

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RACHEL POUYAFAR,

Plaintiff,

-v-

JOHN DOE NOS. 1-25,

Defendants.

Index No. 654820/2023

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION
FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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Plaintiff Rachel Pouyafar (“Plaintiff”), by and through her undersigned counsel Mandel Bhandari LLP, respectfully submits this memorandum of law in support of her application for a preliminary injunction, pursuant to Civil Practice Law and Rules (“CPLR”) §§ 6301, 6312 and 6313, enjoining Defendants John Doe Nos. 1-25 (collectively, “Defendants”), from disposing of, processing, routing, facilitating, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering with Plaintiff’s property, debts, accounts, receivables, rights of payment, or tangible or intangible assets of any kind, whether such property is located inside or outside of the United States, including, but not limited to, cryptocurrency or other digital assets stored at the “hot wallet address” numbered 0x01d19c7dab1da4d2c9a7a8c54a9c1e9b7b5a7b9a (the “Binance Hot Wallet”). Pending this Court’s hearing on the preliminary injunction motion in this matter, Plaintiff seeks temporary injunctive relief prohibiting Defendants from transferring the digital assets held in the Binance Hot Wallet.

PRELIMINARY STATEMENT

This is a case of theft, where time is of the essence. Defendants created a false identity, pretended to want to hire Plaintiff as a New York real estate broker, lured her with a fake website and fictitious “profits” from cryptocurrency, and then stole more than \$200,000 of Plaintiff’s property through a scheme known as “pig butchering.”

As of today, Plaintiff’s property still appears to be in the Binance Hot Wallet. However, Defendants could move this property anytime, without notice. That is why she seeks an immediate temporary restraining order now, before Defendants can transfer it elsewhere.

The “pig butchering” label is unfortunately accurate: it describes the practice of using fake cryptocurrency accounts to “fatten” victims before slaughter. The perpetrators target people,

frequently in New York, by promising—and then pretending to deliver—large, but fake, returns. These fake returns lure victims to deposit substantial amounts of their savings. Once victims have been fattened enough with reports of false profits, and have transferred large amounts of money, the perpetrators steal their property, and disappear.

Plaintiff respectfully requests that the Court grant the requested relief because she satisfies the applicable provisions of CPLR Article 63 and the requirements for a preliminary injunction and a temporary restraining order freezing the assets in the Binance Hot Wallet.

First, Plaintiff is likely to prevail on her claim for conversion, because she has the right to possess these assets, yet Defendants have stolen and now possess them. Plaintiff also is likely to prevail on her claim for money had and received, because it would be inequitable to permit Defendants to engage in secret transactions to steal Plaintiff's assets.

Second, Plaintiff will suffer irreparable harm if Defendants move the stolen assets from the Binance Hot Wallet. Such a move likely would be untraceable, meaning that Plaintiff would lose her money forever.

Third, the balance of equities favors Plaintiff given Defendants' lies, scheme, and theft.

Fourth, a very low undertaking, if any, is warranted here. The equities overwhelmingly favor Plaintiff. Defendants brazenly stole her property and should not be permitted to remove that property from the Binance Hot Wallet.

New York courts have previously considered similar threats of cryptocurrency theft, and have responded immediately to enjoin defendants from transferring stolen property. For example, in *LCX AG v. John Doe Nos. 1-25*, the Court properly issued a Temporary Restraining Order to freeze the stolen assets and allow the Plaintiff the opportunity to recover. See [Order to Show Cause and Temporary Restraining Order](#), *LCX AG v. John Doe Nos. 1-25*, Index No.

154644/2022 (N.Y. Sup. Ct. Jun. 2, 2022) (Masley, J.).¹ As in that case, Plaintiff is entitled to a temporary restraining order to prevent Defendants from selling her assets in the Binance Wallet. Unless Defendants are restrained, they could immediately transfer Plaintiff's assets, without notice.

FACTUAL BACKGROUND

The following facts are set forth in the Affidavit of Rachel Pouyafar, executed September 28, 2023 ("PA"); the Affirmation of Charles Zach, executed September 29, 2023 ("ZA"); and the Affirmation of Rishi Bhandari, executed September 29, 2023 (the "BA").

