Neutral Citation Number: **[2024] EWHC 743 (Ch)**

Claim Nos. IL-2021-000019
IL-2022-000069

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 28th March 2024

Before:

MR. JUSTICE MELLOR

- -

Between:

CRYPTO OPEN PATENT ALLIANCE

(for itself and as Representative Claimant on behalf of Square, Inc., Payward Ventures, Inc. (DBA Kraken), Microstrategy, Inc., and Coinbase, Inc.)

Claimant in IL-2021-000019

(the "COPA Claim")

and

CRAIG STEVEN WRIGHT

Defendant in the COPA Claim

(1) DR CRAIG STEVEN WRIGHT
(2) WRIGHT INTERNATIONAL INVESTMENTS LIMITED
(3) WRIGHT INTERNATIONAL INVESTMENTS UK LIMITED

Claimants in IL-2022-000069 (the "BTC Core Claim")

and

(1) BTC CORE
(2) WLADIMIR JASPER VAN DER LAAN
(3) JONAS SCHNELLI
(4) PIETER WUILLE
(5) MARCO PATRICK FALKE
(6) SAMUEL DOBSON
(7) MICHAEL ROHAN FORD

(8) CORY FIELDS
(9) GEORGE MICHAEL DOMBROWSKI (a.k.a 'Luke Dashjr')
(10) MATTHEW GREGORY CORALLO
(11) PETER TODD
(12) GREGORY FULTON MAXWELL
(13) ERIC LOMBROZO
(14) JOHN NEWBERY
(15) PETER JOHN BUSHNELL
(16) BLOCK, INC.
(17) SPIRAL BTC, INC.
(18) SQUAREUP EUROPE LTD
(19) BLOCKSTREAM CORPORATION INC.
(20) CHAINCODE LABS, INC
(21) COINBASE GLOBAL INC.
(22) CB PAYMENTS, LTD
(23) COINBASE EUROPE LIMITED
(24) COINBASE INC.
(25) CRYPTO OPEN PATENT ALLIANCE
(26) SQUAREUP INTERNATIONAL LIMITED

Defendants in the BTC Core Claim

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JONATHAN HOUGH KC and MATTHEW BRADLEY KC (instructed by Bird & Bird LLP) appeared for COPA.

ALEX GUNNING KC (instructed by Macfarlanes LLP) appeared for the Developers (Defendants 2-12, 14 & 15) in the BTC Core Claim

TERENCE BERGIN KC (instructed by Shoosmiths LLP) appeared for Dr Wright on the applications in the COPA Claim and (instructed by Harcus Parker Ltd) for the Claimants in the BTC Core Claim.

Hearing Date: 27th March 2024

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APPROVED JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on the National Archives and other websites. The date and time for hand-down is deemed to be Thursday 28th March 2024 at 10.00am.

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THE HON MR JUSTICE MELLOR

MR JUSTICE MELLOR:

Introduction

1. Yesterday, I granted a worldwide freezing order ('WFO') in the sum of £6m, on an application brought by the Crypto Open Patent Alliance ('COPA') against Dr Craig Wright. This judgment contains my reasons for granting that application and certain directions on other applications.

2. Procedurally, the application came at a slightly awkward time for reasons I will explain but I proceeded on the basis that if the conditions for the grant of the relief sought are otherwise met, I should not be deterred from granting it.

3. I recently heard the Joint Trial of the 'Identity Issue' between COPA and Dr Wright. The Identity Issue was whether Dr Wright was Satoshi Nakamoto, the creator of the Bitcoin System and the author of the Bitcoin White Paper and the first version of the Bitcoin Source Code. The Identity Issue was also a preliminary issue in that part of the copyright and database right action brought by Dr Wright and two of his companies against certain individuals who have been referred to as 'the Developers' (IL-2022-000069).

4. The Joint Trial commenced on 5th February 2024 and closing submissions concluded on Thursday 14th March. Having listened carefully to all the evidence and the submissions made to me I concluded that the evidence was overwhelming and announced the result of the Identity Issue there and then, with my written judgment to follow. In short, in my judgment, COPA had established that Dr Wright was not Satoshi Nakamoto and had not been the creator of Bitcoin and the early materials.

