

In the High Court of New Zealand  
Christchurch Registry  
I Te Kōti Matua O Aotearoa  
Ōtautahi Rohe

CIV-2019-409

*between:* **gny.io Limited**, a duly incorporated company in Jersey, Channel Islands having its registered address at 6 Hilgrove Street, St Helier, Jersey  
*Plaintiff*

*and:* **Cryptopia Limited**, a duly incorporated company having its registered address at 410 Colombo Street, Sydenham, Christchurch, New Zealand  
*Defendant*

## Statement of claim

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Dated: 11 April 2019

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## STATEMENT OF CLAIM

The plaintiff, through its solicitor, says:

### **The parties**

- 1 The plaintiff, gny.io Limited, is a duly incorporated company registered in Jersey, Channel Islands incorporated under the Companies (Jersey) Law 1991 and having its registered office at 6 Hilgrove Street, St Helier, Jersey.
- 2 The defendant, Cryptopia Limited, is a duly incorporated company having its registered address at 410 Colombo Street, Sydenham, Christchurch, New Zealand.

### **Background**

#### *The defendant's platform and services*

- 3 The defendant is a financial service provider regulated by the Financial Markets Conduct Act 2013.
- 4 The defendant operates and provides services through its website and associated applications (the **Platform**). Through use of the Platform and services operated and provided by the defendant, users can:
  - 4.1 buy, sell and exchange supported cryptocurrency coins; and
  - 4.2 store supported coins in the defendant's hosted wallets.
- 5 The defendant's standard terms and conditions are available on its website and apply to the Platform and the services operated and provided by the defendant.

#### *Particulars*

- 5.1 The defendant's terms and conditions provide, inter alia:

Cl 8(a): We will use reasonable care in operating our Platform, so as to limit disruptions to the Platform, User Accounts and our Services...
- 6 In addition to the defendant's terms and conditions, the defendant's website makes representations about the manner in which the defendant operates and provides its services.

*Particulars*

6.1 The home page of the defendant's website makes, inter alia, the following representations:

Keep your coins safe.

We are ethically run from New Zealand, regulated by New Zealand law and a leading trusted exchange.

Be secure.

Our exchange is simple to use, fast and secure.

Cryptopia offers users the best global transparent exchange platform to trade cryptocurrencies.

(the **Representations**)

*The plaintiff's use of the Platform*

- 7 The plaintiff carries on business as a software development company.
- 8 The plaintiff trades in cryptocurrency through its two tokens, GNY Tokens and Lisk Machine Learning tokens (**LML tokens**).
- 9 From in or around 28 November 2018 the plaintiff commenced listing and exchanging its LML tokens on the Platform in accordance with the defendant's terms and conditions.
- 10 The plaintiff's LML tokens were managed on two user accounts, being username: cintzieh and username: richyjames10.
- 11 The plaintiff also lists its LML tokens on Bitbay, a European cryptocurrency exchange.

**Hack of the Platform and the plaintiff's losses**

- 12 On 14 January 2019 a hacker or a group of hackers obtained access to the defendant's server (the **Hack**).
- 13 In the Hack the hacker/s moved tokens stored in wallet addresses controlled by the defendant to other wallet addresses outside the defendant's control.
- 14 The Hack was a major breach of the defendant's system.

- 15 The plaintiff lost a total of 15,409,316.7196351 LML tokens as a result of the Hack. That amount was 100% of all the plaintiff's LML tokens held in the plaintiff's user accounts on the Platform.
- 16 The total value of the plaintiff's lost LML tokens was 492.3356489 BTC around the date of the Hack, being approximately US \$2,500,000.
- 17 The plaintiff is suffering an ongoing and deepening loss of liquidity as a direct result of the Hack.

*Particulars*

- 17.1 The plaintiff has tracked a number of its stolen LML tokens on Bitbay, but the plaintiff is unable to recover those stolen tokens.
  - 17.2 The stolen tokens have and are eroding the price of all LML tokens.
  - 17.3 LML tokens are continuing to suffer reputational damage.
  - 17.4 Many LML customers have reduced or ceased purchasing LML tokens.
  - 17.5 As a result, the plaintiff's losses continue to mount.
  - 17.6 Since the Hack, the market capitalisation of the LML tokens have reduced by over US \$6,000,000.
  - 17.7 Further particulars to be provided closer to trial.
- 18 Since the Hack, the plaintiff repeatedly attempted to engage with the defendant to mitigate its losses arising from the Hack.

