	Agrees this question should be answered. GNY considers that (assuming that the answer to the liquidators' [8.1] is "no", and none of the alternative orders sought by GNY at [2.2(b)–(d)] above are made), the answers to the specific questions should be:

Liquidators' order sought	GNY position
	• No, surplus assets should not be converted to NZD. • No, surplus assets Coins should not be transferred to a new trustee. • No, individual ledgers for each cryptocurrency trust should not be maintained. The Court should make a further order under s 151(2)(a) requiring the Crown to make immediate payment of assets towards claims.
8.4	GNY considers this question to be superfluous, on the basis of its position on the liquidators' direction [8.3].
8.5	GNY considers this question to be superfluous, on the basis of its position on the liquidators' direction [8.3].
8.6	GNY considers this question to be superfluous, on the basis of its position on the liquidators' direction [8.3].
Low and no value trusts	
9.1	Agrees this question should be answered. GNY takes no position on this question.