A. Plaintiff is a Struggling New York Resident Who Was Targeted in a Crypto Scheme

Plaintiff is a resident of New York who, like many New Yorkers, lost her job during the recent pandemic. PA at ¶ 6. She supports her daughter and her ailing mother, who recently lost her eyesight. *Id.* Plaintiff had taken out a \$131,600 government loan to provide for her family while she established herself as a real estate agent. *Id.* She recently became a real-estate agent with Compass, Inc. a real estate brokerage headquartered in New York, and is trying to rebuild her life and career. *Id.* at ¶¶ 3, 6. Plaintiff lives at 301 E. 66th St, Unit 3M, New York, NY 10065. *Id.* at ¶ 2.

Plaintiff was targeted by one or more of Defendants, who contacted her via WhatsApp pretending to be "Yunhai Quan" ("Quan"). *Id.* at ¶ 4. Quan told Plaintiff he was seeking to purchase a home using Plaintiff as an agent. *Id.* She was eager to pursue a conversation with Quan, given his affluent lifestyle and the prospect of selling him a property in New York. *Id.* at ¶

¹ Available at

<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=8s0QJtgcFH/oFAJOghtK1g==&system=prod> (last accessed Sept. 29, 2023).

6. Plaintiff will attempt to identify Defendants through discovery served on third parties with whom Defendants interacted.

B. Defendants Lured Plaintiff with Lies

Defendants' actions here followed the "pig butchering" roadmap. The scheme began on July 20, 2023, when Quan approached Plaintiff in her capacity as a licensed New York real estate agent. *Id.* at ¶ 4. Quan pretended to be a former investment banker living a lavish lifestyle in California while running an investment firm. *Id.* at ¶ 5. Quan won Plaintiff's trust by convincing her that he wanted to buy a New York residence through her, with a budget of \$5.7 million, and was willing to help her invest in return. *Id.* at ¶ 4.

Quan then persuaded Plaintiff to deposit funds—initially just \$500 on July 31, 2023—in what appeared to be an account at QuedEx, a regulated crypto trading platform. *Id.* at ¶ 9. Quan then provided false reports indicating that Plaintiff had made profits trading cryptocurrency assets. *Id.* After Plaintiff deposited more money, Quan further won Plaintiff's trust by permitting her to "withdraw" approximately \$8,000 in supposed profit. *Id.* at ¶ 10.

The scheme continued during August 2023, with additional false reports of "profits," as described in detail in the Pouyafar Affidavit. *Id.* at ¶ 11. Plaintiff deposited more funds until August 21, 2023, when Coinbase flagged her transaction history as potentially involving illegal activity and froze her account. *Id.* at ¶ 12. Plaintiff deposited a total of approximately \$240,500 from July 31, 2023 through August 22, 2023. *Id.* at ¶ 11.

C. Defendants Stole Plaintiff's Property

As an investigation by Plaintiff's counsel revealed, there were no QuedEx accounts, no investments, and no profits. ZA at ¶ 11. Instead, Defendants' reports were fictitious, falsely indicating that Plaintiff's investments had made money when in truth her funds were not invested at all. *Id.*

Instead, Defendants have engaged in numerous rapid-fire digital transactions to convert Plaintiff's property and hide the locations of Plaintiff's cryptocurrency assets. *Id.* at ¶¶ 12-26. The details of these transactions are set forth in the Zach Affirmation. *Id.* Most important, the investigation by Plaintiff's counsel uncovered the current location of her stolen cryptocurrency assets: the Binance Hot Wallet. *Id.* at ¶ 27.

Plaintiff's assets are now commingled in this account with other funds that could represent property that Defendants similarly have stolen and converted from other "pig butchering" victims. *Id.* at ¶ 28. In all, the above commingled account has approximately \$2.1 million of assets, including funds deposited during September 18-24, 2023. *Id.*

ARGUMENT

A party seeking a preliminary injunction "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor." *Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839, 840 (2005); CPLR § 6301. In addition, "[a] temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had." CPLR § 6301.

Plaintiff meets the above requirements for a preliminary injunction and temporary restraining order.

I. PLAINTIFF HAS A HIGH PROBABILITY OF SUCCESS ON THE MERITS

First, plaintiff has demonstrated a high probability of success on the merits on its claim for conversion. The tort of conversion is established where "one who owns and has the right to possession of personal property proves that the property is in the unauthorized possession of another who has acted to exclude the rights of the owner." *Dragons 516 Ltd. v. GDC 38 E 50 LLC*, 201 A.D.3d 463, 464 (1st Dep't 2022) (citation omitted). A cause of action for conversion

accrues when the conversion takes place. *See Sporn v. MCA Records*, 58 N.Y.2d 482, 487 (1983); *see also Lennon v. Seaman*, 63 F. Supp.2d 428, 440 (S.D.N.Y. 1999); *Seneca Ins. Co. v. Wilcock*, 2002 WL 1067828, at *6 (S.D.N.Y. 2002).