5. I am currently well advanced in writing my judgment, but it is not yet complete. The intention was to hand down my approved judgment when it is ready and then hold, in the usual way, a form of order hearing at which the remaining relief sought, including costs would be determined. Thus, the application for the WFO is not quite a post-judgment application (where the parties have all the Judge's reasoning), but close.

6. In the meantime, both COPA and the Developers have issued applications seeking the determination of final costs orders (including orders for interim payment) in their favour on the papers, but both those applications are extant at this hearing.

7. At this hearing COPA appears by Mr Hough KC and Mr Bradley KC, the Developers by Mr Gunning KC and Mr Bergin KC appears for Dr Wright regarding the applications in the COPA action and for the Claimants in the BTC Core claim.

8. Dr Wright and his team were given notice of this hearing and the application for a worldwide freezing order by email sent at 6.35pm the day before the hearing. This is undoubtedly short notice for an application of this kind, and I am grateful for Mr Bergin KC appearing to assist at this hearing. He made it clear that he was not able nor instructed to deal with the applications for final costs orders from the Joint Trial. Furthermore, he was not able to make anything other than very short observations (largely as to timing) on the WFO.

9. COPA correctly anticipated this, correctly addressed me as if this WFO application was made without notice and so rightly acknowledged their duty to make full and frank disclosure.

10. At an early stage of the hearing, Mr Bergin indicated that Dr Wright had proposals for undertakings which he suggested might resolve the issues. I rose for a short time to enable the proposals to be discussed. At that point I also indicated my preliminary view that it was unlikely that I would make final orders for costs at this hearing, in view of the (very) short notice given. In the event, these proposals did not prove satisfactory for COPA, and they were not developed in argument. Mr Hough proceeded with his application(s).

The trigger for this hearing

11. On Monday 18th March (i.e. the Monday after the conclusion of the trial) Dr Wright filed a form at Companies House in respect of his company RCJBR Holding plc ("**RCJBR**"), by which form he notified Companies House that his shares in RCJBR had been transferred to DeMorgan PTE, a company organised under the laws of Singapore.

12. Understandably, that gave rise to serious concerns on COPA's part that Dr Wright was implementing measures to seek to evade the costs consequences of his loss at trial.

13. Given those concerns and notwithstanding that I have yet to hand down my judgment, COPA issued, lodged and served its application for costs on Friday 22 March 2024. Thereafter, it issued its application for a worldwide freezing order in respect of Dr Wright's likely costs liability on Monday 25 March 2024.

14. COPA say the two applications necessarily inter-relate and the risks of Dr Wright dissipating his assets have made it necessary for COPA to seek an urgent determination in relation to its costs, at a point earlier than it might otherwise have done so.

15. So COPA have two applications before the Court. Upon being given notice, the Developers sought to have their application for costs and other relief (issued 21 March 2024) determined at this hearing and therefore appeared by Mr Gunning KC. COPA suggested that their application for costs should be determined first. The combination of the applications has given rise to a difficulty. On the one hand, COPA only gave short notice of this hearing to Dr Wright for fear that if longer notice was given, he would effect further transfers of his assets, with a view to evading the enforcement of any costs order made against him. On the other hand, Dr Wright has not been given time to prepare properly for the arguments on costs.

16. The reason why COPA wished their costs application to be heard first was because, as I understand the position, there is some debate in the authorities as to whether there is jurisdiction for making a freezing order injunction for a prospective costs order. Before I address that point, I will briefly set out the position as to COPA's costs and then remind myself of the basic principles.

COPA's costs

17. The total costs incurred by COPA so far amount to just over £6.558m. To that total, they add the much smaller costs they incurred in the BTC Core Claim of some £135k down to my order for the Joint Trial, giving a total of just over £6.7m. In both COPA's Skeleton and in Mr Sherrell's Affidavit, there is detailed explanation as to why the costs are that high. These points may be the subject of submissions in due course from Dr Wright's team, but this level of costs does not come as a surprise to me, bearing in mind my involvement in the case management of this complex litigation from June 2023 onwards, the numerous applications I had to determine and my conduct of the Joint Trial. COPA point out that the hourly rates charged by Bird & Bird LLP are significantly lower than those often experienced in this Court and lower than the Guideline Hourly Rates.