*Particulars*

- 18.1 The plaintiff's attempts to engage with the defendant include:
  - 7 March 2019 email
  - 8 March 2019 emails
  - 11 March 2019 email

- 13 March 2019 email
- 14 March 2019 email
- 18 March 2019 email and letter
- 19 March 2019 email
- 20 March 2019 email

19 The defendant's engagement with the plaintiff since the Hack was intermittent and slow, and the defendant failed to engage with the plaintiff on mitigation measures.

*Particulars*

19.1 Correspondence from the defendant:

- 7 March 2019 email
- 8 March 2019 emails
- 13 March 2019 email
- 14 March 2019 email
- 18 March 2019 email

**FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

The plaintiff repeats paragraphs 1 to 19 above and says further that:

20 The defendant's terms and conditions apply to the Platform and the services operated and provided by the defendant.

21 In breach of its terms and conditions, the defendant failed to manage the platform and provide services with reasonable care by failing to:

21.1 safely store tokens on the Platform;

21.2 have adequate safeguards to prevent the Hack; and

21.3 respond with reasonable care to the Hack.

22 The plaintiff has suffered loss and is likely to suffer further loss, as a result of the defendant's breach of contract.

**AND the plaintiff claims:**

- (a) damages in an amount to be quantified;
- (b) interest; and
- (c) costs.

**SECOND CAUSE OF ACTION – BREACH OF FAIR TRADING ACT 1986**

The plaintiff repeats paragraphs 1 to 19 above and says further that:

- 23 At all material times, the defendant was in trade for the purposes of the Fair Trading Act 1986 (the **FTA**).
- 24 The defendant made the Representations about the safety and security of the Platform and services.
- 25 The Representations were false and/or misleading in breach of s 13 of the FTA.
- 26 The plaintiff has suffered loss, and is likely to suffer further loss, as a result of the defendant's conduct.

**AND the plaintiff claims:**

- (a) a declaration that the defendant made false or misleading representations in trade in breach of s 13 of the FTA by engaging in the relevant conduct;
- (b) an order directing the defendant to pay the plaintiff an amount to be quantified, under s 43 of the FTA;
- (c) interest; and
- (d) costs.

**THIRD CAUSE OF ACTION – BREACH OF FINANCIAL MARKETS CONDUCT ACT 2013**

The plaintiff repeats paragraphs 1 to 19 above and says further that:

- 27 At all material times, the defendant was a financial services provider for the purposes of the Financial Markets Conduct Act 2013 (the **FMCA**).
- 28 The defendant made the Representations about the safety and security of the Platform and services.
- 29 The Representations were false and/or misleading in breach of s 22 of the FMCA.
- 30 The plaintiff has suffered loss, and is likely to suffer further loss, as a result of the defendant's conduct.

**AND the plaintiff claims:**

- (e) a declaration that the defendant made false or misleading representations in breach of s 22 of the FMCA by engaging in the relevant conduct;
- (f) a compensatory order in an amount to be quantified;, under s 494 of the FMCA.
- (g) interest; and
- (h) costs.

**FOURTH CAUSE OF ACTION – BREACH OF CONSUMER GUARANTEES ACT 1993**

The plaintiff repeats paragraphs 1 to 19 above and says further that:

- 31 At all material times the defendant was providing a service and the plaintiff was a consumer as defined under the Consumer Guarantees Act (the **CGA**).
- 32 Pursuant to s 28 of the CGA, the defendant guaranteed that its services would be carried out with reasonable care and skill (the **Guarantee**).
- 33 The defendant breached the Guarantee.

34 The plaintiff has suffered loss, and is likely to suffer further loss, as a result of the defendant's breach of the Guarantee.

**AND the plaintiff claims:**

- (i) damages in an amount to be quantified;
- (j) interest; and
- (k) costs.

This document is filed by Laura Louise Fraser, solicitor for the plaintiff, of the firm Chapman Tripp. The address for service of the plaintiff is at the offices of Chapman Tripp, Level 38, 23 Albert St, Auckland.

Documents for service on the plaintiff may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 2206, Auckland; or
- (b) emailed to the solicitor by the email addresses on the front page of this document provided that a hard copy is also posted.