As demonstrated above, Plaintiff owns and has the right to \$202,650 of the property in the Binance Wallet. In addition, Defendants currently have dominion over that property, which they obtained through lies and deception. Accordingly, Plaintiff has shown both: “(1) plaintiff’s possessory right or interest in the property and (2) defendant’s dominion over the property or interference with it, in derogation of plaintiff’s rights.” *Colavito v. NY. Organ Donor Network, Inc.*, 8 N.Y.3d 43, 50 (2006) (citations omitted); *see also Pappas v. Tzolis*, 20 N.Y.3d 228, 234 (2012); *Tudisco v. Duerr*, 89 A.D.3d 1372, 1373 (4th Dep’t 2011).

Second, Plaintiff also has demonstrated a probability of success on the merits on its claim for money had and received. An “action for money[] had and received is quasi contractual in nature and is not founded upon any contract, either express or implied.” *Bd. of Educ. of the Cold Spring Harbor Centr. Sch. Dist. v. Rettaliata*, 164 A.D.2d 900, 900-01 (2d Dep’t 1990). The cause of action for monies had and received “is an obligation which the law creates in the absence of an agreement when one party possesses money that in equity and good conscience should not be retained and which belongs to another.” *Id.* The maintenance of the claim “rests upon the broad consideration of right, justice and morality.” *Id.* at 901. There is no requirement that plaintiff prove the existence of privity between the parties, other than which “results from the circumstances.” *Salisbury v. Salisbury*, 175 A.D.2d 462, 463 (3d Dep’t 1991) (citation omitted). For more than a century, the cause of action for “money had and received” has entitled a plaintiff who is the equitable owner of assets to recover from a defendant who possesses those assets. *See Roberts v. Ely*, 113 N.Y. 128, 131-32 (1889).

As demonstrated above, Defendants orchestrated an inequitable scheme to steal Plaintiff's money. They lied to her, created a false identity, falsified transaction reports, and used complex cryptocurrency transactions to attempt to hide their theft. In equity and good conscience, Defendants should not be permitted to keep Plaintiff's property as money had and received.

II. PLAINTIFF FACES A HIGH DANGER OF IRREPARABLE INJURY IN THE ABSENCE OF AN INJUNCTION

Plaintiff clearly satisfies the irreparable harm element. If Defendants transfer assets from the Binance Hot Wallet, they will be untraceable. Indeed, Plaintiff is fortunate that Defendants have not already transferred those assets.

In addition, Plaintiff is aware that other parties recently have deposited assets in the Binance Hot Wallet. Defendants could stop accumulating assets in the Binance Hot Wallet at any time, and then transfer those assets to a different account, without notice to Plaintiff. As noted above, time is of the essence. Unless this Court grants the requested relief immediately, Plaintiff could lose the assets in the Binance Hot Wallet forever.

III. THE BALANCE OF EQUITIES CLEARLY FAVORS PLAINTIFF

Plaintiff would be seriously and irreparably harmed if she is unable to obtain the assets in the Binance Hot Wallet. As shown above, Plaintiff is in a difficult financial position. She will suffer greatly from the very significant loss of these assets. Without a temporary restraining order, it is highly likely that these assets will disappear.

Plaintiff's stolen funds are identifiable intangible articles of property, traceable using identified techniques and associated with specific virtual asset addresses. Plaintiff had an immediate possessory right to her stolen funds. Defendants intended to and did exercise absolute dominion over Plaintiff's stolen funds when Defendants transferred Plaintiff's stolen funds to

addresses over which Plaintiff has no control, and moved those assets through multiple digital transactions in an attempt to hide the illicit transactions and current location of Plaintiff's stolen assets. Defendants' dominion over Plaintiff's stolen assets was in derogation of Plaintiff's right to her assets, completely depriving Plaintiff of the use of her stolen assets. Defendants benefited from receiving Plaintiff's stolen assets by transferring them to a digital wallet under Defendants' control. In principles of equity and good conscience, Defendants should not be allowed to retain Plaintiff's stolen assets because Defendants had no authority to receive and transact those assets.

In contrast, injunctive relief will not be inequitable for Defendants. In the very unlikely event that Plaintiff does not ultimately succeed in persuading the Court regarding any aspects of her argument, Defendants will not be harmed. Instead, the result of the temporary restraining order will merely be that Defendants will be unable to transfer those assets to other accounts. If Defendants believe they are entitled to the assets in the Binance Hot Wallet, they will be able to appear before this Court and make their arguments, while the assets are preserved transparently in the Binance Hot Wallet.