18. I will briefly explain the parts of COPA's costs application which are relevant. COPA seek a WFO in the (overly precise) sum of £6,200,966.82. This figure is calculated and sought to be justified as follows:

    18.1. COPA's total costs in the COPA Claim and the BTC Core Claim are £6,703,747.91.

    18.2. COPA say that 85% would be a reasonable estimated recovery in the circumstances of this case (including by reference to the hourly rates and the likelihood of an indemnity costs order).

    18.3. COPA has reduced the total sum by 7.5%, to arrive at a figure half-way between the interim payment on account which it seeks (i.e. 85%) and its total costs recovery. No increment has been added for interest on paid costs (which COPA will claim in due course) or for costs which COPA will incur between now and the end of the case.

    18.4. COPA say that this approach thus seeks to ensure that there will be funds to cover the interim payment on account plus an additional amount to reflect the prospect that COPA will recover more in respect of (i) costs incurred to date, (ii) interest on items of costs paid to date and (iii) costs yet to be incurred up to final order.

Applicable Principles

19. The basic principles are not in dispute, although my attention was drawn in COPA's full and detailed skeleton argument to a number of points, some of which I should discuss.

20. In terms of the basic conditions: in summary COPA must establish (i) a good arguable case on the merits (ii) a real risk that the defendant may dissipate assets before enforcement of any judgment; and (iii) that it is just in all the circumstances to grant the injunction.

Have COPA shown a good arguable case?

21. On the first condition, Mr Hough KC addressed me on the debate in recent authorities as to whether the good arguable case test applicable to one of the jurisdictional gateways for service out of the jurisdiction, as expounded in the Supreme Court's decision in *Brownlie v Four Seasons Holdings International* [2017] UKSC 80, also applies in the freezing injunction context. He referred me to the judgment of Bright J. in *Unitel SA v Unitel International Holdings BV and another* [2023] EWHC 3231 (Comm), and to the judgment of Butcher J in *Magomedov v TGP Group Holdings (SBS) LP* [2023] EWHC 3134 (Comm), where both re-affirmed the applicability of the *Ninemia* test in the freezing injunction context. However, COPA correctly submitted that in the circumstances of this application, nothing turns on that interesting controversy.

22. The position on the merits of the Identity Issue (which was the only issue in the Joint Trial) is that COPA and the Developers have succeeded, albeit I have yet to explain my full reasons. I have already indicated that the evidence was overwhelming. As COPA submit, that necessarily means (as I shall explain in my Trial judgment) that Dr Wright has forged documents on a grand scale and, during his cross-examination, he lied extensively and repeatedly.

23. Although I have not yet heard detailed argument on costs, it is undoubtedly the case that COPA (and the Developers) are the winning party. They are highly likely (to say the least) to obtain an order for their costs. Furthermore, in the circumstances, it is likely that those costs will be awarded on the indemnity basis.

24. On the issue of whether there is jurisdiction for making a freezing order injunction for a prospective costs order, COPA drew my attention in this regard to a number of authorities on this point, covering all the possible bases:

    24.1. First, in *Jet West Ltd v. Haddican* [1992] 1 WLR 487, the applicant had the benefit of a costs order, with those costs to be "taxed if not agreed". Lord Donaldson held (at 490) that a freezing injunction "*can be granted or can be continued in support of any judgment or order of the court for the payment of money, whether or not the exact sum which will be payable has been quantified at the date of the order and the date at which the Mareva injunction is sought*". Accordingly, COPA submitted that if I were to grant the costs orders which COPA is seeking there would be no question but that jurisdiction exists to grant the freezing order it now seeks.

