

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

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

CIV-2024-485-58  
[2024] NZHC 165

UNDER the Trade Marks Act 2002, Fair Trading Act  
1986 and a breach of confidence

BETWEEN DAVID IAN RUSCOE AND MALCOLM  
RUSSELL MOORE AS LIQUIDATORS OF  
CRYPTOPIA LIMITED (in liquidation)  
First Plaintiffs

AND CRYPTOPIA LIMITED (in liquidation)  
Second Plaintiff

AND EPIC TRUST LIMITED  
First Defendant

AND THOMAS VICTOR HENRY RONALD  
CATTERMOLE  
Second Defendant

AND MARTIN BRAINE  
Third Defendant

AND PERSONS UNKNOWN  
Fourth Defendant

Date: On the papers

Counsel: S A Barker and B E Marriner for the Plaintiffs

Judgment: 13 February 2024

---

**JUDGMENT OF PALMER J**

---

*Solicitors*  
Buddle Findlay, Wellington

## What happened?

[1] The plaintiffs are the liquidators of Cryptopia Ltd (in liquidation) (Cryptopia), a cryptocurrency exchange company. The liquidation has given rise to a variety of legal proceedings.<sup>1</sup> Most recently, the first defendant (Epic Trust), applied unsuccessfully to join proceedings where the liquidators sought directions about the distribution of the cryptocurrency assets of Cryptopia.<sup>2</sup> Epic Trust is owned by Mr Victor Cattermole, the second defendant. Mr Cattermole appears to control Cogito, a metaverse for which Epic Trust is the trustee company. Mr Martin Braine appears to be an in-house lawyer for Cogito. Other persons unknown, who have control over, or responsibility for the actions of Cogito, are named as the fourth defendant(s).

[2] In 2019, one of the liquidators, Mr Ruscoe, filed an affidavit in earlier High Court proceedings relating to the liquidation. Attached to the affidavit were two spreadsheets which contained commercially sensitive and confidential information, including usernames and email addresses for account holders, the number of cryptocurrencies held by each account holder, a valuation of each cryptocurrency holding, and other account information. The information in the spreadsheets was not publicly accessible.

[3] In April 2021, apparently due to an error of the High Court Registry in Christchurch, Mr Cattermole obtained that information. On 21 October 2020, the Court ordered Mr Cattermole to delete or return the spreadsheets. On 14 July 2021, the Court made orders by consent holding Mr Cattermole in contempt for not providing specified information and devices for review. It recorded his undertakings that he did not have any copies of the spreadsheets in his power, possession or control and that, if he did, he would notify the liquidators.

[4] In December 2023, the liquidators say they became aware that, in 2020, Mr Cattermole had sent parts of the confidential information to another person by email. From October 2023 to January 2023, the liquidators have provided evidence that Epic

---

<sup>1</sup> See, for example *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809; and *Ruscoe v Houchens* [2023] NZHC 2490.

<sup>2</sup> *Epic Trust Ltd v Ruscoe* [2024] NZHC 21.

Trust sent a variety of emails to Cryptopia account holders with the subject line including “Cryptopia”, titled “Cryptopia Communication”, and signed by T Cattermole or Martin Braine or Cogito Support.

[5] The liquidators have filed proceedings seeking relief from Epic Trust, Mr Cattermole, Mr Martin Braine, and the unknown others for breach of confidence, the Trade Marks Act 2002, and misleading and deceptive conduct under the Fair Trading Act 1989. They seek an interlocutory injunction, until such time as the substantive claims are determined, preventing the defendants from:

- (a) using, relying on, referring to, disseminating or disclosing the confidential information; and
- (b) using the trade marks “Cryptopia” and “CRYPTOPIA” in the headings or sub-headings of any documents or communications or in any domain names, usernames, account names, email addresses, subject lines, or display names, created or used for the purposes of advertising to or communicating with Cryptopia’s account holders;

[6] The liquidators apply urgently, without notice, for:

- (a) the same orders as an interim injunction until their application for interlocutory injunctions is determined, in support of the first two causes of action, for breach of confidence and trade mark infringement;
- (b) orders prohibiting the defendants from using or disclosing the information in the spreadsheets, or from using the trade marks “Cryptopia” and “CRYPTOPIA” in communications with Cryptopia account holders, or persons who may be Cryptopia account holders;
- (c) ancillary orders as to service of the first defendant, orders requiring the defendants to disclose the identity, whereabouts and contact details of the third and fourth defendants; and

- (d) confidentiality orders in respect of Mr Ruscoe's affidavit of 8 February 2024.

**Should the interim orders be granted without notice?**

[7] Under r 7.23 of the High Court Rules 2016 (the Rules), an application may be made without notice to the other parties only on one of more specified grounds. They include, in r 7.23(2)(a)(i) and (v), that requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant, or that the interests of justice require it, and in both cases that the applicant has made all reasonable inquiries and taken all reasonable steps to ensure the application contains all relevant material.

[8] I am satisfied that the application for the interim injunction can properly be considered without notice. If the respondents are disclosing confidential information, as they appear to have done, there is a real risk it will be disseminated so widely that the liquidators will be unable to protect the confidentiality of the information. That would also risk prejudicing the claims process being undertaken in the liquidation. The respondents will have the opportunity to respond to the permanent injunction sought in similar terms.