IV. PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER BECAUSE IT APPEARS THAT SHE WILL SUFFER IMMEDIATE AND IRREPARABLE DAMAGE UNLESS THE DEFENDANT IS RESTRAINED BEFORE THE HEARING

Plaintiff's counsel has access to proprietary technology that has allowed it to locate Plaintiff's funds in the Binance Hot Wallet. However, Defendants are currently able to move these funds anytime, without notice. If Defendants withdraw Plaintiff's funds, Plaintiff likely will not be able to recover these funds. In such a case, she would lose her property forever.

It appears from Defendants conduct that they are following the pattern and practice of other "pig butchering" schemes. The remaining step of this scheme is for Defendants to transfer the assets from the Binance Hot Wallet to another of their accounts in a secret way that cannot be

traced or recovered. Based on the facts to date, it appears that this final step by Defendants is likely and imminent. Such a transfer would cause Plaintiff immediate and irreparable harm. To prevent this harm, the Court should restrain Defendants before the hearing.

V. THE UNDERTAKING, IF ANY, SHOULD BE MINIMAL

The purpose of an undertaking upon granting a preliminary injunction is to cover the “damages and costs which may be sustained by reason of the injunction” if it is later determined the movant is not entitled to the injunction. CPLR § 6312(b). The Court has the power to set a very low undertaking in view of the equities, and it should do so here. *See, e.g., In re Total MRI Mgmt., LLC*, 11 Misc. 3d 1062(A) (Sup. Ct. Nassau Cnty. Feb. 24, 2006) (setting undertaking at \$2,500). If it is later determined that Plaintiff was not entitled to an injunction, the assets will remain in the Binance Hot Wallet. Accordingly, there is no need for an undertaking.

VI. PLAINTIFF SHOULD BE PERMITTED TO SERVE DEFENDANTS USING ELECTRONIC MEANS THAT ARE APPROPRIATE GIVEN THE FACTS

Attorneys for Plaintiff have identified the details of Defendants’ transactions, and the current location of Plaintiff’s property. However, John Doe Nos. 1-25 remain unidentified and therefore cannot be served by traditional means. In similar cases, courts have approved of service of process through electronic means. For example, the Court in *LCX AG v. John Doe Nos. 1-25* permitted service to be made via a special-purpose Ethereum-based token delivered into an address similar to the Binance Hot Wallet. *See [Order to Show Cause and Temporary Restraining Order, LCX AG v. John Doe Nos. 1-25](#)*. Likewise, permitting service by WhatsApp would be particularly appropriate in this case, given that Plaintiff has communicated with them solely through WhatsApp, and has no other contact information for any Defendant. This Court should approve of service using appropriate electronic means.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that this Court enter a temporary restraining order and freeze the Binance Hot Wallet address of: 0x01d19c7dab1da4d2c9a7a8c54a9c1e9b7b5a7b9a; and any other relief that the Court finds just and proper.

Plaintiff further respectfully requests that this Court permit Plaintiff to serve Defendants through electronic means, including either (1) via WhatsApp to the contact number Defendants provided to Plaintiff for Quan, or (2) upon the person or persons controlling the Binance Hot Wallet via a special-purpose Ethereum-based token (the “Service Token”), delivered or airdropped into the Binance Hot Wallet. The Service Token will contain a hyperlink (the “Service Hyperlink”) to a website Mandel Bhandari LLP will cause to be created, wherein Mandel Bhandari LLP shall cause to be published the Order to Show Cause and all papers upon which it is based. The Service Hyperlink will include a mechanism to track when a person clicks on the Service Hyperlink. Plaintiff requests that such service shall constitute good and sufficient

service for purposes of jurisdiction under New York law on the person or persons controlling the
Binance Hot Wallet.

Dated: New York, NY
September 29, 2023

Respectfully submitted,
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Certification Pursuant to 22 NYCRR § 202.8-b

I, Rishi Bhandari, at attorney duly admitted to practice law before the courts of the State of New York, hereby certifies that this Memorandum of Law contains 2,937 words, excluding the parts exempted by § 202.8-b(b), and therefore complies with the word count limit set forth in 22 NYCRR § 202.8-b(a).

Dated: New York, New York
September 29, 2023

By: 
Rishi Bhandari, Esq.