    24.2. Second, if I decline to order COPA's costs in principle now and/or were not to award an interim payment on account of costs, COPA indicated an argument might be mounted that the Court should not exercise its jurisdiction in favour of granting a freezing order, based on what Morgan J. said in *Cooke v Venulum Property Investments Ltd v Cadman* [2013] EWHC 4288 (Ch), at [14]:

> *"In the present case, the claimants do not have a relevant order for costs in their favour. They refer to the possibility that an order might be made in their favour. That seems to me to fall wholly within the rule which I have referred to, that freezing relief is not to be granted*

> *in relation to a claim which does not currently exist but might later come into existence."*

24.3. Third, COPA pointed out that *Cooke* predates the Privy Council's decision in *Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24, in which the court disavowed the then conventional view that a freezing injunction is contingent on the existence of substantive (extant or prospective) domestic proceedings, or a pre-existing cause of action. Instead, the: "*key question is whether the assets are or would be available to satisfy a judgment through some process of enforcement*" (see [85] and [88]). Further, as Lord Leggatt JSC made clear at [89]:

> *'The interest protected by a freezing injunction is the (usually prospective) right to enforce through the court's process a judgment or order for the payment of a sum of money. A freezing injunction protects this right to the extent that it is possible to do so without giving the claimant security for its claim or interfering with the respondent's right to use its assets for ordinary business purposes. The purpose of the injunction is to prevent the right of enforcement from being rendered ineffective by the dissipation of assets against which the judgment could otherwise be enforced.'*

24.4. On that basis, COPA submitted that once this is appreciated, there is no reason to link the grant of such an injunction to the existence of a cause of action. What matters is that the applicant has a good arguable case for being granted substantive relief in the form of a judgment that will be enforceable by the court from which a freezing injunction is sought.

24.5. Fourth, that the Court of Appeal in *Re G* [2022] EWCA Civ 1312, at [57]-[61] confirmed that *Convoy Collateral Ltd* correctly states the law in England.

24.6. Fifth, COPA also drew attention to the decision of Marcus Smith J in *Santina Limited v Rare Art (London) Ltd* [2023] EWHC 807 (Ch). The effects of [36(10)] and [37] of that decision were that the Court upheld as correct a prior decision of Edwin Johnson J, in which he granted a freezing order in part on the basis of "*the likely costs Rare Art would recover if awarded its costs of the entire proceedings*".

24.7. Accordingly, COPA submitted that, on the basis that COPA has a good arguable case for being granted substantive relief in the form of the costs orders it seeks, which will be enforceable by this court, it will meet the good arguable case test, even if the Court does not grant the costs order which COPA seeks at this juncture.

25. As part of fulfilling their duty of full and frank disclosure, COPA indicated that, in the event that the Court declines to grant the orders sought in the Costs Application, it could be argued that there is no authority wholly on all fours with the present scenario, and that to accept that there is a good arguable case in respect of a merely prospective costs order would be a novel and unjustified extension of the law. If such an argument were to be made, COPA would say in response that the order it seeks would undoubtedly be within the broad discretion conferred by s.37 of the Senior Courts Act

1981 (see *Santina* at [35]), consistent with principle and in keeping with the weight of authority.

26. In my judgment, the current situation is very different to that under consideration by Morgan J. in *Cooke*, where his decision was entirely understandable, both on the current authorities and the facts before him. In the light of the decision of the Privy Council in *Convoy,* and of the Court of Appeal in *Re G,* in the slightly unusual circumstances which present themselves in this case, I have no doubt that the grant of a freezing order here has (a) a proper jurisdictional basis and (b) is a proper exercise of my discretion. In respect of COPA's costs, COPA has, in my view, an extremely strong case for recovery of its costs, and, as I have said, COPA are likely to obtain an order for assessment on the indemnity basis in the circumstances of the Trial. This is not a merely prospective costs order which they might secure dependent on success in the action. COPA (and the Developers) have succeeded. Accordingly, the relevant merits for the costs order are very strong indeed, albeit I have not yet heard any argument from Dr Wright's side in opposition. They are far stronger than a more normal case where the claimant merely establishes that it has a good arguable case on the merits of the underlying claim.