[9] To grant an interim injunction under r 7.53 of the Rules, the Court must examine whether there is a serious question to be tried, consider the balance of convenience for the parties, pay particular attention to whether damages would be an adequate remedy, and assess the overall justice of the position.<sup>3</sup>

[10] First, on the basis of the evidence before me, given the stage of the proceeding, I am satisfied there is a serious question to be tried in relation to the first two causes of action:

- (a) *Breach of confidence*: There is evidence the information is confidential as account holders' personal information and as Cryptopia's commercial information. There is evidence the confidential information was used, without authorisation. Mr Cattermole told me

---

<sup>3</sup> *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129, (1985) 5 IPR 399 (CA).

that the source of names of account holders used by Cogito was a social media campaign. But at least 64 account holders have told the liquidators they received a settlement offer from a company associated with Mr Cattermole without signing up to any entity associated with him. 15 active Cryptopia email addresses controlled by Grant Thornton employees also received such emails without signing up. 39 internal Cryptopia email addresses, which were on the spreadsheets but inactive since liquidation, also received emails regarding the offer. Communications from the defendants appear to suggest Cogito has the confidential information.

- (b) *Infringement of trade mark*: The defendants have sent email communications to Cryptopia account holders using the trade marks, apparently contrary to s 89 of the Trade Marks Act and without protection of a defence. Many account holders have expressed confusion to the liquidators about whether Cogito is affiliated with Cryptopia.

[11] Second, I am satisfied the balance of convenience favours the liquidators. If the confidential information is disseminated too widely, the liquidators would be inhibited from protecting it on the ground of confidentiality. There is also a risk that the claims process of the liquidation would be compromised. And account holders may register with Cogito on a mistaken basis. In these situations, damages would likely be difficult to quantify and inadequate to compensate for the loss. On the other hand, the defendants' position is only necessarily prejudiced until the application for the permanent injunction is determined. Any commercial loss to the defendants appears more likely to be quantifiable. The liquidators have provided an undertaking as to costs. The liquidators make a fair point that the "status quo" includes the orders of this Court protecting the confidential information. I am satisfied the liquidators have acted without undue delay.

[12] Third, and overall, I am satisfied that granting the interim injunction is consistent with the interests of justice in preserving the position of the parties. I have particular regard to the interim nature of the injunction, the previous Court orders

seeking to protect the confidential information, and the potential impact of the unauthorised use of the information for the 960,000 account holders with a positive account balance in more than 150 countries.

[13] The liquidators also seek ancillary orders as to service of the first defendant and requiring the defendants to disclose the identity and contact details of the third and fourth defendants. I grant these orders in order to facilitate the progress of the proceedings. I also grant the confidentiality orders sought by the liquidators in respect of Mr Ruscoe's affidavit of 8 February 2024 to protect the confidentiality of the information protected by the interim injunction.

## **Result**

[14] I order that:

- (a) from the date of this judgment until the plaintiffs' application for interlocutory injunctions is determined, the first to fourth defendants are prohibited from:
  - (i) using, relying on, referring to, disseminating, or disclosing the information about Cryptopia's database and cryptocurrency holdings contained in the spreadsheets exhibited to the affidavit of David Ian Ruscoe dated 8 November 2019 in CIV-2019-409-544 (or copies thereof, whether in electronic or hard copy); and
  - (ii) using the trade marks "Cryptopia" and "CRYPTOPIA":
    - (1) in the headings or sub-headings of any documents or communications created for the purposes of advertising to or communicating with Cryptopia's account holders, or persons who may be Cryptopia's account holders; and
    - (2) in any domain names, usernames, account names, email addresses, subject lines or display names used for the purposes of advertising to or communicating with

Cryptopia's account holders, or persons who may be Cryptopia's account holders.

- (b) The first and second defendants must disclose, by way of affidavit:
  - (i) the identity and contact details of Mr Martin Braine, the in-house lawyer for the Principality of Cogito; and
  - (ii) the identity and contact details of any legal persons (natural persons or other legal entities) who are in control of decision-making in the Principality of Cogito or the Cogito Metaverse.
- (c) The liquidators are permitted to serve the first defendant by serving a copy of the applications, statement of claim, supporting documentation, and this judgment, on Cavell Leitch, being the solicitors instructed by the first defendant in CIV-2023-485-411.
- (d) No person may search, inspect, or copy the Court file without an order from the Court, made on notice to the liquidators, or the written consent of the liquidators.
- (e) The parties to this proceeding are not permitted to disclose Mr Ruscoe's affidavit of 8 February 2024 to any non-party without an order from the Court, made on notice to the liquidators, or with their written consent, except for the purposes of obtaining legal advice for this proceeding.
- (f) The parties are required to delete Mr Ruscoe's affidavit dated 8 February 2024 after this proceeding and any appeals are determined and to file an affidavit confirming that they have done so.
- (g) Leave is reserved to any party to apply to vary or set aside the interim injunction on three working days' notice.

Palmer J