27. Against that, I do not think it would be right to make final costs orders in favour of COPA and the Developers and against Dr Wright, without giving him and his team the opportunity to marshal and make any points in response which they say should be considered. So, in the unusual circumstances which present themselves, I consider I should proceed as follows:

    27.1. I should not determine the costs orders sought by COPA and the Developers without giving Dr Wright's legal team the time and opportunity to prepare any arguments they wish to make.

    27.2. However, that should not place any obstacle in the way of the grant of freezing relief, and, for the reasons explained in the remainder of this Judgment, I hold that it does not.

Does a real risk of dissipation exist?

28. I move to the second requirement: a real risk of dissipation by Dr Wright before COPA are able to enforce any costs order. On this requirement, COPA drew my attention to the useful distillation of the principles in the judgment of Popplewell J. in *Fundo Soberano de Angola v Jose Filomeno dos Santos* [2018] EWHC 2199 (Comm) at [86], points (1) to (7). I have those well in mind and it is unnecessary to set them out.

29. In addition, COPA drew attention to no less than nine additional points in relation to whether there is a real risk of dissipation, citing examples drawn from *Gee* on Commercial Injunctions and/or caselaw. The applicability of each of these points really depends on the facts. The first 8 are plainly applicable on the facts here. The ninth is delay, which I discuss below.

30. As to the facts here, COPA submit there is an undeniable risk of dissipation. They make 8 points in support of this submission. Each of these points was expanded in Mr Hough's oral submissions, but it is unnecessary to set out all of the supporting detail.

31. The first concerns Dr Wright's dishonesty, on which COPA make points at a general level and a more specific level:

    31.1. At the general level, COPA submit that Dr Wright has shown himself prepared to lie and to double-down on his lies, on such a grand scale that his "commercial morality" can only be assessed as being unacceptably low. Also at the general level, he showed in his evidence that his capacity for evasion is considerable. It follows from the decision announced at the end of trial that the Court has concluded that Dr Wright has given extensive and elaborate dishonest evidence under oath in multiple sets of proceedings – the present actions, the *Kleiman* proceedings in the USA, the *McCormack* proceedings in the UK and the *Granath* proceedings in Norway (as well as verifying dishonest accounts in statements of case in the *Tulip Trading Ltd* and *Granath* proceedings in the UK).

    31.2. At a more specific level, COPA point out with justification that Dr Wright has not been candid about the means and sources of his funding of litigation, which speaks to his attentiveness to maintaining at a distance from COPA potential targets for eventual costs orders. On an application of the principles set out at paragraph above, this constitutes cogent evidence of a risk of a dissipation.

32. The second concerns the recent asset transfer. COPA say that the moving of an on-shore shareholding to an off-shore company, days after the Court announced its decision on 14 March 2024, is indicative of an attempt to safeguard assets against enforcement in this jurisdiction. Taking the corporate filing documents for RCJBR at face value, the assets in question may be worth up to £20 million.

33. Third, is a recent ruling against Dr Wright in the ongoing Kleiman litigation in Florida. As recently as 15 March 2024, Dr Wright was held to be in contempt of court in Florida, by reason of his failure to provide asset disclosure previously ordered by the Florida Court.

34. Fourth, at an earlier stage in the Coinbase action, Dr Wright point-blank refused to detail his assets in connection with Coinbase's security for costs application.

35. Fifth, Dr Wright has boasted that he is judgment proof. Mr Sherrell in his Affidavit cites various examples of statements made by Dr Wright to this effect: including "*I've made myself untouchable*" and *"Technically, I control none of the assets"*. I need not set out additional examples set out in a witness statement of Miss Mountain made at an earlier stage in the Kraken claim. During the recent trial of the COPA and BTC Core claim, Dr Wright gave evidence to the effect that when faced with significant legal costs in Australia, he sought to evade the consequences of that order (which might have included bankruptcy) by hiding assets.

36. Sixth, Dr Wright has a history of default in relation to orders for the payment of money. Dr Wright is subject to a USD$140 million judgment debt in the US, which has not been paid. In Norwegian proceedings brought by Mr Granath, Dr Wright was ordered to pay: (i) the equivalent of £338,000 by the Oslo District Court in October 2022; and (ii) the equivalent of £51,000 by the Court of Appeal in June 2020. As far as COPA is aware, these amounts remain outstanding, although Mr Hough did make the point that some might have been paid without their knowledge.

37. Seventh, Mr Sherrell relates what happened in the Tulip Trading case, where Dr Wright effected an asset transfer in direct response to an embargoed Judgment.

38. Eighth, Dr Wright's asset structures. Here COPA rely on the use of offshore structures in combination with his boasts to be judgment proof. In this regard, I also take into account Dr Wright's proclivity to forge documents, plus his changing story about the Tulip Trust which I will discuss briefly in my Trial judgment. In other words, Dr Wright has already shown himself to be perfectly capable and willing to rely upon asset structures to suit his purpose of evading enforcement.

39. I agree with COPA that the combination of these points presents a powerful case that there exists a real risk of dissipation but I must consider the possible contrary indications which COPA have drawn to my attention.

40. Perhaps the most significant contrary point concerns the potential significance of delay. As COPA pointed out, delay in making the application may be relevant to the risk of dissipation. The defendant might argue that the claimant has delayed in making this application and that delay suggests there is no risk of dissipation. As to this issue, COPA submitted:

    40.1. The risk of dissipation is assessed objectively. Whilst a delay in seeking a freezing order may be said to be evidence that the claimant does not genuinely believe that there is a risk of dissipation – because if the claimant had thought that, he would have acted sooner – that is not a determinative factor (*JSC Mezhdunarodniy Bank v Pugachev* [2015] EWCA Civ 906 at [34]; *Gulf International v Aldwood* [2019] EWHC 1666 (QB) at [174]).

    40.2. The inferences to be drawn from delay and the likelihood of a risk of dissipation are matters which depend on the facts of the case. In particular:

        40.2.1. The fact that a defendant has been put on notice of the claim (even in detailed pre-action correspondence) does not necessarily preclude a finding that there is a risk of dissipation once the claim has started (*Antonio Gramsci v Recoletos* [2011] EWHC 2242 (Comm) at [28]-[29]).

        40.2.2. Delay may mean that some assets could have been dissipated before the injunction is granted. However, the injunction may nevertheless bite on other assets which are harder to dissipate (e.g. real property or substantial business interests) or which have yet to be secreted away (*Antonio Gramsci* at [28]; *Madoff Securities v Raven* [2011] EWHC 3102 (Comm) at [156]; *Pugachev* at [34]).

        40.2.3. Even if it does not disprove a risk of dissipation, delay is still relevant to the court's general discretion whether to grant a freezing order (*Gulf International v Aldwood* at [174]).

        40.2.4. Although each case will turn on its own facts, in the majority of instances, delay has not established that there was no risk of dissipation such that the injunction should not be granted (see for example *Pugachev, Madoff Securities, Ras al Khaimah v Bestford* [2018] 1

> WLR 1099*, Antonio Gramsci, FM Capital Partners Ltd v Marino* [2018] EWHC 2889 (Comm)).

41. Furthermore, COPA drew my attention to the following additional points:

    41.1. That Dr Wright could yet argue that none of the factors addressed above sufficiently bear on and establish a risk of dissipation.

    41.2. That COPA's information is not complete and that it is working to an extent on inference, or that it is misconstruing the corporate documents and/or Dr Wright's statements. In answer to such arguments, COPA relies upon the evidence it has served and maintains that the inferences being drawn are reasonable ones.

    41.3. That, in circumstances in which the essence of the Court's judgment was revealed on 14 March 2024 and in which COPA has not brought its application on until now and has done so on at least some notice to Dr Wright, there is no real risk of dissipation, or that COPA does not truly believe in the existence of such a risk. It might potentially be argued that, if COPA truly thought there was such a risk, it would have proceeded on a fully *ex parte* basis, rather than *ex parte* on notice.

42. In answer to any such suggestions, COPA say that it has moved quickly in the circumstances and that it has inevitably required time to marshal its evidence and issue both the Costs Application and the WFO Application. Furthermore, given that the first "tipping off" occurred on 14 March 2024, the Court may well have viewed a fully *ex parte* application as insufficiently justified. More generally, COPA pray in aid Cooke J's decision in *Antonio Gramsci v Recoletos* [2011] EWHC 2242 (Comm) at [28]-[29] in answer to any such criticisms:

> *28: "It could be said that, in every case where there is a letter before action, the defendant is alerted to the possibility of a claim and the need for dissipation of assets if the defendant is minded so to do in order to make himself judgment-proof. However, time and again the courts have granted freezing orders on commencement of proceedings following exchanges of correspondence where the merits of the claim have been fully debated and the defendant thereby undoubtedly alerted."*
>
> *29: "In my judgment it is no answer for a defendant to come to the court to say that his horse may have bolted before the gate is shut and then to put that forward as a reason for not shutting the gate. That would be to pray in aid his own efforts to make himself judgment proof - if that, indeed, is what has occurred - and to avoid the effect of any court order which the court might make. If he can show that there is no risk of dissipation on other grounds, that is one thing. If he can show that the claimants do not consider that there is such a risk by virtue of the delay in seeking the order, that again is a relevant factor. However, if the court is satisfied about those matters in favour of the claimant, there is no reason why the court should not shut the gate, however late the application, in the hope, if not the*

> *expectation, that some horses may still be in the field or, at the worst, a miniature pony."*

Conclusion on risk of dissipation

43. Each of the eight factors cited by COPA constitutes cogent evidence of a real risk of dissipation. The 'delay' does not detract from those eight factors in any way – COPA had to take time to prepare this application. Taken cumulatively, I agree that it is difficult to conceive of more direct evidence of a risk of dissipation in the face of a judgment than this. Overall, I agree with COPA's submission that it is rare to see such a powerful case on the risk of dissipation.

Cross-undertaking in damages and fortification.

44. Although COPA suggest that the risk that a freezing order might cause unjustifiable harm to Dr Wright is slight, they nonetheless are prepared to give a cross-undertaking in damages in the standard form.

45. In view of its status as an industry body without its own significant free-standing asset base, COPA proposes to fortify its cross-undertaking. It does so by way of the bank guarantee from Barclays Bank dated 2 June 2023 for £1.9 million, which was put in place as part of its provision for security for Dr Wright's costs. In short summary as to the terms of that guarantee (beyond its value), COPA submit:

    45.1. Although the guarantee was originally provided by way of security for costs, it is not limited in its use. On its terms, it could be called upon in response to any unpaid order resulting from the cross-undertaking. Dr Wright can claim on it simply by presenting a notice to Barclays Bank certifying:

        45.1.1. that an amount is due and owing under a Court Order (which must be attached); or

        45.1.2. that an amount has been agreed to be payable and is owing under a settlement agreement (which again must be attached); and

        45.1.3. that the amount owing has not been paid.

    45.2. Its expiry date is 7 March 2026. Accordingly, its duration should be more than sufficient for the purposes of fortifying the cross-undertaking.

46. In these circumstances, I agree that the fortification offered by COPA is more than adequate to satisfy the Court that Dr Wright will have sufficient and meaningful protection against any adverse consequences of the freezing order, should it be shown to have been wrongly granted.

Is it just in all the circumstances to grant a freezing order?

47. Perhaps not surprisingly, on this point COPA's submission was straightforward: that it was just and convenient for the Court to grant the freezing order sought in view of:

    47.1. the inevitability of Wright's liability for COPA's costs (or, at the very least, a very substantial proportion of them);

47.2. the strength of the evidence relied upon as to the risk of dissipation;

47.3. the quantum of COPA's costs; and

47.4. the extent of the protection being afforded to Dr Wright, the remoteness of the possibility that the order sought could cause him loss notwithstanding.

48. Against that, and as part of fulfilling their duty of full and frank disclosure, COPA indicated that the following arguments could be made by Dr Wright:

48.1. First, that he has met all payment orders in the present and recent proceedings, including substantial orders for security for costs in favour of the Developers and other defendants to his various actions. He has also satisfied two costs payments to COPA (one in 2022 and one in 2024). Thus, it could be said that Dr Wright does not present a risk of defaulting on a costs order. In response, COPA say that it would be wrong to attach much weight to the fact of Dr Wright having met orders before now. Those orders (especially the security for costs orders) were made to maintain his position in the litigation; to "keep him in the game". They were not made and met at a time after he had failed at trial. The sums paid were in each case a fraction of the amounts now being claimed by way of costs against Dr Wright and his companies (including by COPA and by the Developers).

48.2. COPA also point out that all except one of the payments made were made prior to the "deal" which COPA understands was done between Dr Wright and Mr Ayre (addressed in Mr Sherrell's affidavit at [38]) which provided for Dr Wright to "fund himself". The payments were made at the time when COPA believes that Mr Ayre and/or his company nChain were funding Dr Wright's litigation (although Dr Wright disputes that position). The provision of security after the "deal" was done was made late, after Dr Wright's cheque had "bounced" (in the words of Dr Wright's solicitors). The payment to COPA in January 2024 was also significantly less substantial than the sums in issue here and made from two different accounts. COPA is not aware of Dr Wright ever having met a costs order of the magnitude claimed in the present case and the fact remains, as mentioned above, that Dr Wright has a broader prior history of significant defaults.

48.3. Second, that the veracity of Dr Wright's accounts as to the various trust structures and similarly opaque means of holding his assets has been disputed, including in these proceedings. In particular, the existence of the "Tulip Trust" (or its various iterations) were in issue at trial, as were Dr Wright's accounts of having incorporated his Seychelles companies in 2009 and 2011 (rather than acquiring them as pre-aged shelf companies in 2014). In response, COPA suggest that, on any view, the opacity and apparently unnecessary complexity of Dr Wright's asset-holding structures is established, and this is a legitimate cause for concern. Further, not all aspects of Dr Wright's apparent recourse to offshore asset-holding vehicles have been doubted by COPA – the short point is that they remain opaque to it, hence the need for asset disclosure orders.

48.4. Third, that it may be that Dr Wright's shares in RCJBR are of no real value, either (i) because of circumstances outside COPA's knowledge or (ii) in any

event given that COPA's case in the main trial was that Dr Wright has a history of falsifying information in relation to company records. In response, COPA say that they rely less on the premise that RCJBR's assets are of value (albeit it would stand to reason for them to be of some value); rather, they rely on the fact that the filings indicate that Dr Wright is moving assets overseas following the Court's ruling.

Conclusion on the application for the WFO

49. In my judgment, this is a plain case for a freezing injunction and one which extends worldwide. In summary:

    49.1. First, COPA has a very powerful claim to be awarded a very substantial sum in costs.

    49.2. Second, I consider there is a very real risk of dissipation.

    49.3. Third, it is just in all the circumstances to grant a freezing order.

    49.4. In the particular circumstances, it is also plain that the order must extend worldwide.

    49.5. Having given careful consideration to COPA's costs arguments and attempting to anticipate the points which could be made in response on behalf of Dr Wright, I concluded the appropriate sum for the WFO was the sum of £6m.

Points on the draft Order

50. Mr Bradley KC addressed me on various points on the wording of the draft Order. To the extent that the WFO I made departs (in minor respects) from the standard form in Appendix M to the Chancery Guide, the amendments were fully justified.

51. Whilst reserving Dr Wright's position generally, Mr Bergin KC submitted that the asset disclosure provisions (in [8(1)] – provision of information and [9] – confirmation on Affidavit) should only take place after the return date. I disagree. In the circumstances of this case, it is in the interests of justice for Dr Wright to provide a clear explanation of all his assets as early as possible. The return date is Friday 12 April 2024, with the provision of information due by 4pm on Friday 5 April, and the Affidavit due by 4pm on Wednesday 10 April.

Other directions

52. In a separate Order, I directed payment out of the sum of £1m lodged by COPA as part of Dr Wright's security for costs. I also gave directions for the exchange of further written submissions on the applications for costs (and interim payment) brought by COPA and the Developers. As currently advised (but subject to any further Order I may be persuaded to make), I consider these applications can be determined on the papers and those directions seek to facilitate that end.